



Conflicted Democracies and Gendered Violence

THE RIGHT TO HEAL

Internal Conflict and Social Upheaval; Examples from India

EDITORS Angana P. Chatterji, Shashi Buluswar, Mallika Kaur

FOREWORD and **STATEMENT** Veena Das and Navanethem Pillay

"A very important feature of Conflicted Democracies and Gendered Violence: The Right to Heal is that it shows the ubiquity of sexual violence that is not simply concomitant to other forms of violence but is a weapon that is part and parcel of the weaponry in the hands of the state and of transnational militant movements. What are the mechanisms through which violence is continuously sustained within democracies? This exemplary book helps us ask that question without the plethora of evasions that often allow democratic states to deflect that question to some other concern—national security, national honor or the necessity of pragmatism in view of the enormity of new forms of warfare. I am so grateful for this book and for the courage of scholar-activists and the victim-survivors who have put the results of years of hard labor on these questions before us."

— Veena Das, Krieger-Eisenhower Professor of Anthropology, Johns Hopkins University

"The monograph provides an incisive, comparative, and contextual framework for grappling with some of the most challenging issues of our time—gender and sexual violence in conflict. The document makes a compelling case for the development of effective national accountability mechanisms for political democracies to address conflict-based issues and grave social violence. The monograph underlines the pressing need to place victims-survivors at the center of owning knowledge and defining remedy. This monumental work stands to impact scholarship, policy, and advocacy for addressing gender-based and sexualized violence in conflicted democracies."

—Navanethem Pillay, United Nations High Commissioner for Human Rights, 2008–2014

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The monograph is dedicated to individuals and collectives in areas of conflict and social upheaval who live with multiple vulnerabilities and labor with courage and dignity against seemingly insurmountable odds to enable the work of remembrance, accountability, and healing.

Especially, it is dedicated to victims and survivors of gendered and sexualized violence in conflict and upheaval, and allies, and their brave, honorable, and enduring struggle to redress injustice and impunity.

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The Armed Conflict Resolution and People's Rights Project, (ACRes), focuses on the internal dimensions of armed conflict and mass social violence. Interdisciplinary in practice and rooted in local knowledge, ACRes contends with the condition of violence and the contested terrain of people's rights, to understand how victim-survivors live with social suffering and ameliorate its effects, define mechanisms for transitional, transformative, and reparatory justice, seek psychosocial healing, and undertake the work of memorialization and social change. The Project works with a collaborative network of victim-survivors, scholars, and academic and civil society institutions.

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CONTENTS

Statement from Navanethem Pillay	xv
Foreword by Veena Das	xvi
Acknowledgments	xviii
Abbreviations	xx
INTRODUCTION	1
Challenges and Possibilities	3
Sites of Inquiry	8
Method and Ethics	8
Disciplinarity and Collaborative Network	9
Research Protocols	9
Applied Research	9
Local Knowledge	10
Oral History	10
Extended Interviews	11
Surveys	12
Communiqués and Interviews on Existing Records	12
Organizations Engaged	12
Issues of Inclusion and Exclusion	13
Vulnerable Subjects	13
Anonymization	14
Exclusions	14
Archival Research	14
Legal Analysis	15
Official Records and Inconsistencies	15
Consultations	15
Peer Review	15
Limitations	15
Language and Italicization	16
SECTION I. CONFLICT AND UPHEAVAL: UNDERLYING ISSUES .	17
Conflicted Democracies	19
Foundational and Political Violence	19
Conflict and Upheaval	24
Internal Armed Conflict	24
Social Upheaval	26

Shared Characteristics	26
Addressing History in the Present	27
A Notation on “Truth”	29
Securing Justice	30
The Subject of Rights	33
Self-Determination: Colonial and Post/Decolonial Contexts	33
People’s Rights and Human Rights	34
International Law	37
International Humanitarian Law	37
International and Non-international Armed Conflict	38
Current Global Climate	38
Gendered and Sexualized Violence	42
Continuum of Violence	42
Nationalist Violence	43
Minoritization	43
Opportunistic and Retributive Violence	43
Sexual Violence	44
Gender-Based Violence	45
Gendered and Sexualized Violence	46
Minorities and LGBTIQA Communities	49
Addressing Gender and Sexual Violence	52
International Context	54
International Agreements	57
Challenges	57
Justice and Accountability	59
Transitional and Transformative Justice	59
Multiple Relevancies	61
Engendering Justice	62
Public Leadership	64
Comparative Contexts	65
Right to Remedy and Reparation	68
SECTION II. CASE IN POINT: INDIA.	71
Why India?	73
Foundational and Political Fault Lines	75
Communalism and Minoritization	77
Communal Violence Bill	81
Special Laws	82

Religious Freedom	84
Women and Sexualized Violence	88
Conflict Violence	89
LGBTIQA and Sexualized Violence	90
Gender and Minoritization	90
The Will and Capacity of the State	92
International Instruments	93
National Framework and People's Rights	95
The Court System	95
Human Rights Commissions	96
Answerability for Sexualized Violence.	103
The Record before Us	107
Four Areas under Study	107
Punjab: The Conflict of 1984-1995	110
Impact	112
Sexual Violence: Examples	118
Jammu and Kashmir: Ongoing Conflict since 1990	119
Impact	123
Sexual Violence: Examples	127
Gujarat: Social Upheaval, 2002	128
Impact	129
Sexual Violence: Examples	133
Odisha: Social Upheaval, 2008	135
Impact	138
Sexual Violence: Examples	139
SECTION III. PART ONE: FOUR SEMINAL CASES	141
Selection and Objectives	143
Punjab: Doaba	146
Investigation	147
Prosecution	147
Jammu and Kashmir: Kunan Poshpora	150
Investigation	150
Gujarat: Naroda Patiya	154
Investigation	155
Prosecution	157
Odisha: Kandhamal.	159

Investigation	159
Prosecution	161
Discussion	163
Criminalization of Sexual Violence	163
Prevention	164
Contextual Analysis	166
Reporting	167
Registration of Complaints and Arrest of Suspects	168
Collection and Preservation of Evidence	170
Physical and Testimonial Evidence	170
Forensic Evidence	171
Timeliness of Court Proceedings	172
State Agents and Legal Immunity	173
Effective Remedy	174
SECTION III. PART TWO: MEMORY FRAGMENTS	177
“Where Is My Story?”	179
Fragments from Punjab	182
Amritsar, Chandigarh, Hoshiarpur, and Tarn Taran	182
Conversations: One	183
Conversations: Two	184
Conversations: Three	188
Conversations: Four	191
Conversations: Five	194
Fragments from Gujarat	198
Ahmedabad and Anand	198
Site One	199
Site Two	202
Site Three	209
SECTION III. PART THREE: THE RIGHT TO HEAL	215
States of Violence	217
States of Emergency, States of Exception	217
Exemplification	218
Apparatuses of Exception	220
Gendering Imperatives	223
Leadership and Civil Society	224
Transition and Transformation	227

Frameworks in Accountability . . . . .	.232
Mechanisms . . . . .	.236
Approaches . . . . .	.239
Historical Dialogue . . . . .	.239
Psychosocial Restitution . . . . .	.245
Thematic Issues . . . . .	.247
State’s Responsibility . . . . .	.248
Law . . . . .	.250
Transformations . . . . .	.253
Civil Society . . . . .	.254
Non-state Perpetrators . . . . .	.255
Economic Restitution . . . . .	.255
Openness . . . . .	.256
Archives of Pain and Healing . . . . .	.258
Appendix . . . . .	.263
Endnotes . . . . .	.265
Bibliography . . . . .	.303
Books . . . . .	.303
Cases . . . . .	.385
Laws . . . . .	.387
International Declarations and Treaties . . . . .	.387
Biographical Briefs . . . . .	.389
Index . . . . .	.394

TABLES

Table 1. India: Population, 1981-2011	75
Table 2. India and International Instruments	97
Table 3. Mention of Gender-based Violence by Commissions of Inquiry	99
Table 4. Verma Committee and Criminal Law	105
Table 5. Areas in Focus	108
Table 6. Population: Jammu and Kashmir and Punjab, 1981–2011.	109
Table 7. Population: Gujarat and Odisha, 1981–2011.	109
Table 8. Illegal Cremations	115
Table 9. Unknown and Unmarked Graves	126
Table 10. Number of Complaints	132
Table 11. Government of India’s Update	133
Table 12. Holding Organizations Accountable	263
Table 13. Village Profile.	264
Table 14. Memorialization.	264

STATEMENT

Conflicted Democracies and Gendered Violence: The Right to Heal provides an incisive, comparative, and contextual framework for grappling with some of the most challenging issues of our time—gender and sexual violence in conflict. Rich, interdisciplinary explorations expand on the notion of “conflicted democracies” and its applicability to states that are troubled by persistent structural and political violence. Longstanding tensions between majority and minority groups, state and marginalized people, and privileged and disadvantaged result in violent conflict and upheaval in conflicted political democracies like India.

Gender-based and sexual violence is ever present in these situations. This courageous work draws attention to examples from different physical and thematic areas that are seldom scrutinized together. Providing extensive details, the document analyzes the existing infrastructure while demonstrating the alarming and repeated failure of official responses and state systems. The stories of survivor women from minority groups and legal cases highlight the horror of their experience in four acute instances, the conflicts of Jammu and Kashmir and Punjab and violence in Gujarat and Odisha.

The document makes a compelling case for the development of effective national accountability mechanisms for political democracies to address conflict-based issues and grave social violence. Adapted to the Indian context, the document calls for the “right to heal” through acknowledgment; political shifts; truth, justice, and reparation; the guarantee of non-recurrence; and the right to dignity and memorialization.

The monograph underlines the pressing need to place victims-survivors at the center of owning knowledge and defining remedy. It is an inspiring resource for researchers, human rights defenders, and civil society. This monumental work stands to impact scholarship, policy, and advocacy for addressing gender-based and sexualized violence in conflicted democracies.

Navanethem Pillay

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FOREWORD

What are the mechanisms through which violence is continuously sustained within democracies? Angana Chatterji and her colleagues have provided an exemplary book that helps us ask that question without the plethora of evasions that often allow democratic states to deflect that question to some other concern - national security, national honor or the necessity of pragmatism in view of the enormity of new forms of warfare. Of-course authoritarian states are not some kind of safe havens ruled by benevolent dictators—there is a mind-boggling violence inflicted on their citizens by the apparatus of the state. But the question is this-can we make a clear separation between democratic states and authoritarian states when the torture apparatus developed in the latter is used by democratic states to evade their own laws in keeping a global regime of torture, incarceration and sexual violence fully functional? And within democratic states themselves there are zones defined as “dangerous,” because of militant movements or insurgencies, that provide the excuse for suspending the law or enacting extraordinary measures through which extrajudicial killing, police violence, and arming of militias to keep the order, becomes part of the normal?

A very important feature of *Conflicted Democracies and Gendered Violence: The Right to Heal* is that it shows the ubiquity of sexual violence that is not simply concomitant to other forms of violence but is a weapon that is part and parcel of the weaponry in the hands of the state and of transnational militant movements. All of these mechanisms occur in what Chatterji and her colleagues astutely name as “conflict societies” – a simple but effective term to show how violence cuts across different modalities of governance. Yet we must ask if the state must not be held more responsible for its failure to protect all citizens equally and for directly inflicting violence on those whose form of belonging it deems as “defective”?

Chatterji and her colleagues do not yield to any nostalgic rendering of violence perpetrated by militants, insurgents, freedom fighters, terrorists – all names that can morph into each other. Nor are they swayed by appeals to “mitigating factors”—as they make the violence of the state visible. Their case study of India is a scathing revelation of the range and kind of violence Indians endure at the hands of their own state through acts of commission and omission. There is the meticulously compiled data, presented in tables, graphs, legal petitions and judgments, and testimonies of victim-survivors that shows how violence and above all, sexual violence, can coexist with the most enlightened laws on paper. There is not an iota of doubt in my mind that the conceptual distinction between interpretive social science and positivist social science is of little use. Here Chatterji and her colleagues show what can be accomplished by compilation of numbers, by building data bases, and combining this with the voices of victim-survivors. If there

is any hope for democracies it is that scholar-citizens such as Angana Chatterji and her colleagues will not give up or give in to despair. This does not, of-course, obviate the necessity for further nuanced analyses of the relation between everyday violence and spectacular violence, or the need to think more deeply of what allows such subjects and torturers, killers in riots, or simply wife-beaters to be brought into being? What this book shows, though, is that while we cannot escape asking these philosophical questions, we cannot escape to them as a means of turning away from the violence that is before our eyes now.

I am so grateful for this book and for the courage of scholar-activists and the victim-survivors who have put the results of years of hard labor on these questions before us.

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Angana P. Chatterji, Shashi Buluswar, Mallika Kaur
October 2015

ABBREVIATIONS

ACRes	Armed Conflict Resolution and People's Rights Project, Center for Social Sector Leadership, Haas School of Business, University of California, Berkeley
AFSPA	Armed Forces (Special Powers) Act
ANHAD	Act Now for Harmony and Democracy
APDP	Association of Parents of Disappeared Persons
BJP	Bharatiya Janata Party
BRICS	Brazil, Russia, India, China, and South Africa
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CBI	Central Bureau of Investigation
CDRO	Coordination of Democratic Rights Organization
CED	Committee on Enforced Disappearances
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEH	Historical Clarification Commission
CIIP	Committee for Information and Initiative on Punjab
CJP	Center for Justice and Peace
CPPCG	Convention on the Prevention and Punishment of the Crime of Genocide
CRC	Convention on the Rights of the Child
CrPC	Code of Criminal Procedure
CRPF	Central Reserve Police Force
DDR	Disarmament, Demobilization, and Reintegration
DHR	Indian Council of Medical Research, Department of Medical Health Research
DNA	deoxyribonucleic acid
DP	Director of Prosecution
EPW	Economic and Political Weekly
FIR	First Information Report
FMLN	Farabundo Martí para la Liberación Nacional
GDP	Gross Domestic Product
GSDRC	Governance and Social Development Resource Center
HRW	Human Rights Watch
IAC	International Armed Conflicts
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights

ICERD	Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social, and Cultural Rights
ICPED	International Convention for the Protection of All Persons from Enforced Disappearance
ICRC	International Committee of the Red Cross
ICTJ	International Center for Transitional Justice
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IHL	International Humanitarian Law
IHRL	International Human Rights Law
IIJ	International Initiative for Justice
IMF	International Monetary Fund
Inter-Am	Inter-American Court of Human Rights
IO	Investigation Officer
IPC	Indian Penal Code
IPS	Indian Police Service
IPTK	International People's Tribunal in Kashmir
ISI	Inter Services Intelligence
JKCCS	Jammu Kashmir Coalition of Civil Society
KMO	Khalra Mission Organization
LGBTIQA	Lesbian, Gay, Bisexual, Transgender, Intersex, Queer, Asexual
MoD	Ministry of Defense
NCM	National Commission for Minorities
NCW	National Commission for Women
NGO	non-governmental organization
NHRC	National Human Rights Commission
NIAC	non-international armed conflicts
OHCHR	Office of the High Commissioner of Human Rights
OPHI	Oxford Poverty and Human Development Initiative
PCTV	Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill
PHRA	Protection of Human Rights Act
PHRO	Punjab Human Rights Organization
PIL	Public Interest Litigation
PMHLC	Prime Minister's High Level Committee
POTA	Prevention of Terrorism Act
PSA	Public Safety Act
PTB	Prevention of Torture Bill
PTI	Press Trust of India

PUCL	People's Union for Civil Liberties
REMHI	Recovery of Historical Memory Project
RSS	Rashtriya Swayamsevak Sangh
RTI	Right to Information Act
SC	Scheduled Castes
SCU	Serious Crimes Unit
SCW	State Commission for Women
SHC	Station Head Constable
SHO	Station House Officer
SHRC	State Human Rights Commissions
SIT	Special Investigation Team
SPO	Special Police Officer
SSP	Senior Superintendent of Police
ST	Scheduled Tribes
SWAT	Special Weapons and Tactics
SWCPW	Second World Congress on Psychosocial Work in Exhumation Processes, Forced Disappearance, Justice, and Truth
TADA	Terrorist and Disruptive Activities Act
TIP	Test Identification Parade
TRC	Truth and Reconciliation Commissions
UAPA	Unlawful Activities Prevention Act
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
UNDRIP	UN Declaration on the Rights of Indigenous Peoples
UNMOGIP	UN Military Observer Group in India and Pakistan
UNSG	United Nations Secretary General
UNTS	United Nations Treaty Series
URNG	Guatemala National Revolutionary Unity
US	United States
USCIRF	United States Commission on International Religious Freedom
USD	United States Dollar
USIP	United States Institute of Peace
VDC	Village Defense Committee
VHP	Vishwa Hindu Parishad

Introduction

CHALLENGES AND POSSIBILITIES

Engaging recent histories of protracted conflict and social upheaval within “conflicted democracies” in the postcolony,¹ this monograph draws attention to events and aspects of gendered and sexualized social suffering that such dissension causes.

Numerous emergent and durable political democracies are habitually afflicted by long-drawn-out political and foundational violence. In the transition from feudal-imperial-colonial formations, the anatomy of conflicted political democracies is surfeited with myriad disputes, nationalist assertions, and unresolved politics. Symptomatic of the assimilative process, shifting political economies and hybridizing cultures are signified by continual and violent transitions and complex relationships between history and residual conflict. These situations erupt as recurrent law and order issues, or develop into episodic confrontations or full-blown conflicts, and as decolonial movements for autonomy and self-determination. Conflicted democracies frequently and sufficiently serve segments of the population yet are unable to effectively provide justice and accountability to subordinated groups, especially those entangled in, and impacted by, conflict and upheaval.

This text locates postcolonial India, the world’s most populous political democracy, as an exemplar. The text narrates issues of extraordinary gendered and sexualized violence within varying political situations in India. It elaborates on the social dangers and performative infrastructure that transform old histories through new political violence (Das and Kleinman, 2000; Feldman, 2000). Detailing events and impacts in and between sites of conflict and social upheaval, the monograph explicates the conflicted relations of a troubled political democracy to violence, the “Other,” and justice.² These relations evidence the entrenched role of discord and aggression in the development of the nation (Pillay, 2014). They call attention to challenges in conceiving and institutionalizing structural mechanisms for psychosocial, economic, and legal justice and redress.

Theoretical precepts—conflicted democracy, gendered and sexualized violence, and transitional and transformative justice, are examined in section I, and particularized in sections II–III via their exemplification and applicability in sites of political turmoil. The conceptual framework seeks to place the analysis in a larger historical, critical, and comparative context. The text draws on wide-ranging theoretical, historical, and specific materials.

Sections II–III focus on two sites of protracted conflict and two areas of social upheaval from India. Section II elaborates on issues in India, whereas section

*The living memory of women
victim-survivors inhabits the
margins of dominant history.
There, they are frequently
rendered incidental and
peripheral.*

III, part one identifies case examples from different regions and contexts across India that are rarely discussed in the same analysis to illustrate official responses to events of gendered and sexualized violence. Section III, part two threads together victim-survivor memory narratives from two sites that are seldom considered together.³

In closing, the monograph expands on the notion of immediate, structural, and transformative justice and espouses the right to heal.⁴ In doing so, section III, part three explores possibilities for accountability and historical dialogue through defining provisions for transformative justice to gendered violence within a conflicted democracy. It raises prefatory questions regarding the role of the state, civil society, and multisector institutions and the most elemental of constituents: victim-survivors.

It is of note that the issues and complexities pertinent to contemporary India are both specific to it and generalizable across cultural and discursive spaces beyond it. These issues are shared across nation-states with varying forms of democratic government and divergent relations to social difference. Particular to the Indian context, the fabric of gendered and sexualized violence is situated within selected cultural and political, and legal and economic milieus. It highlights intersectionalities between disciplinary power (Foucault, 1977), sovereign violence (Butler, 2008), and group violence. It evidences the relationship between majoritarian intent and minoritization (Chatterjee, 1993; Chatterji, 2009; Hansen, 1999; JanMohamed and Lloyd, 1990; Mahmood, 2012).⁵ The monograph traces the difficulties faced by victim-survivors in securing justice. The challenges are manifold to acknowledging the centrality of victim-survivors in shaping knowledge and driving the development of effective remedy through multisector alliances (Minh-Ha, 2009; Silver, 2011). We analyze the efficacy of existing mechanisms of justice and legal and political accountability based on victim-survivor perspectives. In so doing, we chart interventions that emphasize the concerns of victim-survivors of gendered and sexualized violence through defining a framework of priorities and protocols for a national mechanism for justice and accountability.

During prolonged conflict and events of massified social violence, the borders between life and physical and social death, between livability and despair shift and blur.

India is a developing democracy with thriving autonomous institutions, yet it is encumbered by unremitting violence and increasingly disciplinary governmental reach into civil society. India today is gripped by a combination of majoritarian hyperconsolidation and a dramatic expansion of globalizing culture. This creates a strengthened relation to globalizing economic and cultural forces (Appadurai, 2001). The task of bringing justice and accountability to situations marked by

conflict and social upheaval manifests as incommensurate with prevalent national priorities. In its *Country Summary* of 2010, Human Rights Watch (HRW, 2010: 2) stated “India points to its independent judiciary, vibrant media, and active civil society as evidence that it is a thriving, rights-respecting democracy. Yet fundamental structural problems remain including, most glaringly, widespread impunity for human rights violations” (2010: 2). Furthermore, HRW noted, “The government’s failure to protect minorities and other vulnerable groups engenders justified grievances and contributes to militant activity around the country.”

India has a long history of a dynamic and independent civil society engaging with the media and an active judiciary to uphold fundamental rights, freedoms, and special provisions enshrined in the Indian Constitution. The response to the 2012 rape in New Delhi was a recent testament to this legacy (Bhabha in Pazzanese, 2013; Simon-Kumar, 2013). The Supreme Court of India, which is the apex court of last resort in constitutional, civil, and criminal matters and the authoritative interpreter and defender of the constitution, regularly weighs in on policy matters pertaining to economic and social inequities, and offers oversight. With a burgeoning middle class, India reported a growth in gross domestic product (GDP) of over seven percent in 2015 and its economic rise suggests that its economy will overtake that of the United Kingdom in 2018, making it the largest economy in the Commonwealth (Center for Economics and Business Research, 2014). Nearly seven decades since decolonization, India has doubled its life expectancy, quadrupled its literacy rates, and improved health conditions, and it is “poised to lift millions out of poverty in the coming years” (World Bank, 2015: n.a).

A founding member of the United Nations (UN), India is party to key human rights treaties, and a contributing member of international legal bodies such as the International Court of Justice. India is the largest contributor to the UN Democracy Fund and currently the third largest contributor to the UN Peacekeeping Operations (Permanent Mission of India to the UN, 2015). At this juncture in India’s present, a focus on accountability to past and continuing injustices is imperative to political ethics and stability internally, and to repositioning the role of the state as the upholder of rights under rule of law (Pillay, 2012).

Accountability is necessary to maintain sustainable relations between groups that are historically antipathetic to each other (Barkan, 2015). Commitment to such accountability is necessary to the political, economic, and cultural sanctity of subaltern, subjugated communities and lives subordinated through political violence (Das, 1997). Accountability requires that judicial, legislative, and other bodies address the root causes and effects of disarray and dissension. In doing so, they must seek out the vital contributions of victim-survivors and marginalized sections of civil society. Specifying a national mechanism for justice and accountability to actualize such resolve is integral to victim-survivors’ capacity to heal. As a regional

and international economic and military power, India's commitment and capacity to focus on transformative and structural justice can forge pathways in promoting local and global security.

Two sites of protracted conflict and two sites of recent episodic violence in India constitute the analytical and ethnographic backdrop underpinning the gendered dynamics of violent conflict and acute social upheaval. Focus on specific sites enables the elaboration of the distinct and shared experiences of victim-survivors, a complex array of challenges faced by impacted communities, and the capacity of existing mechanisms to deliver individual and structural justice.

The two sites of protracted conflict are in the northwestern state of Punjab and the northern state of Jammu and Kashmir.⁶ The two sites of social upheaval are in the western state of Gujarat and the eastern state of Odisha (formerly called Orissa). The continuities and discontinuities between history and the present that are foundational to the conflicts and political violence in Punjab and Jammu and Kashmir are emblematic of decolonial encounters recurrent in postcolonial states. The social upheaval in Gujarat and Odisha exemplifies the postcolonial state's increasingly majoritarian relations to its "Others," and highlights fault lines in the development of national identity, political economy, and culture.

The causation, political underpinnings, and nature of postcolonial/decolonial conflict and upheaval are varied. The selected sites extend across different, while at times overlapping, time periods and are situated in distinct geopolitical locations in contemporary India. These sites are exemplary of the myriad conflicts and upheavals that have taken place in postcolonial India. They involve diverse communities and complex forms of violence that arise from differing, sometimes intersecting, historical, cultural, and political contexts. These situations resulted in different political, socioeconomic, and legal outcomes in the aftermath of mass violence in the course of social upheaval and during and after conflict.

Although focused on the internal dimensions of conflict, we note that issues borne of the Partition of India and Pakistan in 1947 have significantly defined the conflicts in Jammu and Kashmir and Punjab. These conflicts have had, or continue to have, cross-border and international dimensions. The monograph is limited by the selective study of Kashmir (internal aspects) since 1990 and Punjab between 1984 and 1995. With respect to social upheaval, the analysis is limited to specific incidents of violence in Gujarat in 2002 and Odisha in 2008. In the Indian context, social upheaval premised on the targeting of communities based on their religion, such as in Gujarat and Odisha, is also discourses as "communalism" and "communal violence."⁷ In both Gujarat and Odisha, complex histories and gestation periods culminated in these events and are residual in the aftermath.

The text examines issues of gendered and sexualized infringements on the life and liberty of marginalized communities, and of majority and minority issues and

relations premised on religious, ethnic, caste, tribe, and linguistic differences.⁸ The monograph highlights the collisions and intersections between victim-survivors, the agents and institutions perpetrating aggression, and the dominant political, cultural, and law-and-order apparatus. The introductory prescriptions and protocols depicted in the text are specific to the sites of study. It is hoped that these prescriptions and protocols will be of broader and general relevance to areas grappling with protracted conflict hostilities and periodic social aggression in conflicted political democracies. They are of specific relevance for India and its neighbors, and of thematic relevance to geographic areas beyond South Asia.

Although knowledge in and of itself does not ensure a resolution to social violence, “without knowledge there can be little reasonable expectation for the amelioration of perennial problems” of protracted conflict and social upheaval (Vasquez, 2000: ix; Jacoby, 2008). With this in view, the monograph seeks to contribute to dialogues for transformative justice through detailing effective approaches to accountability that can assist in counteracting future violations and violence within conflicted democracies. Through its focus on the ongoing efforts of victim-survivors and civil society, judiciary and government, international institutions and networks, the work seeks to contribute to conversations within scholarly and advocacy communities on mechanisms for justice, accountability, and social healing.

SITES OF INQUIRY

The work is premised upon preliminary applied inquiry and archival, secondary, theoretical, and legal research. It undertakes a summative engagement with a vast repository of materials and broad concepts that attests to the prolific contributions of so many. The generosity and guidance of research partners, participants, and scholars enables us to identify and reinterpret varied yet apposite theoretical precepts upon which to situate local and archival knowledges from specific research sites. The subject matter is intended for an audience of victim-survivors, scholars, researchers, practitioners, local community members, and policy makers.

METHOD AND ETHICS

This preliminary inquiry identifies and engages select issues and suppositions that define its parameters. In this instance, the key issues in this preliminary qualitative research study were selected for their import to local and impacted communities. The issues elaborated upon in the monograph and the complexities that are inherent to them are by no means exhaustive. A primary objective was to engage impacted communities and victim-survivors to discuss the continued impact of the events of conflict and social upheaval on their lives. A further objective was to understand the relation between continued impact and access to effective justice and accountability.

The research yielded a rich and diverse repository of materials for analysis and interpretation. The exploratory nature and timeframe of the study rendered uneven the relation between the range of issues that were identified and the quantum of information specific to each situation. The study included the direct participation of women victim-survivors and leaders from marginalized ethnic, caste, Adivasi, Dalit, and minority religious groups in inquiring into the gendered impact of conflict violence and mass violence.⁹ The inquiry presented significant potential for understanding the possibilities and failures of society to course-correct deficiencies in conflict-related and upheaval-related reparative mechanisms. Furthermore, it afforded insight into areas of structural and vestigial abuse, impunity and mistrust, and the need for long-term and gender-based reform of the formal justice delivery mechanisms.

The study nuances distinctions and differences in and between conflict situations and situations of social upheaval, rather than adopt a uniform approach to viewing and analyzing the different situations. The research facilitates a situated and comparative understanding, on the assumption that such understanding of the effects of armed conflict and social violence on victim-survivors is imperative to remedy and reparation. The study draws upon provisions applied in other contexts internationally to analytically connect and differentiate between the

situations of conflict and social upheaval and in outlining frameworks in justice and accountability.

DISCIPLINARITY AND COLLABORATIVE NETWORK

Interdisciplinarity The interdisciplinary research collective combined diverse knowledge and specializations. The study draws in particular on cultural anthropology, gender studies, human rights, law, political science, and South Asia studies and, secondarily, on development studies and public leadership, psychology, and sociology.

Collaborative Network The Armed Conflict Resolution and People's Rights Project (ACRes) Working Group, various members of the ACRes Advisory Group, and ACRes Partners provided insight and direction in defining the study and identifying its theoretical and applied dimensions. The scope of the inquiry was developed through the guidance of a Collaborative Network. The Collaborative Network includes individuals and organizations from within communities of victim-survivors and academic, legal, civil society, nonprofit, advocacy, and administrative fields. The local research was undertaken with the assistance of community partners, civil society leaders, and lawyers. Researchers were selected based on competence and professional capacity, and in adherence to local or in-country specifications.

RESEARCH PROTOCOLS

Timeframe This preliminary study was conducted during November 2012 to July 2015 (including archival, secondary, and theoretical research, and preliminary consultations and field research).

The "Archive" The applied research was undertaken through oral history and open-ended interviews. This was complemented by focused qualitative surveys. The number of research participants engaged in this preliminary inquiry was selective and small. The applied research was accompanied by extensive and in-depth archival research and secondary research, and in-depth legal case reviews.

The primary, archival, and secondary research materials, selected case examples, and social and legal evidence pertaining to Punjab, Jammu and Kashmir, Gujarat, and Odisha span time and place. The materials relate to and involve different communities, including national and local minority communities, forms of political and sexual violence, and perpetrators.

APPLIED RESEARCH

Applied Research Applied research for this monograph was conducted only in two of the four areas, in Punjab and Gujarat.

(This was complemented by archival and secondary research on Punjab

and Gujarat, and Jammu and Kashmir and Odisha, and legal case reviews.)

Research with Human Subjects The applied research undertaken by ACRes and its research team was subject to review and approval by the Committee for the Protection of Human Subjects at the University of California, Berkeley.¹⁰

Criterion In Punjab and Gujarat, specific areas were selected for applied research. The selections were based on creating a grouping of the areas most impacted by the conflict violence through triangulating available records. In each, specific cities and towns, and neighborhoods within them, as well as villages, were selected. Cities, towns, and villages selected were from among those who have most recorded the impact and where ACRes had developed relationships with local partner organizations that were working with impacted communities, especially with women. These organizations provided guidance and infrastructural support. These partnerships provided research participants/victim-survivors with the support of local organizations with which they are familiar.

Tools Multiple tools were employed in conducting applied research, including oral history and open-ended interviews in individual, private, and collective settings; conversations; qualitative surveys; and observations.¹¹ The interviews and surveys were usually conducted in person, and researchers undertook multiple corroborations of statements of fact. The instances where such corroboration was not possible are noted in the text. The responses were documented, recorded, and stored as per protocols agreed upon in the review materials submitted to the Committee for the Protection of Human Subjects of the University of California, Berkeley. Steps were taken to verify the credentials and credibility of those interviewed and the veracity of the information received, and unauthenticated statements were eliminated.

Language The research protocols for the applied study were translated into relevant languages and administered with informed consent and subject to confidentiality agreements. Consent forms were translated and made available in Gujarati, Punjabi, and English. Applied research was conducted in local languages, Gujarati and Punjabi, and, in some instances, in English, with translators present.

LOCAL KNOWLEDGE

Oral History

Participants In and from Gujarat, interviewees from three impacted areas in the state were invited to participate. In and from Punjab, interviewees from four

The recording of counter-memory is further complicated through the strident positing of institutional memory, destruction of evidence, literal and figurative exiles, and fear of reprisal.

impacted areas in the state were invited to participate. The forty-three interviewees included impacted women from each of the selected areas who were from minority communities. Furthermore, the interviewees have been directly or indirectly impacted by, or witness to, conflict violence. Community elders from each of the selected areas were also interviewed.

The interviewees were in the age group of between twenty-five and seventy years (no minors were interviewed). They comprised women, men, and others of varied ethnicities, and multiple linguistic, religious, and non-religious backgrounds, and a mix of persons with formal education and semiliterate and non-literate persons with non-formal education. The interviews were carried out in Punjab and Gujarat, with additional meetings in out-of-state locations.

Those interviewed included persons who are socially vulnerable in certain respects, in instances educationally and economically disadvantaged, and persons who have witnessed and been directly and indirectly impacted by mass violence. Those interviewed included victim-survivors who have survived and coped with ordeals with resilience and courage and are perhaps the most significant contributors to the research topic. The collective experiences and understandings, and local and situated/subjugated knowledges, of the research participants are integral to the questions and issues with which this text contends.

Number of Subjects There is much debate in qualitative research on relevant sample sizes. While seeking a comprehensive sample size for the oral history, time (required from participants), cost, and the capacity of a small research team, were taken into account. This oral history study was not conducted with a statistically representative sample size. This oral history study was focused on a sample of research participants who could offer the subtlety of their experience and the depth of perspectives on the issues under scrutiny. Therefore, it was anticipated that a small sample would offer a viable and useful set of data. As each interview or meeting offered layers of information and insight, strong patterns emerged with a small sample. Although it was anticipated that the interviews and meetings would often support the researchers' hypotheses, as expected, additional and new issues, topics, and questions also came to light.

Extended Interviews

In and from Gujarat, research participants were invited to participate in open-ended interviews from three impacted areas in the state. In and from Punjab, research participants were invited to participate in open-ended interviews from four impacted areas in the state. The forty-one interviewees were from minority and non-minority communities. The interviewees have been directly or indirectly impacted by, or been witness to, conflict violence or engaged in the work of securing redress. The interviewees were in the age group of between twenty-five and seventy years

(no minors were interviewed). They comprised of women, men, and others of varied ethnicities, and multiple linguistic, religious, and non-religious backgrounds, and a mix of persons with formal education and semi-literate and non-literate persons with non-formal education. The interviews were carried out in Punjab and Gujarat, with additional meetings in out-of-state locations.

Surveys

In Punjab, four focused qualitative surveys were undertaken with 50 participants who were selected through stratified and emergent sampling. An example of a village where the survey was undertaken may be found in the appendix.

Communiqués and Interviews on Existing Records

In addition to oral history and open-ended interviews, the research team engaged with three human rights advocates (lawyers) working on/in Punjab and two advocates working on/in Gujarat who are practicing at the local courts, state High Courts, and the Supreme Court of India. Secondly, the team engaged with two human rights advocates on Jammu and Kashmir, and two human rights advocates working on Odisha practicing at the local, state, and Supreme Court level. The advocates were in the age group of between twenty-five and seventy years, were all male, and were from multiple ethnicities, and linguistic, religious, and non-religious backgrounds. The meetings and interviews with the advocates regarding Punjab and Gujarat took place locally and in Mumbai and Delhi. The meetings with advocates working on Kashmir took place in Delhi, and meetings with those working on Odisha took place in Delhi and via electronic communication. The advocates provided the research team with an in-depth understanding of the legal issues at play, the scope of justice and accountability, and laws, processes, and procedures particular to each place of study.

Organizations Engaged

In addition to the preceding, the research team engaged local organizations that have been working with victim-survivors. These included Khalra Mission Organization (KMO), Punjab; Association of Parents of Disappeared Persons (APDP), Jammu and Kashmir; Prashant: Center for Human Rights, Justice, and Peace, Gujarat; Odisha Forum for Social Action, Bhubaneswar; and Citizens for Justice and Peace (CJP), Mumbai.

Organizations active in Punjab and Gujarat provided guidance with identifying key issues in these areas and with outreach for contacting survivor communities. They shared their work with the research team, which was formative to the research team's understanding of ground realities. They assisted with the primary research process and with the archival research and aided in the collection of

relevant documents and materials. Organizations working in Jammu and Kashmir and Odisha provided guidance with identifying key issues in these areas, assisted with the archival research and the collection of relevant documents and materials. They shared their work with the research team, which was formative to the research team's understanding of ground realities.

ISSUES OF INCLUSION AND EXCLUSION

Vulnerable Subjects

The research team remained aware that victim-survivors could be coping with identified or unnamed trauma. The research team took precautions to emphasize that the study had no therapeutic intention and neither offered nor guaranteed any direct benefit, either monetary or resulting from the experience itself. The team expressed the hope that the research participants would find the process reflexive and useful. Individuals who had been subjected to gendered and sexualized violence were invited to participate in the research and presumed to have the capacity to give informed consent that was valid and voluntary. Participants were consulted in determining the place of the interviews. A number of the participants came to the interview together, or with a family or community member who was an ally.

The research team inquired why the participants wished to engage in the proposed interview or meeting. If the responses had indicated that the victim-survivor was looking for psychological support, the research team was prepared to request that they seek requisite support and to make a referral. At each interview, the research team reiterated that all participation was voluntary. Participants were reminded that they could elect not to participate. If they were willing to continue, they were informed that they could refuse to answer any questions or end their participation in the interview or meeting at any time.

A community elder or a human rights defender familiar with the impacted community and working with survivors of gender-based violence was at hand during the conversations and interviews. Partner organizations in each area were prepared to provide free legal counseling and researchers were prepared to provide free referral paths should subjects be in need of mental health consultation. Counseling is often culturally alien and at times stigmatized. Community elders and human rights defenders familiar with the local community and having the trust of the community were in a position to assist and engage the research participant in a conversation should they need, and to provide comfort. They were at hand to facilitate a meeting between a research participant and a therapist. Additionally, human rights defenders familiar with the context and trusted by local partnering organizations were available to address any concerns participants raised, including legal concerns.

Anonymization

Where appropriate, quotations are anonymous, or pseudonyms or aliases have been used, and identities of persons and place names have been listed or omitted, respecting issues of dignity, confidentiality, and security. In using quotes and certain specific information from the applied research in the body of the text, the interviewer or source is recorded as “ACRes” and the lead researcher is named at the first instance in an endnote. Insertion(s) within square brackets in the quotations are the authors’ additions.

Many survivors of the incidents described in this monograph asked that they be identified by name. However, identifying information about the victims from primary, archival, and secondary sources and individual cases, including, at times, names of prosecuted perpetrators, has been redacted from the text. This redaction is due to security concerns expressed by individual victim-survivors and their communities and allies, and by local human rights advocates and defenders. Furthermore, this text does not identify victim-survivors of rape, or connected individuals, by name to protect victim-survivor privacy, and as per the specifications of section 228A of the Indian Penal Code. Indian law prohibits the disclosure of identifying information about victims of sexual violence.¹²

Exclusions

The text does not include any information from the research interviews that implicates or directly identifies any alleged perpetrators of specific crimes. Persons against whom the government has an ongoing legal case and for whom matters are sub judice were not interviewed, as this may affect their case or status and place us in the position of having to disclose data. Furthermore, perpetrators of violence were not interviewed. Understanding the effect of the perpetrator on the subjective identity of the victim-survivor is imperative to exploring questions of remedy and reparation (Barkan, 2000); however, undertaking work with perpetrators requires a context that is conducive, where there is an admission of the existence of victims and perpetrators (Assmann and Conrad, 2010; Moser and Clark, 2001). Such work was determined to be outside the scope of this study, especially without formal acknowledgment of the victimization that the conflict-affected have undergone. There can be no *working through the event* amid hostile political contexts. Healing the past requires deconstructive engagement with the troubled histories of loss, hatred, despair, and violence to approach the uneasy task of truth, justice, and reconciliation.

ARCHIVAL RESEARCH

In undertaking archival research, materials in multiple languages were accessed. These included official policy and other documents; primary legal documents;

dossiers, affidavits, oral statements, witness statements, and signed statements; print and electronic media, institutional literature and ephemera; and publically available archival sources including statements produced by various organizations, scholarly articles, books, reports, and newspaper reportage. The preceding was triangulated in developing and analyzing records, and corroborating the reliability of social facts.

Legal Analysis

Legal analysis was conducted through case identification and selection and by review of archival legal documents, and relevant secondary and theoretical sources. Four seminal cases are analyzed from the selected sites: two from conflict areas and two from sites of upheaval. The portion of the archival, theoretical, and secondary research that was undertaken by ACRes with its partner, the International Human Rights Law Clinic at the School of Law, University of California, Berkeley, was subject to the Clinic's internal process.

OFFICIAL RECORDS AND INCONSISTENCIES

The monograph uses various datasets throughout the text. In instances, there are significant inconsistencies between statements, facts, and figures in and between official documents, insofar as they exist, and those recorded in unofficial sources. In such instances, while citing official figures, wherever available, the text supplements them with figures derived from alternate sources.

CONSULTATIONS

In the process of configuring and conducting the study, ACRes held consultations with various members of its Advisory Group and with other scholars, policy-makers, lawyers, and civil society and other advocates. These persons contributed to the work in various ways, and their names are listed at the beginning. ACRes held consultative meetings with its partners and other organizations, including the International Human Rights Law Clinic, School of Law, University of California, Berkeley; International Human Rights and Conflict Resolution Clinic, School of Law, Stanford University; Asian Legal Resource Center, Hong Kong;¹³ and Asian Human Rights Commission, Hong Kong.

Peer Review

During the process of writing, the monograph was subject to peer review by an interdisciplinary panel of scholars and experts.

LIMITATIONS

This monograph is confined to a focus on gendered and sexualized violence in

internal conflict and social upheaval within conflicted democracies. Furthermore, this text focuses on sexual violence against women, who may be heterosexual, lesbian, bisexual, asexual, cisgender or transgender, and who have not disclosed any of the above identities for identification purposes. It does not specifically address the sexual violence perpetrated against LGBTIQ (lesbian, gay, bisexual, transgender, intersex, queer, questioning, and asexual) identified people, or cisgender men and boys.¹⁴ We note that conflict-and social upheaval-related sexual violence against these groups remains a grave and often hidden fact.

The text is limited by the scope of the preliminary research that it relies upon with respect to the terms of reference and the number of sites of applied research. Furthermore, the monograph establishes only limited intersections between its primary focus on gendered and sexualized violence and the vast array of related issues relevant to the topic of internal conflict and social upheaval within conflicted democracies. The continued impact of conflict and upheaval experienced by the individuals and communities engaged in the research defined the time spent with the research participants and made for challenging working conditions. Currently, the monograph is being published in the English language. Being published in English restricts the access of the text to a specific readership and excludes most victim-survivors. The authors intend to make the monograph available to a broader audience through translating it into relevant languages. Furthermore, the authors plan to publish shorter extracts in English and other relevant languages, intended for the public-at-large.

LANGUAGE AND ITALICIZATION

The editors note that the text is incomplete and uneven in languaging social realities outside of gender binaries. Words that are from, and customary to, other languages are not italicized. Transliterations are provided as necessary, and diacritical marks have not been used.

Various “Englishes,” such as “postcolonial English,” have emerged through particular intersections of history, culture, language, linguistics, agency, and convention. Examples of “new Englishes” include Indian English, African Englishes, and Singapore English (Platt, 1984; Schneider, 2007). This makes language “messy” (Schneider, 2007), as reflected in the text.

Section I

**Conflict and Upheaval:
Underlying Issues**

CONFLICTED DEMOCRACIES

Numerous emergent and even durable political democracies are habitually afflicted by long-drawn-out political and foundational violence. What steps do conflicted democracies take that position them to address historically produced and recurrent conflict and social upheaval, and the massivity of gendered and sexualized violence that such conditions impel? What conceptual and practical tensions exist within conflicted political democracies in the principles and practices of governance that abet conflict and upheaval?

Amid transitions from feudal and imperial–colonial–orientalist imaginaries and governance, state formations draw upon, shift, and reanimate fraught remnants of history (Dirks, 2006; Said, 1979; Loomba, 1998; Lugones, 2003; Mignolo, 2011; Peréz, 1999). These fault lines extend across the “post”-Empire, to the “post”-colony and across the erstwhile Eastern Block. Recent history is typified by the reincarnation of post-colonies,¹⁵ other erstwhile developing economies, and post-socialist countries as modern and global nation-states.¹⁶

These states are fabricated via a multitude of divisions and hybridities, dislocations and displacements,¹⁷ both internal and transnational. Many such states are both formally committed to broadly democratic forms of government and also understand themselves as political democracies (Müller, 2013).¹⁸ These states are usually/inevitably constitutive of diverse ethnic, racial, and linguistic societies. These established and rising political democracies are equipped with well-developed and developing political and legal institutions even as they continue to be shadowed by conflict and social upheaval (International Center for Transitional Justice [ICTJ], 2015). These states may be described as “conflicted democracies” (Ní Aoláin and Campbell, 2005: 175-179; Campbell, 2010; Layús, 2010: 21).

Official history reframes the provenance of traditional claims and related antipathies as illegitimate threats to national security. This establishes the primacy of sovereign violence (Butler, 2008), and justifies it as necessary for the constitution and preservation of the state (Das, 2003). Rights violations are endemic in these situations (Pillay, 2012).

FOUNDATIONAL AND POLITICAL VIOLENCE

It may be said that foundational violence in conflicted democracies binds political violence (Kochi, 2009; Praeg, 2007). Jacques Derrida (2001: 57) writes, “all nation-states are born and found themselves in violence... The foundational violence is not only forgotten. The foundation is made in order to hide it; by its essence it tends to organize amnesia, sometimes under the celebration and sublimation of the

grand beginnings.” Speaking to political violence as action and process, Veena Das and Arthur Kleinman (2001:1) elaborate:

“Ethnographers have described how political violence is both mobilized and targeted-and how it works on lives and interconnections to break communities. Sometimes this violence is sudden.... At other times it takes the form of a continuous reign of terror, as with the policies and practices of the brutal regime of apartheid. Even when violence is not present in such dramatic forms, there can be the slow erosion of community through the soft knife of policies that severely disrupt the life worlds of people.”

Complex relationships between history, geographicity (Chatterjee, 2013), and residual conflict serve to determine the anatomy of conflicted political democracies. Myriad disputes remained unresolved as states transitioned from feudal-imperial-colonial formations to political democracies. These situations stayed dormant within the newly formed states. They erupted as recurrent law and order issues or developed into episodic confrontations or full-blown conflicts and as decolonial movements for autonomy and self-determination (Afzal-Khan and Seshadri-Crooks, 2000; Mignolo, 2000, 2011). Conflict and upheaval compelled massive displacements and diasporas, and attempted returns and relocations, a formative force in globalization in the twentieth and twenty-first centuries (Schneider and Barbieri, 2003; Reich, 2012; Stiglitz, 2002).

Various established and rising political democracies equipped with well-developed and developing political and legal institutions continue to be shadowed by conflict and social upheaval. These states and may be described as “conflicted democracies” (Layús, 2010:21; Ní Aoláin and Campbell, 2005). Conflicted relations to Others are characteristic of such states.

Conflicted democracies in the Global South may be characterized as political democracies that grapple with deep-rooted dissension born of political and ideological differences that are historical, ethnic, racial, economic, gendered, and religious in character.¹⁹ Events in border areas and regions inhabited by indigenous peoples in the formative stages of postcolonial state formation provide a guide map to understanding how the complexities of history and the pressures of assimilation manifest in social upheaval and full-blown conflict (Achankeng, 2015; Hansen and Stepputat, 2001). This is evidenced, for example, in postcolonial state formations across sub-Saharan Africa and in Guatemala (Bassil, 2013; Stepputat, 2001; Ndlovu-Gatsheni and Mhlanga, 2013).

In South Asia, this is demonstrated by the reluctance of certain border areas to become a part of post-independent India. This relates to Jammu and Kashmir, Punjab, and the northeast in the calls to become independent nations and is differently evidenced in the Adivasi and Dalit political movements of the 1960s in the Naxalbari region and in Chhattisgarh in the present (Chester, 2013; Ganguly, 2001; Puri, 2015; Upadhyay, 2009).²⁰ It is of note that India, as China, does not accept the term “indigenous,” and understands it to be a term relating to colonialism and neo-colonialism (Maguire, Lewis, and Sampford, 2013). The Constitution of India provides for recognition of Adivasis as “scheduled tribes,” along with “ethnic minorities,” even as constitutional protections are contentious and unevenly implemented (Maguire, Lewis, and Sampford, 2013).²¹

Conflicted democracies in the Global South contend with hyper-nationalism as the national majority community consolidates and unifies itself into the governing elite, solidifying a majority-minority binary. A majority-minority binary functions to establish a hierarchy that privileges the majority community with respect to social status and access to resources. It is of note that anthropological and sociological literature defines “minority” in terms, not of numbers, but rather of power relations and subordinancy (Drake et al., 1993; Encyclopædia Britannica, 2015; Wirth, 1993). Formerly elite-subaltern groups inexorably take control in conflicted political democracies in the Global South as the governing elite (Guha and Spivak, 1988).²² The marginal-subaltern is ordinarily compelled to reconcile to second-class citizenship. The populations, territories, and resources that are in contention are often crucial to fortifying the capacity of the newly formed nation to transform into a self-governing, successful, and sovereign unit. Postcolonial states seek control over populations, resources, and territories “under the aegis of the welfare of the nation or society” (Puri, 2015, communiqué; see also Gupta and Sharma, 2006).²³ The move to acquire material and symbolic power by the newly formed nation leads to confrontations as states seek *control* over heterogeneous populations, resources, and territories that are in disputation. Such societies orchestrate and submit to cycles of state and group violence toward nationalizing resources and assimilating and homogenizing dissenting peoples and social difference.²⁴

Conflicted democracies frequently and sufficiently serve segments of the population yet are unable to effectively provide justice and accountability to subordinated groups, especially those entangled in, and impacted by, conflict and upheaval. Symptomatic of the assimilative process, shifting political economies and hybridizing cultures are signified by continual and violent transitions (Bhabha, 1994; Mbembe, 2001).²⁵ This assertion for control, instead of power-sharing, refutes the possibility of *resolving* contentions through consensus. Systemic and structural inequities, internal dissension, and unjust relations of economic power between social groups lead to a multitiered state system. Many segments of the

population in conflicted democracies benefit from the existing forms of governance and commerce and are served by the rule of law, thus enjoying human rights. Yet, a strong shift within conflicted democracies toward “majoritarian democracy” renders them inconsistent in their capacity to nurture *pluralist commitments* and implement equitable legal, political, economic, and social systems (Buendia, 1993; Khanna, 2008; Papadopoulos, 2013).

“Majoritarianism,” here, refers to cultural nationalism and political assertions by the majority and dominant community toward acquiring and maintaining social, economic, cultural, political, religious, legal, and state-nationalist power (Chatterjee, 1986; Chatterji, 2009: 6, 2011; Gould, 2004; Stepan, 2015). A majoritarian democracy contrasts with a consensus democracy and a consociational state, which functions on the basis of elite cooperation (Bolte, 2013). The development of majoritarianism is increasingly structured through religionization, racialization, and securitization.

Religionization refers to the politicization of religion, rendering it an object of violence. The shifts in religion and the “religious dimension” develop or deepen through time, whereby, for example, institutions that profess to be secular, including institutions of state, assume a religious tone and/or character (Larson, 1995: 282; Khalidi, 2008; Peri, 2012; Puri, 2015, communiqué).²⁶

Racialization, as a function of majoritarianism, and majority and minority self-rendition seeks to ethnicize and religionize the self/Other. Race and racial difference remain pertinent, beyond the colonial and Western context, to understanding contemporaneous constructions of difference in the postcolony (Das, 2007 ; Chatterjee, 1999; Loomba, 2009; Puri, 2016). Racialization creates representations of the Other through ascribing racial and ethnic identities to peoples who defy their self-recognition.²⁷ Within unequal relations of power and contexts of accommodation,²⁸ racialized groups may begin to—be forced to—identify with the ascribed identity for safety, assimilation, or access to resources.

Securitization is the establishment of policies, discourses, and practices that define the parameters of freedom, threats to national security, and mechanisms for national preservation (Foucault, 2009; Schuilenburg, 2015). Securitization also

Michel Foucault (1980:194) defined his use of the term dispositif (apparatus) as a “heterogenous ensemble consisting of discourses, institutions, architectural forms, regulatory decisions, laws, administrative measures, scientific statements, philosophical, moral, and philanthropic propositions—in short, the said as much as the unsaid. Such are the elements of the apparatus. The apparatus itself is the system of relations that can be established between these elements.”

delimits the state's constantly shifting relations to its internal and external Others. This process builds and fortifies the national collective and protects state sovereignty (Puri, 2015, communiqué).²⁹

Unceasing everyday and spectacular violence within conflicted democracies is surfeit with the collision between unresolved histories and a dynamic and severely contested present (Das, 2007, 2014). Such violence is endemic to state formation (Pillay, 2012). Conflicted relations to Others characterize these state systems. Hyper-nationalist violence and ethnic and religious divisions, evidenced across the societal fabric of conflicted democracies in the Global South, coalesces into conflict and upheaval. Here discord threatens or erupts in episodic and sustained political violence, leading to the further marginalization of vulnerable ethnic populations and religious minorities. Political violence through conflict—"conflict violence"—is regularly comprised of militarization, securitization, and the quotidian strategies of heteronormativity (Bacchetta, 2004; Jacoby, 2008; Manjoo and McRaith, 2011).

Unremitting aggression amalgamates in protracted internal armed conflict, frequently with international and territorial dimensions, and recurring social upheaval. Rights violations are endemic in disputed situations, and as noted by Navanethem Pillay (2012: electronic statement n.a.), "the human rights of people living in areas that are the subject of unresolved territorial disputes are also often neglected." During prolonged conflict and events of massified social violence, the borders between life and physical and social death, between livability and despair, shift and blur. Not just structural, nor simply affective (JanMohamed, 2014),³⁰ the social apparatus of conflict violence in the modern decolonial (Mignolo, 2011), postcolonial era is framed by the collusion of the socially sanctioned and the politically taboo. Aporias abound between efforts to consolidate "nation" through amassing economic and political power built upon inherited hierarchies. This buttresses dynamics of Othering and undermines efforts to establish pluralistic democracies marked by rule of law. The microstructures of violence are fortified by a merger of affective desire with aggression, as the task of erasing difference and asserting power leads to an indelible societal breakdown. The logics of conflict violence are deep-rooted in history and escape simple explanatory forms of knowledge.

Das and Kleinman (2000:1) identify the emergence of "new political geographies" since the early 1980s. They challenge the traditional classifications and meanings of "violence-prone areas" as *out of date* (1). "The violence in these areas seems to belong to a new moment in history," Das and Kleinman suggest (1). It "cannot be understood through earlier theories of contractual violence or a classification of just and unjust wars" (1). This old violence is made over with new meanings and strategies, and "its most disturbing feature is that it has occurred between social actors who lived in the same local worlds and knew or thought they knew each other" (1).

The implosion of worlds, political, cultural, economic, legal, and moral, and the makeover of identities and forces, local, national, and global, defines this moment. An objective of this consolidation is to solidify the unit of the state. Toward this end, the official narration of nation becomes singular. This story of the state begins to displace multiple memories of place and history with the logics of a unified manifest destiny and monolithic national culture and identity. Official history reframes the provenance of traditional claims and related antipathies as illegitimate threats to national security. This establishes the primacy of sovereign violence and justifies it as necessary for the constitution and preservation of the state (Das, 2003). Such consolidation creates tectonic shifts in subjectivity, “the felt interior experience of the person... [and their positioning] in a field of relational power” (Das, 2000:1). This new and enduring moment repositions notions of “normality,” and “belonging,” “as we explore the connections between the different forms of violence that pervade our contemporary world” (1).

CONFLICT AND UPHEAVAL

What factors distinguish an internal armed conflict from a social upheaval characterized by mass violence? The formative moments, landscapes, timespans, perpetrator-victim relations, and events may vary significantly in conflict situations from those in areas of social upheaval. The indifference to and sites of omission in accountability that follow further attenuate long-term stability in both situations. The interventions and breakdowns engineered through massified violence during a social upheaval can directly facilitate or indirectly enable the making or holding in place of a long-term conflict.

Internal Armed Conflict

Drawing on international humanitarian law, internal armed conflict may be described as an armed conflict that is not identifiable as an international armed conflict (International Committee of the Red Cross [ICRC], 2008). International armed conflict may be defined as “any difference arising between two states and leading to the intervention of armed forces... even if one party denies the existence of war” (UN Special Rapporteur on Extrajudicial, Summary, and Arbitrary Executions, 2010: n.a).

The UN states that “to distinguish...an armed conflict from other forms of violence, such as internal disturbances and tensions, riots or acts of banditry, the situation must reach a certain threshold of confrontation” (Office of the High Commissioner for Human Rights, 2011: 39). Additionally, the situation must meet two other criteria (ICRC, 2015). First, the non-state group must be minimally organized and identifiable (Special Rapporteur on Extrajudicial, Summary and Arbitrary Executions, 2010: at ¶ 52). Second, the conflict must meet a minimum

threshold of intensity and duration (Special Rapporteur on Extrajudicial, Summary and Arbitrary Executions, 2010: at ¶ 5). To meet this threshold, the violence must be protracted or have a very high intensity (Prosecutor v. Tadić, 1995), and “this may be the case, for example, when the hostilities are of a collective character or when the government is obliged to use military force against the insurgents, instead of mere police forces” (ICRC, 2008: 3).

Internal armed conflict, within a state and consisting of state armed forces and non-state armed groups, is non-international. Internal conflict may be present where internal circumstances and external relations (where, for example, an external state provides support) render the conflict, at least in part, international. Legal classification as a non-international armed conflict requires that non-state groups be minimally organized and identifiable. Furthermore, it requires that the violence is protracted or have a very high intensity.³¹ An internal armed conflict may take place within states and between armed forces of the state and non-state armed groups. It is of note that relations between state and non-state groups are often complex; and may be ideologically or thematically antagonistic while mutualistic in relation to accessing benefits from a conflict economy. Common Article 3 of the Geneva Conventions (1949) is binding on parties engaged in non-international conflict.³² Common Article 3 is considered customary international law, in that it “establishes fundamental rules from which no derogation is permitted” (ICRC, 2015), and thus its provisions bind all states regardless of their signatory or ratification status vis-à-vis treaties. The ICRC (2015) states that, “Given that most armed conflicts today are non-international, applying Common Article 3 is of the utmost importance. Its full respect is required.” The provisions of Common Article 3 prohibit, at a minimum, the following:

“Conflicts today are very modern conflicts, fought not only with an arsenal of sophisticated weaponry, but also with words and pictures, using the media, with arguments and discussions.

They are battles over territory, sovereignty, homeland, power and above all, control, not only of resources, but also of that age-old thing, the mind.” (Urvashi Butalia, 2000)

“(a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; (b) Taking of hostages; (c) Outrages upon personal dignity, in particular humiliating and degrading treatment; (d) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples” (Geneva Conventions, Article 3, 1949).

The ICRC further states that Common Article 3 “Requires humane treatment for all persons in enemy hands... Requires that the wounded, sick and shipwrecked be collected and cared for; Grants the ICRC the right to offer its services to the parties to the conflict; Calls on the parties to the conflict to bring all or parts of the Geneva Conventions into force through so-called special agreements; Recognizes that the application of these rules does not affect the legal status of the parties to the conflict” (2015).

In the two instances examined in this monograph, internal armed conflict has been protracted and militarized. In both these instances, the state has used paramilitary and armed forces and non-state groups are or have been organized and identifiable. In both these internal conflicts, international and cross-border dimensions have been or continue to be present.

Social Upheaval

Drawing on international law, social upheaval may be described as a situation or event of internal disturbance and hostility, such as a situation of localized social, sectarian, and mass violence that is acute but episodic and not protracted. In situations of social upheaval, state, sub-state, and non-state parties may be involved, and include the use of force by the government to preserve or reinstate control and order.

Shared Characteristics

Episodes of mass violence during social upheaval in conflicted democracies are often characterized by the failure of timely state interventions and the participation of state agents in crimes against marginalized people. The techniques of violence in conflict zones are reproduced on a smaller scale yet in high intensity during episodes of mass violence. The police, armed forces, pro-and-anti-government militias, and vigilante groups engaged in militancy perpetrate conflict violence. The scope of such violence renders targeted communities vulnerable in every respect. Those who do not share in the dominant community’s worldview and cultural reality are often the primary targets of conflict and episodic violence.

The events of conflict and social upheaval are routinely marked by extreme gendered and sexualized violence (Das, 1997; Sarkar, 2001). Ongoing, everyday hyper-nationalist discourse and practices are deeply gendered and sexed, as exemplified by Hindu nationalist discourse and other right-wing discourses globally (Bacchetta, 1999; International Initiative for Justice (IIJ) 2003). Such quotidian strategies endow agency for episodic and spectacular violences. During Augusto Pinochet’s military rule of Chile between 1973 and 1989, thousands of political dissidents were imprisoned, and women prisoners were subjected to violence, and “torture for women prisoners was sexual, and took many and bizarre forms” (United States Institute for Peace [USIP] 2002: 160). In Liberia, during the civil

war between 1989 and 2003, an estimated 250,000 were killed, and sexual violence was routine. There are various estimates, including some that note that, “between 60 percent and 90 percent of all Liberian women were raped during the conflict” (Toral, 2012: n.a). Even after the cessation of armed hostilities, and the exile of President Charles Taylor, women victim-survivors of the conflict remained highly vulnerable to sexual abuse (Amnesty International, 2014). Such violence is accompanied by social schism and decay and manifests in cyclic civil, political, cultural, and human rights and humanitarian violations. Special laws aid in the impunity of state agents and enable cycles of oppression that target and abuse local people. Alongside, there exists the failure to disarm perpetrators. Often the focus is on prosecuting individual perpetrators while dominant and majoritarian perpetrator collectives are not held responsible for organizing and inciting violence. Worse, perpetrators are regularly incorporated into the ranks of the state and hold prominent social positions. Under such conditions, the severity of violations of civil liberties and people’s rights remains undiagnosed, and historical dialogue and reconciliation involving dominant and targeted communities prove difficult.

The impacts of individual acts of violence against an individual are inevitably greater than the sum of its parts. The experiences of individuals become, by extension, the collective experience of their community. The impact of political violence on psychosocial health, physical health, and resultant intergenerational poverty disproportionately affects women and the poor (Buluswar, 2014). These conditions, in turn, impact children’s health and education, migration patterns, wage labor, and kinship structures. The underlying social and political histories that lead to episodic violence and prolonged conflict are often inadequately addressed in the aftermath.³³

ADDRESSING HISTORY IN THE PRESENT

Rule of law is a precondition, an intrinsic characteristic, of contemporary political democracies and is integral to their self-identity (Campbell, 2010). Even as political democracies are assumed to have lower levels of violence and rights violations than authoritarian regimes, rights violations are usually foundational and systemic within conflicted democracies (Moyn, 2010). Within conflicted democracies, for example in South Asia and the Middle East, the challenges of pervasive internal dissension and episodic social violence delimit the scope of people’s rights and rights violations. This threatens the cultural survival of groups that are subject to multiple vulnerabilities and poses endemic humanitarian crises (Mohan and Sahani, 2012; Hinnells and King, 2007).

The state across South Asia manifests as the foremost arbiter of sovereign violence (Banerjee et al., 2012: 5; Das, 2003; Butler, 2008).³⁴ We note that the “state” is multiple, and that its institutions and apparatuses are unified as well as dispersed

(Althusser, 2014; Sharma and Gupta, 2006). The ideological, military, affirmative, repressive, punitive, educational, and other apparatuses of the state are contradictory and “multiple, distinct, and ‘relatively autonomous’” (Sharma and Gupta, 2006: 94). In this text, we refer to the varied branches of the state, but particularly to its ideological, juridical, repressive, and security apparatuses.

The organization Global Democracy ranks democracy-based, “free” and “partly-free,” countries in order of the quality of their political and non-political dimensions of democracy. The rank of 1 is the highest affirmative score, and 112 is the lowest achievable. In 2014, the following states of South Asia were ranked low, with India at 70, Bangladesh at 80, Sri Lanka at 85, Nepal at 89, and Pakistan at 109.³⁵ Freedom House (2015:21) ranked India at 2 for political rights and 3 for civil liberties, with 1 representing the “most free” and 7 the “least free” rating. Political democracies and its others in South Asia exemplify an “investment in the mechanism and language of war, in structures of inequality, in the glorification of military cultures, and nuclearization” (Banerjee et al., 2012: 5). Such strategies “only reinforce violence, and gendered violence in particular” (5).

Newer political democracies in the Global South exhibit manifold trials and tribulations. This is exemplified by South Africa, ranked 71 by Global Democracy (2014), in the concentration of wealth along color lines and the impediments to post-apartheid reconciliation. India, ranked 67 by Global Democracy (2014), also evidences regular conflict and social upheaval, and the majoritarianization and sexualization of violence against minorities, Dalits, and Adivasis. These trials and tribulations carry across the Global South and are also evidenced in the Global North. The United Kingdom and its contemporary relation to Ireland is an example. Another example is Turkey, ranked 64 by Global Democracy (2014), in the power held by its deep state and in its relation to Kurdish communities (Jacinto, 2015).

In addressing the legacies of past injustices, the question of *transition* from conflict conditions to a conflict-free state and from a state of social upheaval to that free of episodic violence looms large. What conditions enable transitions from a conflicted democracy to a non-conflicted democracy? Crucial to this is the guarantee of non-recurrence of systematic violence. The embodiment and enactment of justice and accountability to conflict and social upheaval must be effectively ensconced within the existing governing framework of the state. Equally important is the displacement of states as the foremost perpetrators of violence. Equally important is the discernment that such enactments are critical to fashioning and strengthening

Old violence is made over with new meanings and strategies, and “its most disturbing feature is that it has occurred between social actors who lived in the same local worlds and knew or thought they knew each other.” (Veena Das and Arthur Kleinman, 2000: 1)

democracy (Ní Aoláin and Campbell, 2005; Campbell, 2010; Layús, 2010).

The will and capacity of conflicted democracies to address historical injustices and mistrust among dominant and marginal groups abound with contradictions. In Brazil, the Amnesty Law of 1979 that allowed for the release of political prisoners also prevented the investigation and prosecution of human rights violations committed between 1961 and 1979 (Bickford, 2007). It took more than twenty years after the release of the findings regarding the military regime's torture practices for the government to officially create a national truth commission (ICTJ, 2015).

A Notation on “Truth”

The task of unmasking *the truth* following injustices has remained contentious through history (Agamben, 1999; Hovannisian, 2007; Moon, 2009; Rabinow and Rose, 2003). Official history and elite undertakings routinely privilege dominant and monolithic relations to Truth (Foucault, 1980). Victim-survivor and subaltern, subjugated histories remain incommensurate, often irreconcilable with the claims of dominant memory. The recording of counter-memory is further complicated through the strident positing of institutional memory, destruction of evidence, literal and figurative exiles, and fear of reprisal. In majoritarian states, national (and institutionalized) mourning can displace victim-survivor (and often oral) histories, and language remembrance as an impediment to healing and progress. The imposition of dominant discourse, and the imperative of victim-survivor adherence to official history often becomes a prerequisite for receiving reparation and for reconciliation and rehabilitation that mandate assemblage and assimilation into the dominant through *leaving behind*, forgetting.

“Access to justice is a right, not a privilege.”
(Navanethem Pillay,
2015: 7)

As enduring and nascent political democracies continue to experience protracted conflict and mass violence during social upheaval, the issue of needing to address historical injustices remains paramount. Successful frameworks and protocols are rare in their capacity to address past injustices as well as recurring and emergent ones related to structural and historically mediated inequities. Protracted conflict and social upheaval are regularly marked by an absence of formal acknowledgment. This silence extends to both to naming the existence of conflict and the stage of the conflict and to formal pronouncements regarding whether and when a conflict ceases. Official acknowledgment of episodic violence can be obfuscating. The instances of Brazil, El Salvador, Guatemala, India, Kenya, and Turkey are important to this conversation (ICTJ, 2012). Accountability processes are arbitrary and sporadic without the scrutiny of international human rights and justice institutions and are marked by a lack of follow-through.

SECURING JUSTICE

Conflicted political democracies frequently do not adhere to international standards in addressing conflict violence and often decline to become a party to international processes or to sign and ratify, and honor and enforce, international treaties. If they do, it is often merely symbolic with uneven intent to comply (McAuliffe, 2013; Maguire, Lewis, and Sampford, 2013). The refusal and reticence to sign international agreements curtails the jurisdiction of international bodies over perpetrators and weakens the enforcement of international norms. Affected communities are regularly marginalized in, or excluded from, conversations regarding accountability. Mechanisms for justice and accountability to historically engendered conflict and social upheaval, and attendant gendered and sexualized violence, are too often inadequate and, if attempted, are arbitrary. Disbursements of justice remain arbitrary without the formalization of *national mechanisms* for transitions from, and transformation of, the conditions of conflict, upheaval, and violence.

For the impacted, there is an *urgent* need to shape transformative and transitional justice mechanisms and acknowledge the right to a remedy. (For definitions and a broader discussion of transformative and transitional justice, see the later subsection entitled “Justice and Accountability.”) These mechanisms are vital to grappling with prolonged internal conflict and social upheaval particular to conflicted political democracies.

Transitional and transformative justice mechanisms are “applied across a geographically and ideologically diverse range of jurisdictions emerging from authoritarian and frequently violent pasts” (Ní Aoláin and Campbell, 2005: 173) to address issues of prevention, reparation, and non-recurrence. States that transition from authoritarian regimes to democracies often generate, or are willed by the international community to generate transitional justice mechanisms. Political

“Part of the self-identity of the liberal democratic state is a commitment to the ‘rule of law.’ A paradox exists when a liberal-democratic state finds itself dealing with a legacy of serious systematic rights-violations. There is a further paradox when ‘transitional justice’ analyses are employed to deal with the conflicted ‘past,’ since this discourse developed out of the need to deal with the legacy of authoritarian regimes in transition to democracy.... The UK’s attempts to deal with Northern Ireland’s ‘past’ can be understood as the outworking of these paradoxes.... While transitions involving authoritarian states can project straightforward narratives of change, those in the liberal state are unlikely to fit together so coherently, even if the level of violations is lower.”
(Colm Campbell, 2010:1)

transitions that are paradigmatic are understood to require formal transition justice mechanisms and international oversight (Ní Aoláin and Campbell, 2005). The preceding has been acknowledged in the instances of Angola, Argentina, Bosnia, Colombia, East Timor, El Salvador, Namibia, Sierra Leone, and Zimbabwe. Most transitional justice processes focus on areas of regime change from military rule to democratic governance. Transitional justice processes over the medium and long-term have been marked by various challenges (Daly and Sarkin, 2007).

In the process of transition from authoritarian regimes to new forms of government, it appears that critical structural changes, including institutional reforms necessary for a just and enduring peace, are rarely fully implemented. There have been repeated calls to meaningfully involve overlooked stakeholders, such as women and minorities, in addressing structural problems. The shortcomings may be traced back to the concentrated focus of transitional justice mechanisms on the symptoms of violence rather than to the underlying causes. To remedy the shortfalls of transitional justice frameworks requires expanding the focus to address present social, economic, health, and cultural issues that are of significant import.

However, states that transition from feudal-imperial-colonial entities via political struggle to form themselves as political democracies often circumvent creating transitional justice mechanisms to address residual and protracted conflict and recurrent social upheaval. For political democracies, the desired shift is from a “movement from violent conflict to peace instead of a movement away from an authoritarian regime to a democratic one” (Layús, 2010: 21). The realities of disarray and dispossession pertinent to authoritarian regimes are differently but equally at play for subjugated populations during transitions from internal conflict and social upheaval within conflicted democracies.

Yet there are few examples of formalized transitional justice mechanisms within conflicted democracies that have addressed issues of transition for populations in conflict with the nation-state. Northern Ireland is in the process of defining a national transitional justice mechanism, and is a relevant example. The Good Friday accord of 1998 included disarmament, demobilization, and reintegration (DDR), a shared government, and a number of criminal inquiries into specific events. More recently, there has been widespread agreement that the lack of a comprehensive transitional justice policy is problematic and Northern Ireland is planning on initiating truth-seeking and reparations initiatives. Colombia, a formal liberal democracy, is addressing transitional justice issues in the midst of ongoing conflict. Various liberal democracies have addressed the legacy of mistreatment of indigenous/first nation peoples. These include Australia, Canada, and the United States, though not in the context of active ongoing conflict (Roht-Arriaza, ACRes).³⁶

National integration processes routinely focus on subsuming or ignoring conflicting issues rather than brokering mutually agreed upon pathways to ethical

resolution. Within conflicted democracies, an official commitment to the rule of law and justice presumes that the infrastructure of law and order will rectify violations when they arise and prevent recurrence. However, neither ordinary law-and-order mechanisms nor transitional justice frameworks developed for paradigmatic transitions are equipped for or adequate to address political and structural issues related to conflict and upheaval within conflicted democracies (Ní Aoláin and Campbell, 2005). Transitional mechanisms continue to be necessary during ongoing conflict and social upheaval within conflicted democracies.

Transformative justice is an important accompaniment to transitional justice. Transformative justice “emphasizes local agency and resources, the prioritization of process rather than preconceived outcomes and the challenging of unequal and intersecting power relationships and structures of exclusion at both the local and the global level” (Gready and Robins, 2014: 340). Transformative justice mechanisms assist in defining the obligations and timely steps for *transforming* and restoring viable conditions of life from internal conflict and social upheaval *within* conflicted political democracies.³⁷

THE SUBJECT OF RIGHTS

The subject of rights is elemental to understanding justice and accountability. There are tensions between those who approach the work of justice from a rights-based standpoint and those who find a rights-based framework to be limited for structural reconditioning. Human rights and structural change are not mutually exclusive but supportive in relation to each other. Discourses and practices on people's rights and human rights offer frameworks for identifying and addressing dimensions of underlying, structural issues. Human rights, people's rights, civil liberties, help ensure equity and assist in undermining social hierarchy. The sanctity of human rights ensures a political context where subordinated peoples are capacitated to seek structural change.

SELF-DETERMINATION: COLONIAL AND POST/DECOLONIAL CONTEXTS

The transition from colonial and occupied governance to independent statehood was premised on the notion of and belief in nationalism and self-determination (Chatterjee, 1986; Gellner, 1983). Colonized peoples used moral arguments, political organizing, and force to free themselves and attain self-determination. Self-determination encompasses the right of peoples to define their political or national status and future without coercion. Through history, self-determination has not been recognized as a right. The right to such determination is not available to everyone who seeks it or to every group. Globally, the legal and political processes through which the legitimacy of any claims to self-determination may be resolved, or by which peoples may define themselves as peoples, remain inconsistent.

The right to self-determination is a fundamental principle in international law. The Atlantic Charter of 1941 accepts the principles of self-determination, as does the United Nations Charter of 1945, which situates such right in international law and diplomacy. Article 1 of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) states that "all peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development." Article 15 of the United Nations Universal Declaration of Human Rights endorses the right of individuals to a nationality and the right to change one's nationality (Buchanan, 2004; Danspeckgruber, 2002; Griffith, 2003; Hannum, 1996; Lehning, 1998).

Self-determination as a concept carries differing meanings for different groups (Posner, 2014). It infers the ability of a people to determine their political or national status and "freely pursue their economic, social and cultural development" (UN Declaration on the Rights of Indigenous Peoples, UNDRIP, n.d).

Article 4 of UNDRIP indicates that, “indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions” (n.d). Self-determination has also been interpreted as a process-related right and not an outcome-specific right. Contemporary discourse pertains to both internal and external self-determination, and the right to secede from a state or the right to political autonomy together with the conditions for social and cultural integrity and economic development (Posner, 2014). Self-determination infers the right of a people to govern their internal matters within the nation in which they reside. Self-governance implies the right of a people to their history, heritage, and memory; unique cultural, social, and political institutions; customary law; and political economy (Posner, 2014).

Within newly emergent postcolonial states, unaddressed histories that involved territorial disputes led to new movements, hyper-nationalism, and claims for self-determination (Clark and Williamson, 1996). Postcolonial governments progressively interpreted such claims as threats to national integrity (Bereketeab, 2014; Hannum, 1996). The growing need for national integration was proportionate to the vast demands on the political economy made by ever-enlarging populations and required for the development of the state (Sharma and Sharma, 2007). The extent of territorial and social dispute appears to be historically proportionate to the violent response of postcolonial states and majoritarian groups to those claiming self-determination (Buendia, 1993; Weller and Nobbs, 2010). Peoples, groups, and decolonial and ethno-nationalist movements claiming self-determination became identified over time as anti-national and their actions as insurgent (Doniger and Nussbaum, 2015; Mignolo, 2011; Pelly, 2008; Roy, 2011).

Furthermore, non-majority ethnic and religious groups elsewhere in the nation, even those not arguing for self-determination, but for rights under the new nation, came to be perceived as (potential) threats. This impelled hyper-militarization and the legitimation of sovereign violence (Doniger and Nussbaum, 2015; Pelly, 2008). Conflicted political democracies began contending with massive social dissension, and augmenting adversarial relations between states and people’s movements (Broadbent, 2001; Burnell, Rakner, and Randall, 2011). The hyper-militarization of postcolonial states was further accompanied by growing non-state political violence that also infected conflicted democracies (Arias and Goldstein, 2010; Basu and Roy, 2006; Hansen, 1999; Roessler, 2005).

PEOPLE’S RIGHTS AND HUMAN RIGHTS

Peoples, groups, and communities within conflicted democracies with distinct religious, ethnic, gender, and linguistic differences often wish and organize for social, political, and legal equality and to be recognized as distinctive entities (Moyn, 2010;

Spivak, 2004). Many such communities are national minorities and, historically, inherently marginalized by virtue of their difference. Some who have been incorporated into the nation-state seek autonomy and self-determination, whereas others wish to maintain their autonomy within the nation. Some that have determined to reside within the nation-state argue against forcible assimilation and nationalization. They advocate for the right to a life free of conflict, with self-governance and decision-making over their ancestral and traditional lands, resources, and destinies. They seek a life without discrimination and with equal opportunity, and the rights to cultural, political, economic, and spiritual survival. Such advocacy underscores the importance of heritage, customary rights, and counter-memory for cultural survival.

The challenges to the nationalization of social and economic resources and cultural identities faced by conflicted democracies also commenced processes for depoliticizing and countervailing local and subaltern movements for structural change and self-determination (Moyn, 2010). These processes brought to the forefront the tensions between collective rights and individual rights and the role and future of the nation-state. The demand for collective rights ensued from indigenous peoples, ethnic and religious minorities, and sexual identity groups. These demands and groups often collided with the legal framework of the state that increasingly accorded primacy to the rights of the individual (Moyn, 2010). The organization of rights within political democracies was conditioned by modern legal systems rooted in colonial jurisprudence and law. The system of colonial jurisprudence and law was structurally either in opposition to or functioned outside of traditional norms and customary justice and law (Sheleff, 2000; Tobin, 2014).³⁸

Specific historical events have shaped the emergence of human rights as an international force with popular moral support and institutional organization. Diverse forces have formed the notion of the “Human” as a normative category and contributed to the eventual rise of the regime of human rights within a larger Western history (Asad, 2003; Moyn, 2010). That history encompasses Roman law, Christian and Jewish discourse, natural rights traditions, and the impact resulting from the Holocaust of Jews and others in Europe, including people of other minority faiths, non-Whites, people with disabilities, homosexuals, and political dissidents (Shapiro, 2014). Furthermore, a cultural history of human rights relies upon Enlightenment rationality, the formation of nation-states as constitutional republics, metropolitan rights, and civil liberty traditions (Shapiro, 2014). Modern conceptions of human rights coalesced in the second half of the eighteenth century.³⁹ Theoretically developed in the 1940s, the UN Charter of 1945 first internationalized the notion of human rights. On December 10, 1948, the framework for universalizing human rights was put in motion with the adoption of the Universal Declaration of Human Rights by the then newly constituted UN General Assembly (Eide, 1992). The ICCPR and the ICESCR enshrine universal civil-political and

social-economic-cultural rights respectively.⁴⁰ The UN High Commissioner for Human Rights was created via the Vienna Declaration and Program of Action at the World Conference of Human Rights in June 1993. The Vienna Declaration highlighted a fundamental respect for democracy; the need to combat terrorism; the imperative to combat racism, xenophobia, and intolerance; and respect for the rights of minority groups.⁴¹ The discourses around the Vienna Declaration stress the responsibilities of states (Pillay, 2000).

The early emphasis on human rights in a post-UN context was on national self-determination. The universalization of the nation-state was assumed to be the best platform to secure rights. Decolonization was assumed to be the process whereby erstwhile colonies molded into European-like nations would guarantee political and civil rights. By the 1970s, the emphasis had shifted from national self-determination to the protection of individual rights under an assimilating nation-state. Within liberal democratic states, human rights derived legitimacy through political processes (Reed, 2007). Around the mid-1970s, human rights solidified as an international force and as the preferred discursive frame for conceptualizing justice (Moyn, 2010). This emergence was in response to international pressure to fill a void where the moral imperative for rights gradually repositioned, even displaced, the political. Human rights assumed its stature as the arbiter of international conduct. It did so amid a world of (“failed” utopian and) contested ideologies, such as socialisms, anti-colonialisms, pan-Africanism, pan-Arabism, and non-alignment (Moyn, 2010).

Currently nine seminal human rights treaties have been ratified by a number of the states, and represent the states’ willful limitation of their sovereignty (Posner, 2014). Some of these treaties have been ratified by as few as forty-five countries. International human rights—enshrined in these treaties, customary law, and other sources—are understood to be those interrelated, interdependent, and indivisible rights that are universally inherent in humanity, irrespective of “nationality, place of residence, sex, national or ethnic origin, color, religion, language, or any other status” (Office of the High Commissioner for Human Rights, 2011), presumably including race, class, caste, indigeneity, gender, sexuality, faith, irreligiosity, language, ability, albinism, place of residence, and immigration status. All rights are generally understood to give rise to tripartite obligations of the state to respect (not interfere with enjoyment), protect (safeguard from interference), and fulfill (positively ensure enjoyment of) rights (Yamin, 2005).

The framework of human rights correlates to the concept of “responsibility.” The trials at Nuremberg of Nazi war criminals initiated a premise for adjudicating upon individual responsibility for war crimes and crimes against humanity (Bohlander, 2007) and influenced the parameters of accountability within international human rights. The defining of collective responsibility within human

rights and humanitarian law, to hold a state or an identifiable group responsible for wrongful acts, remains contentious in political and legal philosophy (Darcy, 2007). In their actions, states are expected to conform to the principles of collective responsibility and the rights of all subjects (Darcy, 2007).

INTERNATIONAL LAW

After World War II, international law has increased attention to guaranteeing rights to the individual vis-à-vis their own states as well as other states (Moyn, 2010; Oppenheim, 1912: 362; Sohn 1982). Whereas human rights law accords rights to every individual, national status is often determinative of the rights granted to an individual and being a “foreigner” can often mean fewer rights in many countries (Sarkin, 2015). Human rights are aspirational in content, often ambiguous, with myriad interpretations (Posner, 2014).⁴² They may be non-representative, starting with the Universal Declaration of Human Rights that was drafted without participation of the majority of the world’s peoples. National governments, even among the liberal political democracies, were reticent to incur any binding legal obligations (Posner, 2014). Furthermore, crimes of omission are not incorporated into the Rome Statute and domestic criminal law relevant to human rights and humanitarian violations, statutory lapses, and military misconduct (Schabas, McDermott, and Hayes, 2013; Eboe-Osuji, 2010).

International Humanitarian Law

International humanitarian law (IHL) and international human rights law (IHRL) both accord protections and aim to counteract the massive powers of the nation-state (Posner, 2014) and protect the dignity and humanity of all people, but they differ in scope and application (Office of the High Commissioner for Human Rights, 2011: 7).

IHL is generally regarded as the “law of war,” and is applicable in situations of armed conflict (Office of the High Commissioner for Human Rights, 2011: 33). Although there is a debate regarding the temporal relationship of these two fields, the majority view holds that IHL and IHRL are “complementary sources of obligation” and apply concurrently during times of armed conflict (Office of the High Commissioner for Human Rights, 2011: 6). Where the two disciplines directly conflict and are incompatible with each other, *lex specialis*⁴³ applies and requires application of IHL because IHL provisions are more specific to times of armed conflict (International Law Commission, 2001). The rights enshrined in IHL are also non-derogable, meaning they are minimum guarantees that cannot be abridged (Kellenberger, 2003).

During times of emergency that rise to the level of threatening the “life of the nation,” states may, it is largely held, suspend derogable human rights regardless

of whether the right directly conflicts with a provision in IHL (Human Rights Committee, 2001: 3). Derogable rights are seen as fundamental rights that may be too difficult for states to guarantee in times of emergency (ICCPR, Article 4), such as the right to be free from “unlawful interference with privacy, family, home, or correspondence” (ICCPR, Article 17). Rights in treaties are assumed to be derogable unless accompanied by an express non-derogation clause; examples of non-derogable rights include “the right to life,” “the right to be free from torture,” and “the right to recognition as a person before the law” (ICCPR, Articles 4, 6, 7, 16). Even when the high threshold of emergency is met, *jus cogens* norms, non-derogable human rights, and IHL still bind states to fulfill basic obligations to protect fundamental rights.

International and Non-international Armed Conflict

At the core of IHL are the Geneva Conventions of 1949. The Geneva Conventions of 1949 formally bifurcated armed conflict into international armed conflicts (IAC) and non-international armed conflicts (NIAC) (Akande, 2012). The bifurcation stems from the historical fact that international law traditionally only regulated the relations between states (Akande, 2012). The threshold for IAC is very low; there is no requirement for the length of conflict or the number of victims. Non-international armed conflict (NIAC) is more difficult to define than IAC because there are many types of conflicts that may be considered non-international (Pejic, 2011).

Depending on the type of armed conflict, different IHL provisions are invoked. Individuals who are not directly participating in hostilities receive protections under both IAC and NIAC regimes; however, IAC provides more elaborate protections for these individuals. Individuals who directly participate in hostilities receive greater protection under IAC. This is particularly true, for example in India, because the state has ratified the Geneva Conventions I-IV. Because India has not signed the Additional Protocol II or the Rome Statute of the International Criminal Court, very few protections exist for individuals involved in NIAC (Akande, 2012).

In NIAC, the primary protection of non-participants is found in Common Article 3 to the Geneva Conventions (Office of the High Commissioner for Human Rights, 2011:39). Common Article 3 is considered customary international law (Prosecutor v. Tadić, 1995), and thus its provisions bind India. This is unlike Additional Protocol II or the Rome Statute of the International Criminal Court, which also regulate hostilities in NIAC (Akande, 2012) and which India has not ratified and, therefore, are not binding.

CURRENT GLOBAL CLIMATE

The apparatuses of human rights became an important media for internationalizing civil liberties and people’s rights. Introduced by international institutions and

the elite-subaltern, the practice of human rights led to the codification of diversity and mainstreaming of claims based in customary practice. Adjacently, arguing for the human rights dimensions of social struggles afforded local movements international visibility and access (Eckel and Moyn, 2013). The need for cohesion, however, called for the codification of the immense diversity that was the “local,” and for the assimilation of divergent priorities into a shifting yet preconceived order. Critics contend that undeveloped relations to politics in human rights movements can support a salvific relation to distant Others. Such relations delimit political action to soft advocacy and often foster problematic alliances. This further constrains human rights programmatic planning to technocratic interventions, or expert advice on capacity building (Moyn, 2010).

The professionalization of the field of human rights led to nonprofit bodies and institutions inhabiting the role of intermediaries. The struggle for control also led to the centralization of funding and resources for social justice work, at times shifting the paradigm from collective political action to humanitarianism. State governments were quick to act as clearing-houses for bilateral and multilateral funds. Governments regulated the conditions for the allocations (Dupuy, Ron, and Prakash, 2012; HRW, 2015), leading to the development of a marketplace akin to that of tied aid during structural adjustments (UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, 2015).

The discourses and practices of human rights have been subject to periodic reframing to meet the demands of present history (Moyn, 2010). Postcolonial and allied examinations of what is problematic in human rights has enabled more strategic, creative, and critical, political relations to human rights discourse and practice, and allowed for shifts attentive to difference and diversity. Furthermore, there is an increased understanding that locating “human rights” as originating in the West is inherently racialized (Baxi, 2006). This questions the assumption that only certain Western nations can monitor and promote human rights (Baxi, 2006). As postcolonial states contend with the attendant responsibilities of assuming greater prominence in the global arena, it is necessary to rethink the binary experience of the human rights movement, as led by the West and followed by the rest. There is emergent demand to reshape human rights through diverse movements that reposition relations of power between states and peoples and elites and subalterns (Mutua, 2001).

Practitioners, leaders, and critics imply that human rights will be more effective in addressing injustice when it is linked to energizing political visions and

“Fake encounters are a symptom of the failure to hold security forces accountable for their crimes, but they are also a consequence of other problems.” (Meenakshi Ganguly, 2013: n.a.)

thoughtful political strategy (Moyn, 2010). In postcolonial spaces, this involves strengthening the nation as protector of human rights. It simultaneously requires building international alliances and systems for securing human rights within states, and providing legal redress. Alliances for human rights are enlivened via energetic and progressive social and political forces, and by civil society institutions within and across nation-states that cultivate informed networks of civic action.

Although the integration of the conception of human rights into international law is a significant attainment of history, the human rights agenda remains vulnerable globally (Posner, 2014). States continue to disregard and infringe upon human rights without incurring consequences, and it is very difficult, indeed often impossible, to hold them accountable (Posner, 2014). The current corpus of human rights is critiqued for inventing a benevolent “international community,” while de-politicizing local movements and overstating the results of human rights (Kennedy, 2002). More than 150 countries, from among the 193 countries that are member-nations of the UN, use torture (Posner, 2014). Many are embroiled in recurrent internal conflicts, civil war, and social upheaval where state institutions and state personnel are the primary violators of people’s rights. Prominent among them are numerous conflicted democracies.

Two of the largest democracies, Brazil and India, are regarded as having serious human rights issues such as custodial torture and summary and extrajudicial executions (Human Rights Council, 2013; HRW, 2014; UN Special Rapporteur on Extrajudicial, Summary, and Arbitrary Executions, 2010). Furthermore, Posner (2014: n.a.) adds, “Brazil is hardly the only country where this takes place.” Human rights problems persist in South Africa, including xenophobic violence, as well as the Dominican Republic, Iran, and Sri Lanka (Amnesty International, 2015; HRW, 2015).

Posner (2014) points out that “these countries all have judicial systems, and most suspected criminals are formally charged and appear in court.” Extrajudicial killings of civilians in South Asia often take place while “disappeared” persons are in the custody of state forces or during “fake encounters” (Ganguly, 2013). A “fake encounter” is the extrajudicial killing of civilians, often while they are in the custody of state forces. Officials have been known to record such killings as resulting from an armed confrontation with state forces instigated by the recently deceased (Chatterji, Imroz et al., 2009; HRW, 2009).

Human rights problems persist in Israel, including the recent blockage of Gaza, collective punishment, and indiscriminate violence (HRW, 2014; Prashad, 2015). HRW (2014, n.a.) stated that: “Israeli forces and Palestinian armed groups committed serious violations of the laws of war during fighting in the Gaza Strip in July and August 2014.” In response to the enormity of 9/11, new configurations of Islamophobia and xenophobia at home, and the use of torture and drone strikes

against civilians elsewhere by the United States have ensued great concern and critique across segments of society (Columbia Law School and CIVIC, 2012; Kumar, 2010). Iran and Iraq continue to infringe on equality, religious and political freedoms, and self-determination (Posner, 2014; *Rebel Music* and Durrani, 2015). China's aggressive development record has led to the curtailment of self-determination for ethnic, religious, and indigenous minorities and human rights violations (Anonymous, 2010; Zhao, 2004). Political illiberalism has gained ground in Turkey, Nigeria, and Russia (Posner, 2014). The European Union has been facing a massive economic crisis. Many states in Europe are witnessing xenophobia and Islamophobia (Haritaworn, 2012), escalated in light of the recent refugee crisis (Cololi, 2015). Approximately 30 million people across the globe work as forced laborers (Global Slavery Index, 2014), and many continue to live in conditions of slavery, including some women, Dalits, and Adivasis in India (Sarkin and Koenig, 2010).

The human rights regime is often seen as politically expedient: in conditioning foreign aid on accepting human rights protections, or in commencing military interventions against sovereign states, or in preserving the tiered approach to socioeconomic and cultural rights. Socioeconomic and cultural rights, though theoretically indivisible from civil and political rights, have been considered less immediate since inception, consonant with the prioritization stemming from the Cold War agendas of the United States (Orend, 2002: 30-32; Posner, 2014).

Human rights advocacy has often employed "shame and blame" strategies (Roth, 2004). Human rights movements have been critiqued for promoting Eurocentric remedies without accounting for the agency of "victims" or global and historical differences in power that make certain societies more vulnerable to rights abuses (Mutua, 2001). A case in point is the critique of the International Criminal Court (ICC) as an "African Court," with prosecutions focused on African defendants and conflicts. The ICC has investigated cases outside Africa (Office of the Prosecutor, 2013), and six of eight African countries themselves invited the ICC "to investigate allegations of serious crimes committed in their countries because they were unable to carry out the investigations themselves.... Far from being western justice inflicted upon Africa, the Rome statute.... received overwhelming support of African countries." (Pillay, 2015: 5).

GENDERED AND SEXUALIZED VIOLENCE

*They would hang women upside down. The torture on women wasn't lesser. They destroyed women's lives. [To escape,] a woman committed suicide with her infant by taking cyanide. We are just surviving. We have just survived.*⁴⁴
 — ██████████, Punjab (ACRes)⁴⁵

*They grabbed ██████████. She was pregnant. They brought a can of kerosene. They stabbed her in the stomach with a sword. Her screams were so loud. She pleaded with them to save her unborn child. They killed her. They cut out her baby from her womb. They doused her with kerosene and torched her.*⁴⁶
 — ██████████, of Gujarat (ACRes)

Throughout history, gendered and sexualized violence has accompanied tectonic shifts in polity and culture. Embodied gendered and sexualized violence was inherent to the colonial-feudal encounter, the internal colonization of Native Americans, and the enslavement of Africans in the United States. Such violence was ever-present in the Holocaust of Jews and others in mid-twentieth century Europe. Gendered and sexualized violence remained a significant element in contemporary state formations and transitions in Africa, South America and Latin America, Eastern Europe, the Middle East, and South Asia.⁴⁷ In the contemporary era, gendered and sexualized violence continues to be a significant element of conflict and social upheaval in conflicted democracies.

Current international norms, following widespread research and advocacy, reflect the disapprobation of sexual violence and criminalize it as torture, enforced disappearance, and international crime. Rape is now widely recognized as a “tactic of war to humiliate, dominate, instill fear in, disperse and/or forcibly relocate civilian members of a community or ethnic group” (Office of the High Commissioner for Human Rights, OHCHR, 2010). In particular factual circumstances, rape may constitute a crime against humanity or a war crime (as per the Rome Statute of the ICC) or an act of genocide under international law (Prosecutor v. Akayesu, 1998).

CONTINUUM OF VIOLENCE

Virulent nationalism (always gendered and sexed) constitutes cathexis relating to the racialization of the Other. This mediates the militarization of gendered roles (Yuval-Davis, 1989; Peterson and Runyan, 1998) and the use of structural and direct violence in furthering the minoritization of socially vulnerable and marginalized groups (see later). Gender inequities and relations in society; the status of women, LGBTIQ, and other marginalized genders, and the systemic rights

violations experienced by women and/as marginalized Others, serve as preconditions to massified sexualized violence during social upheaval and violent conflict.

Nationalist Violence

Nationalist violence combines militarization and patriarchy (Banerjee et al., 2012; Chatterji, 2012; Sarkar, 2010). This has been noted in the literature on India (Anand, 2011; Chatterjee, 1993; Jeffery and Basu, 1998).⁴⁸ This has been recorded in the domestication of religious politics in Ireland, ethnic cleansing in Bosnia, and in Israel's governance of Palestine (Feldman, 1991; Hinton, 2002; Richards, 2005; Sa'di and Abu-Lughod, 2007). Anthropology of violence posits how, in targeting the individual, nationalist violence focuses on the political and cultural identity of minority groups (Das, Kleinman, and Lock, 2000). Nationalist violence in the postcolony incorporates majoritarian and supremacist norms. The sexualized and performative dimensions of nationalist violence accelerate minoritization (Das, 2007; Mahmood, 2012).⁴⁹

Minoritization

Minoritization is the social, political, and economic exclusion and targeting of non-dominant peoples and groups through dehistoricization, marginalization, and stereotypification (Chatterjee, 1998; Mufti, 2007). Abdul JanMohamed and David Lloyd's roadmap of the project of minoritized studies (1990) elucidated upon the notion of minoritization, elaborated upon by Talal Asad, Homi Bhabha, Dipesh Chakrabarty, and Satya Mohanty, Paula Moya, Linda Alcoff, and Michael Hames-García; and other postcolonial and decolonial scholars (Anfeng, 2009; Mignolo and Escobar, 2013). Aamir Mufti (2007) offers a comparative account of Jewish and Muslim minority-ness in Europe and India through a reading of literature on the Jewish Question and Exile and of Indian secularism, and the crisis of Muslim identity in modern India (also see Asad, 1993).

Relevant to this conversation is Saba Mahmood's (2012) account of the right to religious liberty and non-Muslim minorities in the Middle East, where she examines the high impact of discourse on minority rights. It can be said that the conditions for minoritizing and militarizing violence against women, especially socially marginalized and minority women, are rampant during episodes of social upheaval and become routine in long-term conflict situations.⁵⁰ The idealization of the "heteronormative family" positions majoritarian, homophobic national identity "as the privileged site... of power and self-realization, threatened by a host of internal and external Others" (Bacchetta and Power, 2002: 8).

Opportunistic and Retributive Violence

Varying forms of collective and individualized violence in armed conflict may

be characterized as “opportunistic violence” and “retributive violence” (Boyle, 2014). Opportunistic (criminal, sexual) violence exploits circumstances that present themselves to inflict violence as a means toward reaching the tactical interests of particular groups (Boyle, 2014; Tilly 2003). Retributive violence is inflicted as punishment to avenge purported wrongful acts and may become cyclic (Borneman, 1997). Retributive violence may use similar means as opportunistic violence toward reaching the tactical interests of particular political, ethnic, religious, security, and ideological groups.

Various state and non-state agents may perpetrate opportunistic and/or retributive violence, individually and collectively (Bacchetta, 2004; Chatterji, 2009; Osuri, 2013; Sarkar and Butalia, 1996). State agents may include the police, the paramilitary, and armed forces personnel. Non-state agents may include representatives of majoritarian and hyper-nationalist groups, as exemplified by the Hindu nationalist-supremacist Bajrang Dal and Rashtriya Sevika Samiti, the women’s “structurally subordinate” wing of the Rashtriya Swayamsevak Sangh (RSS) (Bacchetta, 2004: 55), in Gujarat in 2002 and Odisha in 2008. Hindutva is the Hindu nationalist ideology professing Hindu cultural dominance and ascendancy. Hindutvadis are believers of Hindutva, dedicated to its ideology and to actualizing its mandate (Hansen, 1999; Jaffrelot, 2005; Sarkar, 2002; Savarkar, 2003).

In the context of Hindu nationalism, “understanding the specificity of rightist women’s agency,” Bacchetta (2004: 45) urges, requires a “shift [in] the focus from right-wing women versus feminists, to a gender comparative approach: women Hindu nationalists versus their male counterparts.” Non-state agents may also include representatives of local majority community-led groups (who are national minorities), as exemplified by the Muslim-led Jammu and Kashmir Liberation Front in Kashmir in the 1990s or the Sikh-led Khalistan Commando Force in Punjab in the 1980s and 1990s.

Sexual Violence

Sexual violence refers to violence of a sexual nature against an individual on the basis of the individual’s perceived sex. Sexual violence pertains to sexual acts committed to establish power and control over the victim, including sexual humiliation and intimidation, forced prostitution, abduction, sexual slavery, sexual torture, sexual mutilation, forced sterilization, rape (individual, gang, and collective), forced pregnancy, and coerced abortion.⁵¹ Sexual violence is a constitutive component of gender and a form of gendered violence. Sexual violence includes sexual abuse and exploitation likely intended to inflict physical, psychological, and emotional harm by targeting the physical and non-corporeal body and personhood through physical and psychosocial aggression and persecution. The denotation is non-specific with respect to gender, and includes the possibility of non-male abusers and non-female

targets. Sexual violence is rooted in history and culture and encompasses actions that are structural, collective, and individual (Das, 2010; Green, 2004).

Sexual violence is endemic in conflict and during social upheaval and pertains to sexual acts that are committed on the basis of their symbolic and material power to target and victimize an individual or community (Bacchetta, 2010; Chatterji, 2009). In such contexts, sexual violence against an individual targets the individual's community. These acts occur in the public arena and in domestic and private life. Collective sexual violence refers to acts of violence, such as rape, that are perpetrated by state agents or a political group on civilians. "Collective violence, by... definition, excludes purely individual action, non-material damage... It includes a vast range of social interactions" (Tilly, 2003:4). In recent times, sexual violence against women in armed conflict and during social upheaval has been subject to greater scrutiny by the international community.

Gender-Based Violence

Gender-based violence targets individuals on the basis of the person's perceived gender and gender identity and is linked to structural violence, and in part to state violence (Bourgeois, 2001; Speed, 2014). Gender-based violence is discursive and corporeal and governs and is governed by relationships between genders (Das, 2002, 2007; Foucault, 1980). Gendered differences are routinely sustained through various forms of normalized violence against individuals and groups in subordinate positions. Relations of power manifest through gender-based violence that is conditioned by age, sex, sexuality, race, caste, class, faith, religion, irreligiosity, ethnicity, national origin, and immigration status.

The scope of gender-based violence has been broadened in various parts of the world to include sexual, as well as economic and psychological violence. A report by Health and Human Rights Info (2015: n.a.) elaborates on the manifold and serious impacts of gender-based violence, including "physical injuries that may remain, as chronic pain syndromes, muscle and skeleton damages, infections, sexually transmitted diseases. In the recent years it has come more in focus that also the psychological effects are severe, sometimes more serious than the physical ones." Individuals of any sex or gender assignment vested in maintaining the status quo may perpetrate gender-based violence.

The term *gender-based violence* is often used interchangeably with the term *violence against women* (European Institute for Gender Equality, 2014). Such usage negates various complexities, as gendered violence targets all non-dominantly gendered subjects regardless of their gender status (as cisgender or transgender, multigender)⁵² or sexuality (as LGBTIQ). Recently, the Office of the Prosecutor of the ICC explicitly highlighted violence against men and boys (ICC, 2014). Violence against women operates within a political and social context marked by

structural gender inequities (Dauer, 2014: 3). Sexual violence against women in and after conflict and social upheaval affects gendered relations (Lundgren and Adams, 2014: 56). Furthermore, gendered violence commenced during conflict and social upheaval “leaves in its wake emotional damage which may be acted out through the perpetuation of violence against family members” (Speed, 2014: 80; “the continuum leaves the interpersonal and the state-sponsored at opposite ends of the spectrum, limiting our ability to understand their relationship” (80).

Gender and gender identity are socially constructed within history, language, culture, and power. They exhibit the effects of productive and strategic relations of power (Bailey, 2013; Butler, 1986: 513, 1990; Foucault, 1978, 1985; Johnson, 2003; Munoz, 1999; Roscoe, 1998; Spelman, 1988). Judith Butler (1990) explicates the divide in feminist theories and feminisms surrounding the distinction between *sex* as a biological marker and *gender* as socially constructed and argues against the reification of categories. Butler contends that sex and sexed bodies are signified and given meaning through gender and that the presumed actuality of sex prior to its discursive and cultural formation illustrates the performativity of gender itself (Butler, 1993, 2009). Contemporary issues around transgender and intersex persons and their entitlement to rights further illuminate these dynamics (Karkazis, 2008).

Gendered and Sexualized Violence

Violence as gendered links aggression to the apparatuses (mechanisms and structures) of social and political power (Foucault, 1980: 196-98). Gendered and sexualized violence is not static and is particularized differently across varying social contexts. Sexual violence is gendered when it is inflicted on individuals on the basis of their gender. Experts caution against identifying universal principles that are determinative of gendered and sexualized violence and that render them applicable across varying local situations (American Anthropological Association, 2010). Local and global conditions, cultural and legal norms, and historical, political, and economic circumstances and inequities determine the scope of gendered and sexualized violence. Gendered and sexualized violence is structured through normative constructions of masculinity and femininity, buttressed by the naturalization of sex, gender, and gender binaries (Nestle, Howell, and Wilchins, 2002; O’Toole, Schiffman, and Edwards, 2007). As research into history demonstrates, colonized subjects never measured up to the gendered norms imposed by the colonizer. Colonial gendered norms live in the postcolony and impact (as the dominant framework that is also contested) what constitutes gender and sexual normativity in the present (Bacchetta, 2002, 2006; Mani, 1999, Vanita and Kidwai, 2000; also Nandy, 2009, on colonial constructions of gender). Gendered and sexualized violence intersects with social hierarchies of race, ethnicity, caste, indigeneity, and

class and majority and minority, as emasculation as a governance strategy impacts how men understand and perform re-masculinization.

Gendered and sexualized violence in conflict and social upheaval functions as a technique to escalate social control and to exact fear and obedience from subjugated populations (Yuval-Davis, 1997). Women are considered to be the embodiment of the “honor” of a community, and hence their rape is perpetrated to dishonor the entire community. Gendered and sexualized violence is normalized and performed through material and symbolical acts that are carried out in regular life through ordinary networks. Minority women, for example, are seen as symbols of the ethnic, religious, and racial community and, therefore, are targets of gendered and sexualized violence (Bacchetta, 1994; Chatterji and Nazir Choudhry, 2012; Loomba and Lukose, 2012). Such targeting seeks to undermine kinship relations and community security and to disrupt the transmission of culture. Such disruption intends to assert the dominion of majority culture over “resources,” including minority women.

Responses to gendered and sexualized violence against members of a minority community, especially women, are routinely governed by how the community is perceived.

The Beijing Declaration and Platform for Action (1995) states that, “in all societies, to a greater or lesser degree, women and girls are subjected to physical, sexual and psychological abuse that cuts across lines of income, class and culture.” Estimates note that one in every three women in the world will be beaten, raped or otherwise abused during her lifetime (UN Development Fund for Women, 2003), and violence against women and its long-term health impacts have been noted as a “global health problem of epidemic proportions” by the World Health Organization (2013: n.a). It has been widely recognized that women often constitute the vast majority of those adversely affected during conflict and upheaval, including through sexual violence (Security Council Resolution 1325, 2000).

The international community’s efforts in recent years demonstrate a critical understanding that sexual violence against girls and women is a crime as well as a violation of international human rights standards. Women take on new roles in their communities during conflicts as “both victims and actors” (GSDRC, 2002: 13; Yuval-Davis, 1997). In the aftermath of conflict, women victim-survivors continue to experience adversity in “the transition from war to peace, or from military dictatorship to democracy, [as] the rhetoric of equality and rights tends to mask the reconstruction of patriarchal power” (Meintjes, Pillay, and Turshen, 2001: 4). More recently, it has also been recognized that gendered and sexualized violence in conflict also targets men (and other genders), creating unique challenges for these victim-survivors amid prevalently patriarchal and heteronormative worlds (UN

High Commissioner for Refugees, 2013; UN Security Council Resolution 2106, 2013; also Hagen, 2014; UN Free and Equal Campaign, 2012).

Violence against women is held in place through everyday, chronic, and spectacular events. The scope of “routine violence” (Pandey, 2005) against women is further gendered and sexualized during times of political and social crisis. Routine violence is escalated and entrenched socially through extraordinary mobilizations and formations. In militaristic contexts, everyday actions of gendered and sexualized violence are reified to stress the preservation of power in larger patriarchal social milieus. This reification occurs in contexts where women, and especially minority women, are persistently discriminated against in every aspect of life. Sexual violence may be used as a technique in ethnic cleansing and result in forced pregnancies, as children are assumptively understood to take the ethnic identity of their “fathers” (the perpetrators). In Rwanda, genital mutilation was used to forcibly sterilize women (Women’s Media Center, 2015). The International Criminal Tribunal for Rwanda (ICTR) held that rape and sexualized violence, in its opinion, “constitute genocide in the same way as any other act as long as they were committed with the specific intent to destroy, in whole or in part, a particular group, targeted as such” (Schabas, 2009: 185).

Gendered and sexualized violence is deliberate, premeditated, and subsidiary in intent and action during conflict and upheaval. State and non-state agents perpetrate such violence. The impunity with which agents of state commit atrocities is often conditioned by the legal immunity they are granted. Relations of power that operate between those who perpetrate violence and those who are its recipients condition both opportunistic and retributive forms of violence. Stigma, shame, lack of political will, and the insensitivity and ineffectiveness of legal systems often prevent victims from obtaining justice. Most girls and women suffer the physical, emotional-mental, and social consequences of sexual and gendered violence in isolation and without adequate psychosocial and economic redress. Lesbian-identified individuals, cisgender men and boys from marginalized/minority groups, and transgender,⁵³ third gender, and intersex individuals and groups are also victims of such violence.

Embodied gendered and sexualized violence in conflicted democracies is linked to political breakdowns and state formations (Jayawardena and de Alwis, 1996; Yuval-Daivs, 1997). It is influenced by attendant religious and ethnic contentions and by economic and social marginalization and fragmentation. Gendered and sexualized violence increases with the militarization of masculinities and heightened militarization of states (Maria Eriksson Baaz and Maria Stern, 2013). The issues that lead to such situations, and the impact they have on victim-survivors, are shared and yet highly specific (Loomba and Lukose, 2012). Understanding women’s diverse experiences of violence requires situated knowledge of women’s experiences and rights cross-culturally (Visweswaran, 2004: 485). Women’s

capacity to survive the events of violence is affected by the “historicized particularity of their relationship” to “scattered hegemonies” (Grewal and Kaplan, 1994: 17; Nazir Chaudhry, 2012: 219). Bernice Johnson Reagon and Chandra Talpade Mohanty argue for women’s “shared survival as the basis for (feminist) solidarity and resistance” (Visweswaran, 2004: 190).⁵⁴

Conflict-related gendered and sexualized violence is dependent on the equitability of relations between genders in ordinary times. Structured inequality on the basis of gender enshrines violence in normal relations that form the basis for escalation during conflict and upheaval. Therefore, if women face structural discrimination in ordinary times (such as, lower wages), they are likely to face heightened discrimination (such as, lack of economic rehabilitation) during/following conflict and upheaval. Furthermore, the inequity between minority and majority communities disproportionately impacts minority women in conflict and upheaval. In conflict situations and during social upheaval in conflicted democracies, relations between culture, power, and sexuality are intensified (Foucault, 1980; Das, 1997). The intensification occurs through the deployment of “performative violence” (Das, 1985, 1997), where symbolic, public, and exhibitionist violence is used to coerce social transformation (Dirks, 1996; Juris, 2005; Viliani, 2011).

Furthermore, Das (2007:1) speaks to the reach of extreme violence into “the recesses of the ordinary” and its residence within the everyday.⁵⁵ Often a pervasive, high-impact, and unmonitored instrument of combat, compulsive violence that targets gender and sex is escalated beyond its ordinary acceptability and further normalized during violent conflict and episodic upheaval (Concerned Citizens Tribunal-Gujarat, 2002; International Initiative for Justice, 2003). Conflict-related sexualized violence is deployed as both a tactic and a weapon and manifests episodically or over long periods. Social upheaval may witness to high-intensity and spectacular sexual violence over a short time.

MINORITIES AND LGBTIQ COMMUNITIES

The pain and the frustration of having to live a difference that has no name and too many names already.
— Trinh T. Minh-ha (1991: 14)

Myriad examples exist that describe the active relation between state formations, gendered and sexualized violence, and nationalizing culture (Banerjee et al., 2012; Butalia, 2000, 2015; Chhachhi, 1998; Das, 2003, 2007; Kazi, 2011; Menon, 1998). Targeted groups and peoples include indigenous peoples, caste groups, women and children; and religious, ethnic, and gender and sexual minorities (Chatterjee and Jeganathan, 2000; Guha, 2013).

National minorities are prevalently subordinate groups, discriminated against by virtue of differences in race, caste, ethnicity, indigeneity, class, religion, language, gender, sexual identity, and other social markers. The classification is not exclusively numerical; for example, a powerful minority governed South Africa during apartheid. The issue of protections and rights for minority populations has arisen through present history and featured in the Congress of Vienna in 1814, the Ottoman Empire in the nineteenth century, the Paris Peace Conference in 1919 and the League of Nations in the 1920s, and the UN Human Rights Covenants since 1966. The two primary human rights covenants, ICCPR and ICESCR, recognize the notion of collective rights to self-determination, which is applicable to minorities.

In international law, the term *minority* remains undefined even as various instruments provide protections to minorities. The Committee on the Elimination of Racial Discrimination provides four descriptors for “minority,” national, ethnic, religious, and linguistic. The Special Rapporteur of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities (1979, para. 568) defines a minority as “a group numerically inferior to the rest of the population of a state, in a non-dominant position, whose members—being nationals of the state—possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language.” The classification of national minorities is often relational to the identification of a social majority that occupies a privileged position to social, economic, legal, and political power. The social power exercised by the majority community may be linked to majoritarian and nationalist aspirations. The formal classification of a “minority” group and their capacity to secure rights within a state may involve highly contentious processes. Such classification by states both renders the minority group formally subordinate in the social hierarchy while potentially enabling access to resources for development and assimilation.

Responses to gendered and sexualized violence against members of a minority community, especially women, are routinely governed by how the community is perceived. Furthermore, the responses “signal the tensions in recognizing women as symbols of ethnic, religious, and racial communities when they are targets of gendered and sexualized violence” (Puri, 2015, communiqué).⁵⁶ In Indonesia, militant Islamic groups with the tacit or overt support of the state have committed violence against minority religious groups, including Ahmadiyahs, Christians, and Shia Muslims. Indonesia’s legislation and regulations discriminate against religious minorities while minority victim-survivors of violence are often blamed for the atrocities to which they are subjected, for example, with charges of blasphemy or incitement to disturb “religious harmony” (HRW, 2013). In India, during episodic

and conflict-related violence against Christian, Muslim, Sikh, Dalit, Adivasi, and other minority communities, violence against the minority woman is often overlooked as collateral damage. In political discourse, this often becomes reducible to a diverse nation's "minority problem" (Engineer, 1985). Violence against a minority community and reactions to this violence are necessarily indicative of the secondary status and structural positioning of the community.

Sexual orientation is another basis of targeting communities during various contexts of political repression, for example, during the Holocaust in Germany, during apartheid in South Africa, in Peru in the time of armed conflict, or in the war in former Yugoslavia (ICTJ, 2015). How does the emasculation of subjugated men impact wartime alliances and their capacity to acknowledge the existence of LGBTIQ people? There is a glaring oversight of focus on conflict-related violence against individuals and groups whose sexual orientation/practice is socially marginalized.⁵⁷ The UN Free and Equal Campaign (2012), HRW's (2009) report on sexual orientation-based violence in Iraq, and ICTJ's (2015: n.a.) determination that in Colombia, "the investigation of abuses suffered by LGBTI communities is still a pending task for transitional justice" are illuminative of this.

Currently many western countries are deploying the status of LGBTIQ subjects as tools in foreign policy, to justify occupations (Israel/Palestine), war (Iran), and economic boycotts. This practice entails dividing LGBTIQ peoples into those who can be assimilated into "national homosexuality" (generally white, middle class, cisgender) and those who, along with straight people of color, are increasingly demonized. Various states in the Global North have claimed to be protecting the former. Jasbir Puar (2007) has called this splitting and deployment homonationalism. Bacchetta and Haritaworn (2011) point to several dimensions and deployments of these tactics: homoationalism 1 or discourses and action by the state; homonationalism 2 or discourses and action in civil society; homotransnationalism 1 or the alignment of numerous states in common or convergent homonationalist discourses and practices; and homotransnationalism 2 or the alignment of multiple civil societies in common or convergent homonationalist discourses and practices.

The omission (of recognizing the impact of conflict violence on LGBTIQ persons) continues, given the homophobic social and official contexts in which a majority of fact-finding and research is carried out, and the social and legal exclusion and invisibility accorded LGBTIQ communities. Furthermore, ICTJ (2015: n.a.) notes that "one of the main problems is that these violations are considered part of 'ordinary violence,' instead of being recognized as an intentional strategy implemented in the context of conflict."

Indeed this is continuous with the colonial construction of all colonized subjects as anormative, and the erasure of actual LGBTIQ subjects in colonized

space, and the postcolonial notion that LGBTIQ people and identities are a Western phenomena. As Bacchetta has pointed out, both the colonizers and the colonized “exile” queers by imagining that homosexuality is not a part of their in-group but rather creeps in from the outside (2013: 127). For example, the colonial British called homosexuality “the oriental vice” and today right-wing groups in India maintain that, “lesbianism is not Indian” (123).

In India, to date, no official investigations have taken place into the impact of conflict violence and social upheaval on LGBTIQ communities. In the Indian context there are multiple forms of same sex practices and identities, which do not correspond necessarily to the categories that predominate in the West. The politics of identification and non-identification emerge out of specific historical context, with its particular conditions of power, modalities of violence, and practices of resistance (Bacchetta, 1999, 2002; Reddy, 2005; Vanita 2002). The categories are multiple and include Single Women, Hijra, Kothi, Aravani, Zenana, and precede and coexist with Indian English. Among women, those who identify as lesbian and transgender are often invisible as such, even as some are hyper visible and targeted directly because of their gender presentation. In general, in India, transgender women are visible while some lesbians who can pass for straight prefer to do so to avoid being targeted.

Nonprofit organizations reporting on conflict violence and social upheaval either habitually exclude or are unable to access issues relating to conflict violence on LGBTIQ communities. The Civil Society Coalition on Human Rights in Manipur and the UN (2013, Para 65) states that “homophobia penetrates into state policy, law enforcement, welfare programs implementation, the jurisdiction of the Armed Forces (Special Powers) Act, [1958, (AFSPA)] in the public domain, as well as in social, community, and inter-personal relations.”

Now that transgender people are recognized as legal subjects in India, it is necessary that such recognition be extended into all realms, including that transgender women are also targets of conflict violence. Further, in order that lesbians may receive recognition as subjects of conflict violence, it is also necessary to recognize lesbians as legal subjects.

ADDRESSING GENDER AND SEXUAL VIOLENCE

Violent conflict impacts women and men varyingly as victims, survivors, family and community members, civilians, leaders, combatants, enablers, direct and indirect participants and perpetrators, and caretakers. Gender equity is associable with lower levels of armed conflict and social violence within a nation. During conflict and social upheaval, agents of institutions responsible for good governance,

law, and order all too frequently collaborate with socially ascendant, disruptive groups to permit attacks on, or directly attack, targeted peoples. Overwhelmingly, there are no avenues for targeted groups to register complaints and violations and have their rights upheld. The gendered toll of armed conflict and social upheaval includes enforced disappearance, rape, torture, extrajudicial execution and mass killing. It extends further to the disposal of the dead through illegal cremations, including, mass cremations, and unknown graves, including mass graves, and economic destruction and livelihood insecurity.

Men from targeted communities are disproportionately targeted by death and involuntary disappearance in conflict, whereas women and children constitute a majority of rape victims, refugees, and the displaced. Acknowledgment and action are discouraged and condemned by the state, larger society, and often the community itself. Sexualized violence is routinely spoken about euphemistically, including by victim-survivors, and a prevalent atmosphere of ignominy leads them to internalize a sense of shame (Mahmood, 1996). Women who attempt to secure justice are stigmatized, in turn leading to their displacement and abandonment. Fearing reprisal, families can ostracize women who take steps to secure justice. Access to legal or rehabilitation services for women often proves difficult.

Extrajudicial executions and enforced disappearances during conflict engender culturescapes that require women to assume greater leadership and responsibility. Although women suffer deeply from the acuteness of structural inequities within which they are forced to function, women's complex experiences enable and constrain various forms of agency (Giles et al., 2009), as social upheaval also presents opportunities for resistance to inherent hierarchies (Moser and Clark, 2001). Impacted women assume responsibilities as heads of households, caregivers to disintegrated families, cultural icons and rights defenders, witnesses to self and subjective trauma and dislocation, and seekers of justice. Women are forced to assume such leadership within structural contexts where gender relations are often highly inequitable. While the disparities in women's participation and compensation in the workforce are conditioned by social and economic shifts globally and nationally (Tyson and Zahadi, 2014), localized cultures of violence impact how marginalized women are inducted into conflict-economies and the post-social upheaval

The UN Security Council has issued various resolutions calling on states to end "the use of sexual violence as a tactic of war."

The UN has also developed models of best practices for ensuring state duties to prevent, investigate, punish, and prosecute perpetrators of sexual violence. These efforts, however, have failed to significantly reduce the pervasiveness of sexual violence or the impunity accorded to perpetrators.

workforce (Turshen, 2000). Identifying survivor women's agency, autonomy, and leadership are crucial to curtailing sexual violence in conflict, and capacitating historical dialogue and sustainable peace.

There is acknowledgment that women are excessively impacted by armed conflict and during social upheaval yet they continue to be under-represented in processes seeking resolution and reconstruction (Governance and Social Development Resource Center, GSDRC, 2015). Scholars and advocates speak to the importance of, and challenges to, the genuine inclusion of women victim-survivors in defining redress (Mayesha, 2014; Nesiah et al., 2006).

In the last two decades, the international community has placed greater emphasis on legal accountability for gender-based crimes committed in times of peace and conflict. Today, the vast majority of nations have ratified the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which focuses specifically on the rights and protections of women.⁵⁸

International Context

Despite extraordinary and global processes for conflict-accountability from Nuremberg to Rwanda in the twentieth century, the apparatus for acknowledgment, monitoring, and accountability to gendered and sexualized violence in conflict and social upheaval remains universally inadequate. Governments and the social sector have undertaken extensive regional, sub-regional, and local attempts for accountability. International commitment to developing norms and mechanisms for justice and accountability has covered much ground. These norms include the Geneva Conventions of 1949 and Hague Conventions of 1899 and 1907, the ICC, and UN conventions and injunctions.

Many international instruments, including treaties, address the human rights of women, the most notable of which are the ICCPR and CEDAW. In general, these treaties aim to define the various forms of discrimination to which individuals may be subject and establish rights protecting individuals from those various and intersecting discriminations. According to both treaties, state parties are obligated to ensure the protection of women's right to personal integrity and the prevention of sexual violence against women as a form of gender-based discrimination. India acceded to the ICCPR on April 10, 1979; it ratified CEDAW on July 9, 1993. As a state party to each, India is bound by these treaty provisions. Notably, the ICCPR codifies the human right of individuals, including women and children, to protection from "advocacy of national, racial or religious hatred" resulting in "incitement to discrimination, hostility or violence." Where sexual violence and

CEDAW guarantees human rights for women on par with men, but it does not address issues of sexuality and/or gendered violence in conflict.

gender-based discrimination frequently intersect with one of these other forms of hatred, the ICCPR becomes a critical tool for establishing wrongdoing.

Whereas the ICCPR provides general, codified human rights standards for all persons, CEDAW focuses specifically on the protection of women. The UN considers CEDAW to be a key framework for addressing gender-based discrimination as a human rights violation and has now incorporated sexual violence against women as a form of discrimination under the treaty. Pertaining to sexual violence against women *during conflict*, CEDAW specifies that states shall take “all appropriate measures” to “modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudicial customs and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women” (CEDAW, 2015; Cook and Causack, 2010: 72).

Drawing on consultations with diverse conflict-affected women, General Recommendation 30 of Committee on the Elimination of Discrimination Against Women (the monitoring body for the CEDAW) provides an authoritative interpretation of state’s obligations under CEDAW. GC 30 “clarifies the application of the Convention to situations of armed conflict and political crises, to prevention and resolution of conflict and to the various complex peacebuilding and postcolonial reconstruction processes” (see UN Women, Swaine and O’Rourke 2015: 9). The above can thus be understood to also apply to sexual violence in situations of *mass unrest*.

CEDAW guarantees human rights for women on par with men. CEDAW does not as yet specifically include lesbian and transgender women under its purview. It also seeks to “suppress all forms of traffic in women and exploitation of prostitution of women” (Article 6). Beyond this, the Convention does not address issues of sexuality and/or gendered violence in conflict. This impacts women, men, and other genders that face aggression and discrimination from a dominant community during conflict and upheaval, and where the same dominant community is responsible for law and order and local governance. The relatively recent attention to “violence against women” in the life of IHRL has meant that CEDAW itself does not address these issues (Edwards, 2010). The Committee on the Elimination of Discrimination against Women (CEDAW Committee), General Comment 19, provides that gender-based violence “includes acts that inflict physical, mental or

The International Criminal Court recognized sexual violence as an international crime and expanded the definition of a crime against humanity to include instances of “rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity” (Rome Statute of the International Criminal Court Article 7(1)(g), July 17, 1998).

sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty” (CEDAW, 1992).

Since CEDAW came into force, the international community has increasingly focused on violence against women in domestic and intimate settings, and in times of conflict, as a human rights violation. These efforts are manifest in the Declaration on the Elimination of Violence against Women, as well as in several General Assembly resolutions focused specifically on targeted sexual violence against women.

In addition to CEDAW, the Convention on the Rights of the Child (CRC) contains several provisions particularly relevant to female child victims of sexual violence during situations of civil unrest and armed conflict. The CRC specifies that state parties must “protect the child from all forms of sexual exploitation and sexual abuse” (CRC, 1989). The explicit language used in this article makes clear that human rights law prohibits sexual abuse against children under any circumstances (CRC, 1989). Additionally, during times of armed conflict where IHL also applies, the CRC specifies that state parties must “ensure respect for [the] rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child” (CRC, 1989). This provision includes the obligation of the state to protect children from acts of sexual violence as well as a general obligation of the state to minimize harm to civilians, including children (CRC, 1989).

Overall, international human rights treaties and declarations stress that women are frequently subject to “double and triple marginalization,” stemming from “multiple intersecting or aggravated forms of discrimination,” including gender-based discrimination, which intersects with discrimination based on “otherness” (for example, race, caste, ethnicity, indigeneity, religion, and economic status). Consequently, states must be mindful that, in responding to crimes of sexual violence, they do not inadvertently re-victimize and thus must take measures to ensure that remedies take into account the identity of the victim-survivor and the nature of the individual and collective trauma they have experienced.

The International Criminal Tribunal for the former Yugoslavia (ICTY, 1998: n.a.) defines sexual violence as “serious abuses of a sexual nature inflicted upon the physical and moral integrity of a person by means of coercion, threat of force or intimidation in a way that is degrading and humiliating for the victim’s dignity.” No international human rights treaty prohibits violence against women.

The UN Declaration on the Elimination of Violence against Women (1993) provides a working definition for “violence against women” as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”⁵⁹ Of these acts, there has of late been a hyper attentiveness to sexual harm against women, as women’s groups and allies have challenged these means to subjugate and dehumanize women.⁶⁰

International Agreements

Various international agreements are concerned with the security and sanctity of women in areas and situations of conflict (GSDRC, 2015; Swaine and O'Rourke, 2015). They argue for women's constructive and inclusive role and leadership in conflict transformation, social reconstruction, and sustainable peace (GSDRC, 2015; PeaceWomen, 2015). The UN Security Council has adopted seven resolutions—Resolution 1325 (in 2000); Resolution 1820 (in 2008); Resolution 1888 (in 2009); Resolution 1889 (in 2009); Resolution 1960 (in 2010); Resolution 2106 (2013); and Resolution 2122 (2013)—on the theme of women, peace and security to offer guidance on necessary steps to preserve and protect women's rights during and following conflict (Swaine and O'Rourke, 2015).

Addressing the impact of conflict on women, Resolution 1325 “mandate[s] the protection of women and girls during and after conflict and the greater involvement of women in conflict resolution, peacekeeping, and peace-building processes” (GSDRC, 2015). Resolution 1820 names sexual violence as a mechanism of conflict, understanding that “sexual violence as a security issue and tactic of war demand[s] parties to armed conflict to adopt concrete prevention and protection measures and assert the importance of women's participation in peace processes” (GSDRC, 2015). The resolutions have driven the establishment of norms relating to addressing the impact of sexual violence in conflict. As they are currently absent in these resolutions, it is important to highlight the need for specific inclusivity of lesbians and transgender women under their purview.

The implementation of the norms detailed by the resolutions remains fraught with challenges (GSDRC, 2015). Speaking to “gender equality and women's rights in the post-2015 agenda,” the Organization for Economic Cooperation and Development (2015) reiterated concerns regarding the limited assignment of priorities to address issues of gender equity in conflict situations. Technical solutions and short-term fixes to gender equity in conflict situations are more frequently prioritized over political and structural issues (GSDRC, 2015). Another set of complications pertains to mediating women's concerns regarding gender equity, leadership, and participation with heterogeneous issues of race, ethnicity, caste, religion, class, indigeneity, sexuality, legal status, and ability (GSDRC, 2015). Attentiveness to women's meaningful inclusion in addressing sexual violence in conflict would enable frameworks for transforming relations of gender, bringing focus on developing mechanisms for equitable, sustainable structural changes across culture, political economy, government, and judiciary (GSDRC, 2015).

Challenges

Mechanisms for addressing sexual violence against women have recently received much-required attention in, for example, Guatemala, India, and South Africa.

However, the political will and structural reorganization required to address gendered and sexualized violence in conflict and social upheaval, and the development of legal frameworks and durable, symbolic, and practical institutional mechanisms for accountability continue to be impaired or absent globally. Addressing gendered and sexualized violence and safeguarding people's rights during conflict and social upheaval, and in their aftermath, pose daunting challenges across the globe, affecting all existing states and governments.

Effective national mechanisms, policies, and laws that address gendered and sexualized conflict- and social upheaval-based violence are rare. If credible laws exist to address gender and sex crimes, they are often not implemented or are overridden by other laws that prioritize securitization over people's rights and conflict resolution. Such scenarios empower state-based perpetrators, such as military and paramilitary personnel and the police, to act with impunity. Laws that sanction impunity enable abuse, diffuse and delay justice processes, and send a message to victim-survivors, perpetrators, and civil society at large that conflict-related sex and gender crimes may be condoned or overlooked by the state. These circumstances enable a continuum of violence. As the imagined, and actual, threat of the next event of oncoming violence looms, public silence regarding what occurred and what is lurking beneath the surface grows, exacerbating the possibility of the next act of violence. Under these conditions, the psychosocial segregation and marginalization of vulnerable groups continues in the absence of reparation and structural changes that can shift the relations and imbalances of power. Peace and dignity remain fragile or impossible.

JUSTICE AND ACCOUNTABILITY

As postcolonial societies contend with the attendant responsibilities of positioning themselves on the global stage, the role of the state and civil society in providing accountability for the violations and injustices of conflict and upheaval continues to be central. To be relevant, frameworks and protocols in transitional and transformative justice must be context specific and focused on the local. Viewed in relation to their transformative capacity, comparative transitional justice frameworks and attendant critiques present relevant knowhow. To transition and transform requires enduring political commitment and affirmative relations to difference, inclusivity, and experimentation on the part of various stakeholders especially the state and society at large (Dudouet, 2006; Gross, 2004). Transitional and transformative justice is about the present effects of the past as much as it is dynamically informed by commitments to the future. There is increasing awareness that democracies should be assessed on the basis of how marginalized groups fare. This is informed by concerns of justice that intersect issues of the past, present, and future. By this measure, most democracies, including even leading democracies, fall short (Papadopoulos, 2013; Puri, 2015; UN Secretary General, 2009).⁶¹

TRANSITIONAL AND TRANSFORMATIVE JUSTICE

Transitional justice refers to the steps societies take to address the sources and consequences of conflict and the abuses of people's rights (Roht-Arriaza, 2005; Ross and Sriram, 2012). The early contexts of formal transitional justice programs involved territorial and political transitions, cross-border negotiations, and regime changes, such as in Argentina, Colombia, or South Africa (Roht-Arriaza, 2005; Ross and Sriram, 2012; Sarkin, 2010). The term *transitional justice* conjures up The Hague Tribunals for the former Yugoslavia, the Truth and Reconciliation Commissions (TRC) of South Africa, or the arrest of Pinochet for the crimes in Chile. The field of transitional justice is considerably broader and evolving. Transitional justice frameworks include restorative and retributive priorities. A central question in the praxis of transitional justice hinges around the role of violence and the nature and proportion of retributive justice for the past that is necessary to building the future.

*"Transformation [is] an element of the transitional project."
(Erin Daly, 2002: 74)*

The domain of transitional justice is contentious across the intellectual and political spectrum with conflicting meanings, analyses, goals, and agendas (Daly and Sarkin, 2007). The earliest underpinnings conceptualized the transition to mean "that of the non-democratic state in the process of change to [a] stable democracy. Transition theory... [was] therefore intimately tied in with particular conceptions of democracy" (Ní Aoláin and Campbell, 2005: 173). The earliest

activities that popularized transitional justice largely prioritized legal over non-legal solutions, relied on external involvement, and have been heavily critiqued. Critiques include the dominance of Western-influenced approaches and institutions that are not uniformly available or relevant to those affected by conflict or are perceived as interventionist, especially in postcolonial spaces (Daly and Sarkin, 2007). New events have shifted and added to the possibilities and problematics as, for example, BRICS (Brazil, Russia, India, China, and South Africa) countries assume their role as global powers. In the last three decades, transitional justice has evolved significantly, responding to various critiques and drawing from various contexts across the world. A 2004 UN Secretary General report defined transitional justice as constituting:

“The full range of processes and mechanisms associated with a society’s attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanism, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof” (United Nations Secretary General, UNSG, 2004: n.a).

This definition recognizes the multifaceted and interdisciplinary nature of transitional justice, while responding to the various developments in the field. It is widely understood today that “what has worked in one country may fail in another” (Mendez, 2009: 160). Once confined to the *truth* versus *justice* model, the field of transitional justice has since been shifting to become context specific and culturally relevant (160).

Transformative justice, as it constitutes a broad theoretical and applied framework for transitioning from armed conflict, is a relatively new and emergent field (Daly and Sarkin, 2007; Mayesha, 2014). Erin Daly (2002: 74) writes that societies must view “transformation as an element of the transitional process.” Focused on constructively and critically engaging structural and historical factors, and extending beyond the criminal justice system, transformative justice, Paul Gready and Simon Robins state, “emphasizes local agency and resources [and] the prioritization of process rather than preconceived outcomes” (2014:340). The evolving definition of transformative justice draws on various disciplinary traditions and includes frameworks from peace building, restorative justice, critical social theory, and liberation theology (Gready and Robins, 2014).⁶²

In the present, transformative justice, as a framework for addressing issues of structural and immediate injustices following violent conflict, relies on locally

driven and situated change. Feedback derived from the lived realities of local people is critical to informing transitional justice processes and their supplementary efforts. A *transitional and transformative justice* approach thus requires iteratively contending with legal and policy frameworks and institutions as much as with the everyday lives and concerns of local people and victim-survivors. In doing so, transformative justice “brings together [possibilities for] economic justice along with legal, psychosocial, and political justice in an effort to transform both structures and relations” (Lambourne, 2009: 46).

Despite concerns that the transformative requirement may “overstretch” transitional justice (Waldorf, 2012; Lambourne, 2009), an integrated transitional and transformative justice approach is essential to meaningfully responding to the various limitations noted in transitional justice efforts across the world. Viewed from a transformative perspective, the various comparative transitional justice approaches and critiques represent neither failures nor replicable models. They provide valuable lessons in the importance of long-term commitment, of embracing complexity, of engaging with historical and structural inequities, and of capacitating political will for societies to *transition* to non-conflict and then *transform* towards an inclusive, equitable, and enduring peace.

MULTIPLE RELEVANCIES

The function of transitional and transformative justice in conflicted democracies following social upheaval is both shared and dissimilar to those of past and continuing conflicts. Transitional and transformative justice efforts are ordinarily utilized once conflicts are resolved. However, transitional and transformative justice efforts can be facilitative, indeed instrumental, in conflicted democracies following social upheaval, where the conditions for intensive and episodic violence are not addressed and the lack of comprehensive accountability erodes the possibility of enduring stability. The upheavals in Gujarat in 2002 and in Odisha in 2008 are representative of this.

In instances where active conflict involving state and non-state parties has ostensibly ended (even decades ago) without comprehensive efforts at accountability, transitional and transformative justice mechanisms, even though delayed, can mitigate impunity, empower affected communities to heal, and address continuing and intergenerational impacts of the conflict. The conflict in Punjab of the 1980s-1990s is illustrative of this point.

In situations of continuing and currently low-intensity conflict, such as in Jammu and Kashmir, addressing the impunity of state forces and rights violations perpetrated by non-state parties, implementing pending remedies and reparations for victim-survivors, assessing and revoking impunity laws, and enabling local and impacted communities to express pain, frustration, rage, loss, and fear are critical

to developing a serious, honest, and attainable commitment for political resolution. Transitional and transformative justice mechanisms can assist in enabling these above prerequisites for long-term resolution and restorative social conditions.

ENGENDERING JUSTICE

A gender-attentive approach to transitional and transformative justice recognizes that women, men, and persons of other genders suffer distinct harms in times of conflict and its aftermath and have different needs and roles in justice measures that follow conflict.⁶³

Gender justice is an area of increasing prominence, particularly because of the traditional failure to appropriately account for gender in designing peace and transformative justice programs (Rubio-Marín, 2006). Scholars have noted that transitional justice mechanisms have largely failed to account for the gendered dimensions of conflict and its aftermath, much to the detriment of society (Ní Aoláin and Turner, 2007; Nesiah et al., 2006). Despite a history of failure in implementing gender-attentive measures, scholars note that in the process of repairing harms, nation-states have the opportunity to develop institutions that enable shifts in dominant culture and elevate the status of marginalized communities through the implementation of transitional justice measures. Such marginalized communities often include women (Nesiah et al., 2006; Rubio-Marín, 2009).

Experts have extensively documented the lack of attention to women, in their roles as combatants or in more “mixed” roles, in various DDR efforts (Boyd, 2014). The re-traumatization of rape victims has been extensively noted, including in well-resourced efforts like the ICTY, along with the exclusion of women’s voices from peace processes (Mertus, 2004: 124; Rehn and Johnson Sirleaf, 2002). Re-traumatization occurs both outside and within the context of transformative justice. In 2011, the Nobel Women’s Initiative declared, “Past commissions have for the most part, failed to improve women’s security and empowerment with recommendations never fully implemented” (n.a).

Corey Levine (2014: 129) states, “Women may not feel justice has been adequately served even with the establishment of transitional justice mechanisms if the development and scope of these processes are not engendered.”

Commissions such as those in Guatemala, Peru, and Sierra Leone have addressed sexual violence against women and girls in conflict as an integral part of the process. Such efforts also bolster a larger critique that gender in transitional justice is often narrowly presumed as synonymous with rape. A gendered approach to conflict resolution and transformational justice requires attention to various “side effects” of

conflict that disproportionately affect women. Although all women may be generally vulnerable during conflict, the attendant effects are especially pronounced for women from targeted communities. These attendant effects include the impact on women's health, including reproductive health (Buluswar, 2014; Rehn and Sirleaf, 2002) and the vulnerabilities of women rendered homeless due to conflict (Coomaraswamy, 2001). Studies evidence the linkage of domestic violence to escalating violence in society (Litrichin and Mladjenovic, 1997). Conflict also impacts the violence women face in undertaking daily work and performing culturally relegated domestic roles. Women experience a curtailment in social and economic mobility during conflict and increased danger and harassment at checkpoints (Levine, 2014).

Some states have adopted a gender-attentive approach to their reparations strategies by creating targeted reparations for human rights violations that disproportionately affect women in times of conflict, such as forced pregnancy, coerced sterilization, and displacement (Rubio-Marín, 2009). These violations disproportionately affect women because of the nature of the violation, for example, forced pregnancy, or because of the nature of the conflict whereby women are displaced in greater numbers than men because men stay to fight in the conflict. Various methods provide a gender-attentive approach to reparations, such as "establishing inclusive definitions of rape," "supplementing individual reparations with collective measures that recognize the systemic, collective patterns of abuse against women," "defining 'dependents' in ways that include same-sex partners and customary marriages," and "disseminating information about the reparations programs and how women and those in socially marginalized communities can access them" (Nesiah et al., 2006: 37).

A gendered approach to reparations enables spaces for understanding the vulnerability of targeted men and boys, and of LGBTIQ individuals to sexualized violence during conflict. Attentiveness to gender illuminates the particular targeting of the gender-roles performed by men and boys including as heads of households (ICTJ, 2015; Levine, 2014). Experts contend that it is "both impractical and ill advised to expect reparations, as a measure of *transitional* justice, to remedy the diverse gendered imbalances of power and social and economic inequalities" that characterize any society (Duggan, 2014: 147). However, transitional justice efforts should not re-entrench inequalities. The basic principles of gender justice must be integrated into the framework of transitional and transformative justice even as these tenets must be context-specific. For justice to be transformational it is crucial to destabilize normative comprehensions of gender and develop understandings of gendered violence as targeting women and also LGBTIQ subjects and all subjects whose gender presentation does not conform to gender norms, irrespective of their sexuality. To do so would require reconfiguring transitional and transformative justice methods to make central all of these subjects and their vulnerabilities, as mediated by race, ethnicity, religion, irreligiosity, class, national/

immigration status, ability, and culture. Furthermore, in majoritarian contexts, minorities are represented as anormatively gendered in relation to majority norms; evidencing the construction of gender as inseparably linked with race, ethnicity, religion, caste, class, and coloniality.

Public Leadership

Women's public leadership has activated various and complex post-conflict alliances and possibilities. The most prominent human rights group that emerged to resist the conflict in Argentina, for example, were the Madres de Plaza de Mayo, an association of Argentine women whose children, spouses, and relatives were reportedly involuntarily disappeared during the war (Cavatorta, 2013; Wright, 2007). Formed in 1977 and organized around the belief that "to demand the fulfillment of human rights is a revolutionary act" (Bouvard, 2004: 195), the group's ideological differences over an extended period of time led to the eventual division of Madres de Plaza de Mayo into two separate sections (Cavatorta, 2013; Wright, 2007). Madres de Plaza de Mayo stopped protesting for the disappeared in 2006, but continued to congregate on Thursdays before the Presidential Palace in Buenos Aires in support of other post-conflict causes. The Madres de Plaza de Mayo started a café and a radio station, and founded the Universidad Popular de las Madres (Cavatorta, 2013; Wright, 2007).

In another context, in El Salvador, the end of the twelve-year war was followed by peace accords between the government and Farabundo Martí para la Liberación Nacional (left wing, insurgents, FMLN) in 1992. Women constituted 30 percent of FMLN. In an expression of unity against exclusion, left- and right-wing women members of Congress in El Salvador formed an unexpected caucus. Responding to the lack of attention to women in the accords, and the lack of concern around violence against women, this caucus worked on significant legislation, including against domestic violence, as well as fortifying and broadening the application of El Salvador's child support laws (Blumberg, 2001).

In integrating gender, intersectional subjects of gendered violence, and other social variables into the logics of transitional justice, it is imperative to recognize threats that transcend gender and equally necessary to scrutinize the specific forms of marginalization that are gendered (Valasek, 2014). The focus on gendered and sexualized violence should not individualize victimhood to the detriment of women survivors (Duggan, 2014). The gendered experience of conflicts must be recognized and addressed in a context where certain threats cut across gender lines and women of a community may themselves choose to prioritize such threats over sexualized violence (Duggan, 2014). Given these complexities and contexts where consent and choice may have been eroded for women and other vulnerable groups over significant periods of time, facilitating public leadership is all the more critical

to enabling justice. Supporting grassroots leadership through collaborative and horizontal networks is likely to assist transitional and transformative justice over the long-term. Conflict contexts have witnessed the role and limits of well-meaning and professionalized nonprofit organizations, even as they often contribute efficiently to short-term goals. Focused on fulfilling agendas set from the outside, and on quantifiable outputs and logistical requirements, over time, such groups often have diminishing impact at the grassroots (Jamal, 2014).

COMPARATIVE CONTEXTS

The trajectory of transitional justice efforts in certain country contexts may provide particular and comparative value in framing transitional and transformative justice mechanisms in India.⁶⁴ Brazil, for example, is an emerging global power witnessing increased economic influence similar to India and also a country confronting a conflicted history. After twenty-one years of conflict, Brazil transitioned to democracy in the 1980s. The 1979 Amnesty Law allowed exiled activists—earlier threatened by persecution under state policies—to return to Brazil while shielding state officials from the consequences of excesses during military rule. In 1982, a private group issued a truth report, *Brasil: Nunca Mais*, based on military records, exposing violations against citizens. The report was prepared in secrecy for approximately three years with the help of the Brazilian Catholic Church, lawyers, and civil society groups. More than one hundred thousand copies of the report sold within ten weeks of its release (Dassin, 1986: x). The report brought to light the human rights abuses the military committed between 1964 and 1979, and included the testimony of 1,843 political prisoners, illuminating 283 torture techniques. The report also addressed the persecution of women and children.

Following the release of the report, civil society further organized for truth and justice. As a result, in 1995, the Special Commission on Political Deaths and Disappearances was created following the passage of the “Law of the Disappeared” (Mezarobba, 2010:13). Although it marked state acceptance for illicit acts, and permitted families to request death certificates, the Commission was not mandated to identify those responsible and as a result placed the burden of proof on families. In 2006, the Commission collected blood samples from families of people who were killed to generate a DNA (deoxyribonucleic acid) database for purposes of identifying the remains of the dead (Mezarobba, 2010: 13-14).

Reparations, whether through the Law of the Disappeared and the Commission or court-mandated, have been primarily monetary with some declarations of state responsibility. The figures ranged from as low as 5,000 Reais to as high as 6,558,272 Reais (Cano and Ferreira, 2006: 110).⁶⁵ Furthermore, since 2007, memorials have been erected across Brazil, seeking to honor the history of political dissidents. In 2009, *Revealed Memories*, an online project funded by

the federal government, was created. In 2011, the Congress approved a bill creating the first national truth commission to examine and clarify executions, torture, enforced disappearances, and human rights abuses between 1946 and 1988 (ICTJ, 2015). The goal of the Truth Commission is to uncover what transpired and accurately record the history, while helping victims locate the bodies of the dead. The Commission has progressed very slowly and it is a work-in-progress that is being monitored closely by civil society.

In Timor-Leste, a 2005 Commission on Reception, Truth, and Reconciliation had no prosecuting power yet was generally welcomed over the earlier Serious Crimes Unit (SCU) to investigate and prosecute “crimes of genocide, torture, crimes against humanity, and war crimes” (Levine, 2014: 126) during ten months in 1999, the watershed year of the violence against the East Timorese. The different reception to the two transitional justice efforts is attributed in part to the Commission’s success in making people feel they were heard as opposed to SCU’s limited mandate that in itself made people feel silenced about the legacy of twenty-five years of violence that led to the eruption of 1999. Given the extraordinary nature of mass crimes, affected populations may not be able to imagine justice within the ordinary provisions of the law, even as many transitional justice mechanisms focus on legal justice, while several international laws govern reparations.

Ethnic, racial, minority versus majority, and intractable conflict impacted Guatemala for more than thirty years, dimensions of which are common to areas of internal armed conflict in India. By the 1980s, Guatemala had witnessed curtailment of popular movements, death squads, and paramilitaries comprising largely of indigenous youths who committed atrocities against their own communities, and the “scorched earth” policies designed to exterminate whole villages (Evans, 2012). This influenced the unification of guerilla groups in 1982, through the formation of the Guatemala National Revolutionary Unity (URNG), organized to fight the state in a civil war. The conflict ended in 1994, when the international community facilitated a peace agreement between the URNG and the state (Paz Y Paz Bailey, 2006). In 1994, the signing of the accord led to the creation of the Historical Clarification Commission. The Commission’s mandate was to investigate the numerous violations both sides had perpetrated in the armed conflict. In 1998, while the Commission’s work was ongoing, a report, *Guatemala: Nunca Más*, was released, championed by the Guatemalan Catholic Church’s Recovery of Historical Memory Project (REMHI) (Hatcher, 2009).

In 1999, the UN-mandated Historical Clarification Commission (CEH) published, *Guatemala: Memory of Silence*. Guatemala’s then president Alvaro Arzu issued an official apology on behalf of the government for its role in the human rights violations during the armed conflict (Evans, 2012: 157-58). The guerrillas formally apologized in March 1999 via a full-page article in the major daily

newspapers (Evans, 2012: 157-58). Five years later in 2004, President Berger made a public apology to the victims of the armed conflict, accepted state responsibility for several key massacres, and called for the recommendations of the Commission to be fully implemented (Hayner, 2002). Furthermore, as part of the peace agreement, the government provided for material restitutions as well as financial, cultural, and psychosocial reparations, and has built more than eight hundred houses for victims and paid out anywhere from 10,000 quetzals to 24,000 quetzals depending on the victim (Viaene, 2010). The Guatemalan Congress resolved to establish “a national remembrance day for victims of the conflict” in 2004, and “the ‘Day of Dignity’ is commemorated every year on February 25” (USIP, 2015) and is marked by various events, including holding vigils, creating murals and paintings on the sidewalk, and convening discussion forums.

An emergent right internationally, several international and domestic courts have recognized the right to truth (Groome, 2011). Additional Protocol I of the Geneva Conventions and the International Convention for the Protection of All Persons from Enforced Disappearances (ICPED) make explicit references to the right to know certain facts. It is held that the right to truth is of particular significance to survivors of conflict. This is especially evident in instances of involuntary disappearances. Argentina is a case in point. With a massive record of enforced disappearances during the “Dirty War” (1974-1983), Argentina pursued various transitional justice efforts in the 1980s (Sikkink, 2008). Rather than pursue a vigorous public demand for reparations, survivors prioritized finding bodies, establishing the full truth, and prosecuting the guilty. In Argentina, *Memoria Abierta* (Open Memory) is a collaborative alliance that works to memorialize the conflict by archiving and disseminating documentation on the events of the recent past to prevent authoritarianism in the future (Wright, 2007).

In conflict contexts around the world, art and artistic expression have been utilized to actualize victim-survivor desires for recognition and memorialization. In Peru, families of the disappeared collaborated together over fourteen months to knit a one-kilometer-long “scarf of hope,” with various panels on remembrance woven by families and allies (González, 2011). Performance art has also been widely employed in South Africa, including through protest theater, which reflects real-life experiences of “the shame, the attacks on their dignity, the failures, the traumas, the triumphs, the joys and laughter” (Tutu, 2010: 7). Art gallery exhibits, cultural festivals, murals, banners, poems, and music have been employed to resist and remember and to honor black artistic expression (Williamson, 2010: 9-10). Tributes to the memory of persecuted anti-apartheid activists include a sculpture of Nokuthula Simelane, which was vandalized by detractors in 2011 (ICTJ, 2015). The desecration was symbolic of the long and challenging process in the making of “post-apartheid” South Africa (Buikema, 2012).

Post-conflict work in Sierra Leone has included funding for art therapists and community mediators to help facilitate workshops for community members living with trauma. Such initiatives have enabled victim-survivors to express their experiences through artwork and share them with others. The TRC in Sierra Leone also enabled people to write and perform plays envisioning new futures. This was intended to help victim-survivors heal from trauma and to allow participants a shared sense of empowerment in shaping a peaceful future. Physical spaces and artifacts of significance, including places where bloodshed took place during conflict, are often marked as sites of remembrance and restoration. In Brazil, a prison symbolic of past atrocities is now a public memorial co-designed by former prisoners, who focused not on “the brutality and inhumanity of their torturers, [but on] acts of solidarity among prisoners that helped support each other and other efforts that asserted and affirmed their dignity” (ICTJ, 2015: n.a). In Bosnia, sculptors have used charred wooden beams and broken glass to create “recycled art,” and a former nuclear weapon bunker has been turned into an art gallery.

Monuments have been erected in various conflict and post-conflict contexts. In Sri Lanka, since 2000, a monument to the disappeared displayed passport-sized photographs of those who remain lost, and has since become a convening space for families on Sri Lanka’s National Day for the Commemoration of the Disappeared (ICTJ, 2015). In Chile, the Women in Memory monument, erected in 2006 to commemorate women who were “disappeared,” now honors all women activists who were targeted for their advocacy.

RIGHT TO REMEDY AND REPARATION

Although a diverse range of stakeholders are involved in the reframing of transitional and transformative justice mechanisms and efforts, the role of the state remains central.⁶⁶ The right to a remedy is definitively marked in the Universal Declaration of Human Rights (UDHR)⁶⁷ and other widely ratified human rights treaties, including ICCPR, ICPED, Convention Against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT), International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and CRC,⁶⁸ and is endorsed by regional human rights.⁶⁹ Upon review of these guarantees, in certain circumstances—namely when the state is the perpetrator of a violation—the state must provide a remedy.⁷⁰ In other circumstances—namely where the state was not a perpetrator—the state inheres the obligation to ensure that individuals can access a remedy for rights violations.⁷¹

In 2005, the UN General Assembly adopted the “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of IHL.”⁷² The Principles and Guidelines highlight that “the impunity issue and the

reparations issue are undoubtedly interrelated, certainly from the perspective of transitional justice in societies emerging from dark episodes of violence, persecution and repression (van Boven, 2005: n.a). The principles reinforced existing and legal obligations related to state duties to provide remedy and reparation for victims of human rights and humanitarian violations” (van Boven, 2005). The Principles emphasize the need for a victim-centric approach that keeps “faith with the plight of victims, survivors and future human generations and reaffirms the international legal principles of accountability, justice and the rule of law” (OHCHR, 2005: n.a). Additionally, they affirm an expanded concept of “victims,” as those who “individually or collectively have suffered harm...through acts or omissions that...constitute violations of...internationally recognized norms relating to human rights” (OHCHR, 2005: n.a). This expands the circle of victims to include individuals *indirectly* affected by rights violations, and empowers them to access the right to a remedy. The broad right to a remedy is well established, but the appropriate and required remedy may vary, contingent on the character of the violation.

The four substantive components of the right to a remedy have been identified as: the right to justice, the right to truth, the right to reparations, and guarantee of non-recurrence.⁷³ These principles affirm the obligations of states, including those to prevent violations and respond to violations when they do occur, through investigations, prosecutions and appropriate punishment, and reparations for victims.

The right to justice requires that states criminally prosecute perpetrators of gross human rights violations and serious violations of IHL. The UN Special Rapporteur on Transitional Justice noted that should only a fraction of “outrageous acts” ever get investigated, and even fewer proceed to prosecution, yet the benefits of prosecuting such violations are enormous (Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, 2012: 47, 57).⁷⁴ Of most relevance, the Genocide Convention,⁷⁵ CAT and the Committee Against Torture,⁷⁶ and Committee on Enforced Disappearances (CED)⁷⁷ obligate states to criminalize and prosecute the respective crimes of genocide, torture, and enforced disappearance.⁷⁸ As such, if states grant amnesty to perpetrators of the crimes established by these treaties, states are in breach of their treaty obligations.⁷⁹

The right to truth requires that states adequately investigate serious human rights violations and provide individuals and communities with the results of the investigations. Once triggered, the right to truth requires the state to undertake a rigorous investigation to reveal to the victims and families “what really happened, why did it happen, and who is directly and indirectly responsible” (Méndez and Bariffi, 2011: 4). It includes revealing the truth about the repressive structure that led to the commission of the crimes (Méndez and Bariffi, 2011: 4). It also includes investigating the truth about the fate of every single victim whose case is known

(Scovazzi and Citroni, 2007).⁸⁰ Typically, these aims are achieved through the establishment of “extrajudicial commissions of inquiry” and include measures to preserve archives that help to tell the broader story (Sub-Commission on Prevention of Discrimination and Protection of Minorities, 1997:18). Additionally, states must afford the opportunity for judicial truth, where victims may be heard by a state entity, though not necessarily in a criminal law tribunal (Naqvi, 2006).

The right to reparations requires that states provide access to redress and compensation for violations. International law scholars generally recognize seven categories of reparations: cessation, restitution, compensation,⁸¹ satisfaction,⁸² interest,⁸³ guarantee of non-repetition,⁸⁴ and rehabilitation.⁸⁵ Cessation means to stop committing the human rights violation. Restitution means to, whenever possible, restore the victim-survivor to the place she would have been, had the violation not occurred (for example, the restoration of liberty or return of property). When cessation and restitution fail to restore the victim-survivor wholly, the five other forms of reparation apply (Shelton, 2009). With respect to the guarantee of non-repetition, experts in this field have described the guarantee of non-repetition as having four caveats: (1) DDR of former combatants;⁸⁶ (2) institutional reform;⁸⁷ (3) security sector reform;⁸⁸ and (4) lustration/vetting.⁸⁹ These caveats help inform the wide-ranging forms that guarantees of non-repetition may take.⁹⁰

In South Asia, the few transitional and reparatory justice processes that exist in the region have proven inadequate (Asian Human Rights Commission, 2013; Mayesha, 2014). For example,

“The end of violence [in Sri Lanka] has not resulted in a frank and open discussion about the use of sexual violence as a weapon of war; the Bangladesh War Crimes Tribunal of 2009 paid little attention to the question of rape despite the fact that it is widely acknowledged as having happened, and despite women having spoken out about it. In a positive development, [and in] Bangladesh has just announced that biranganas, women who were raped during the war, will now be seen as freedom fighters” (Zubaan, 2015).

The absence of formal pronouncements regarding whether and when a conflict exists or is over and the absence of accountability processes impede the possibility for, and transition to, post-conflict (Grover, 2002; Kapur, 2006; Mashru, 2013; National Human Rights Commission, 2002). Furthermore, such deficiency impairs the ability to address the legacy of violence and prevent reoccurrence. Affected communities are excluded from conversations regarding accountability negating the possibility of configuring durable symbolic and practical accountability mechanisms to interrupt the climate of impunity, abuse, and mistrust.

Section II

Case in Point: India

WHY INDIA?

She rested in silence, Lalo remembered, framed by her torn clothes... She barely made a sound... Today, Lalo cannot pass the space where she sat without thinking of her. She used to be his unknown neighbor, then became a living ghost on the side of a busy road, and then disappeared into some relief camp.
— Parvis Ghassem-Fachandi (2012:115)

India is rich in religious, linguistic, and cultural diversity. Resilient judicial and administrative institutions; formidable intellectual, artistic, scientific, and technical production; and a vibrant civil society are emblematic of its culture and polity. A particular example of liberal democracy, India's stability is of critical import to South Asia and globally. A rising nuclear power, India ranked as the third largest economy in terms of its purchasing power and is calculated to have a decisive impact on the global economy of the future (International Monetary Fund, IMF, 2014).

In 2014, India's population was recorded as 1.267 billion, and its GDP was recorded at US\$2.067 trillion (World Bank, 2014). A Stockholm International Peace Research Institute report records that between 2010 and 2014, India was the world's largest procurer of arms, with a 15 percent share of the global arms imports (Wezeman and Wezeman, 2015: 4-5). Between 2005 and 2014, India's import of arms increased by 140 percent (Wezeman and Wezeman, 2015: 5). Adjacently, India is home to one in three of the world's poorest people and ranked at 135 from a total of 187 countries in the Human Development Index for 2013 (Human Development Report, 2014). India ranked 143 (of 162 countries) in the Global Peace Index in 2014 (Institute for Economics and Peace, 2014: 29). This was based on the number of external and internal conflicts and the conditions of instability they foster. According to the Pew Research Center, religious hostilities have escalated globally. India ranked in the top 3 in 2011 and 2012. This was accompanied by a "very high" score of 9.6 on social hostilities (15, 62). In 2013, India ranked in the top 2,⁹¹ along with a "very high" score of 9 on social hostilities. A 2011 report estimated that 506,000 persons remained internally displaced

The continuities and discontinuities between history and the present that are foundational to the conflicts and political violence in Punjab and Jammu and Kashmir are emblematic of decolonial encounters recurrent in postcolonial states. The social upheaval in Gujarat and Odisha bear witness to a postcolonial state's increasingly majoritarian relations to its "Others," and highlights fault lines in the development of national identity, political economy, and culture.

in India due to conflict and upheaval (Norwegian Refugee Council/Internal Displacement Monitoring Centre, 2012).

At the same time, every third person in an Indian city today is a youth and, by 2020, India is projected to hold the largest percentage of the world's youngest population (IRIS Knowledge Foundation and UN Habitat, 2013:114). India will "soon have the largest and youngest workforce the world has ever seen" (World Bank, 2015).⁹² The population is increasingly urban, and more than 10 million persons move each year in the largest rural-urban migration of this century (World Bank, 2015). This includes entire communities that are displaced by mining, dam construction, water scarcity, and deforestation. India witnessed the world's largest elections in 2014 with a turnout of 814 million voters. This was greater than the entire population of Europe, and first-time voters between 18 and 19 years accounted for 23 million, approximately the entire population of Australia (Basu, 2014). The election turnout in the second most populous country in the world, predicted to overtake China by 2022, is 60-70 percent, roughly the same as democracies in the Global North (British Broadcasting Corporation, 2015; *The Economist*, 2014). Although the efficiency of the government in the post-election phase diverges from the event of the election itself (Tapper, 2014), parliamentary productivity is currently reported as the highest in a decade (Naidu in *Mid-day*, 2015).

Economically, various estimations agree that the "rise of India looks unstoppable" (Center for Economics and Business Research, 2014). A member of the G-20 and BRICS, India has grown into the third largest economy in the world, and is predicted by the World Bank to replace China as the world's fastest growing economy within two years (Bellman, 2015). Yet, the National Sample Survey Organization, in a survey conducted during its Sixty-Eighth Round in July 2011 to June 2012, recorded that 75 percent of India's rural workforce and 69 percent of the urban workforce were employed in the informal sector (Chandrashekhar, 2014).

Furthermore, 85 percent of the rural workforce and 73 percent of the urban workforce had no employment contracts (Chandrashekhar, 2014). Indicative of patterns across South Asia, the Oxford Poverty and Human Development Initiative (OPHI) states that "86 percent of India's poor live in rural areas" (OPHI, 2014: 2). The Reserve Bank of India (2013) noted that 13.7 percent of the urban population and 25.7 percent of the rural population live in poverty.

In 2005, a committee appointed by then prime minister Manmohan Singh and led by retired chief justice Sachar of the Delhi High Court, studied the relative social, economic and educational status of Muslims, the largest religious minority community in India (Prime Minister's High Level Committee [PMHLC], 2006). Across various indicators, including relative unemployment (PMHLC, 2006: 73), salary in public and private jobs (PMHLC, 2006: 105), poverty (PMHLC, 2006: 161), and government employment (PMHLC, 2006: 167), the Sachar Committee's report of

SECTION II. CASE IN POINT: INDIA

2006 noted that the Muslim community “exhibits deficits and deprivation in practically all dimensions of development” (PMHLC, 2006: 237).

Table 1. India: Population, 1981-2011

	1981	1991	2001	2011
Hindus	549.7 (82.6%)	672.6 (82.4%)	827.6 (80.5%)	966.3 (79.8%)
SC	104.8 (15.3%)	138.2 (16.3%)	167 (16.2%)	201.4 (16.6%)
ST	51.6 (7.6%)	67.8 (8.0%)	84.3 (8.2%)	104.5 (8.6%)
Christians	16.2 (2.4%)	18.9 (2.3%)	24.1 (2.3%)	27.8 (2.3%)
Muslims	75.6 (11.4%)	95.2 (11.7%)	138.2 (13.4%)	172.2 (14.2%)
Sikhs	13.1 (2.0%)	16.3 (2.0%)	19.2 (1.9%)	20.8 (1.7%)

The Sachar Committee made a series of recommendations regarding religious minorities in general, including the creation of an “Equal Opportunity Commission” to receive complaints from “deprived groups” (240), creation of common learning spaces in “mixed localities and across neighborhoods” (242), the evaluation of school textbooks and inclusion of content around diversity (244), teacher trainings on diversity and plurality (247), and measures to increase “the employment share of Muslims amongst the teaching community, health workers, police personnel, bank employees, and so on” (252). In 2015, in response to strong criticism by RSS groups to a speech by the current Indian president Pranab Mukherjee at a Muslim gathering, Justice Sachar noted the continuing challenges, including allegations of divisiveness, to policy conversations on improving the situation of minorities in India (Sachar, 2015).

According to the Millennium Development Goals report of the UN (2014: 9), “in 2010, one third of the world’s 1.2 billion extreme poor [32.9 percent] lived in India alone,” and “almost one third of all global maternal deaths are concentrated in two populous countries: India, with an estimated 50,000 maternal deaths (17 percent), and Nigeria, with an estimated 40,000 maternal deaths (14 percent)” (29). In its *Global Gender Gap Report* of 2014, the World Economic Forum ranked India ranked at 114 (the lowest being 142) in the overall gender gap index. In 2013, the International Labor Organization stated, “India’s labor force participation rate for women fell from just over 37 percent in 2004-05 to 29 percent in 2009 and 2010. Out of 131 countries with available data, India ranks 11th from the bottom in female labor force participation” (n.a)

FOUNDATIONAL AND POLITICAL FAULT LINES

Violent conflict and social upheaval cast long shadows across a culturescape of enduring inequity, injustice, and insecurity. Since 1947, social unrest, upheaval,

and attendant mob violence have been frequent within the context of ongoing political struggle (Das, 1997; Gupta and Sivaramakrishnan, 2011; Panagariya, 2008).⁹³ Several parts of the country have experienced prolonged political violence, premised upon historical, social, and economic inequities that underpin foundational violence. The far-reaching human impact of conflict and social upheaval extends beyond localized hotspots. Conflict and social upheaval render millions of civilians vulnerable to psychosocial suffering and creates contexts for the emergence of conflict-dependent political economies in impacted areas.

The contemporary Indian context provides an important case study on conflict and democracy—conflicted democracy. Historical and traditional dissensions in areas of conflict and social upheaval merge with contemporary grievances across the country, spurred by issues of territorial consolidation and self-determination, identity, majoritarianism, and minoritization, and the struggle for control over resources. The contradictions in the political-secular nature of the state in

India (Bilgrami, 2014) and the will and capacity of the state to respond to the gendered targeting of minority groups are perhaps most sharply evident in the aftermath of internal conflict and acute social violence. Many of the contemporary internal conflicts in postcolonial India trace their origins to the feudal-colonial era, and some have cross-border and territorial dimensions (Ganguly, 2002).

Examples of conflicts with internal and cross-border dimensions include Jammu and Kashmir (since 1990), Punjab (1984-1995), and Manipur (since 1958) (Aoun, Danan, and Hameed, 2012). Numerous sites of social upheaval have experienced repeated instances of religionized violence between majority and minority groups. This has been emblematic in instances of episodic violence in Delhi (1947, 1984), Kolkata (1946), Kota (1953), Rourkela (1964), Ranchi (1967), Ahmedabad (1969), Bhiwandi (1970), Aligarh (1978), Jamshedpur (1979), Moradabad (1980), Meerut (1982), Hyderabad (1983), Assam (1983, 2008), Bhagalpur

“There are more paramilitaries in the state [Odisha] now than six years ago, and the state is asking for more and more military camps here.” (Sudhir Pattnaik in Scroll, 2015)

“Under its well-intentioned but blatantly inappropriate “welfare” schemes, the state had sought to bring the benefits of “civilization” to the tribe. Schools hardly functioned in the few villages that had them, so Adivasi children were brought to ashramshalas or boarding schools where the education is in Odia (the Dongria Kondh [Adivasis] speak [the] Kui language). Adivasi culture is sought to be replaced by the dominant mainstream one.” (Ashish Kothari, 2015)

(1989), Bhadrak (1991), Ayodhya (1992), Mumbai (1992-93), Gujarat (1969, 2002), Marad (2003), Mau (2005), Goa (2006), Bhinga (2007), Jammu (2008), Odisha (1991, 2007, 2008), and Muzaffarnagar (2013).⁹⁴

Increasing state monopoly over forest and public lands (and the ecological and economic resources they represent) since the 1950s has led to the erosion of the traditional and customary rights of local communities, especially Adivasis and Dalits. This is compounded by projects of careless globalization and the corporatization of large-scale development. These projects have repeatedly induced massive displacements of Adivasis and Dalits, and their corresponding alienation from subsistence resources. Such processes are layered with the overt racialization and religionization of Adivasis and Dalits, and majoritarian attempts at “civilizing”/nationalizing them, as witnessed in Gujarat (prior to 2002) and Odisha (prior to 2007, 2008).⁹⁵ This has led to the organization of Adivasi and Dalit local self-determination efforts, and their reciprocal suppression by state forces and state-supported militias. This ensued another significant context of conflict, as witnessed in Chhattisgarh, Niyamgiri in Odisha,⁹⁶ and the Narmada Valley.⁹⁷ In instances, as in Chhattisgarh, cycles of aggression have included non-state groups that have resorted to violence.

Communalism and Minoritization

The religionization of the state in India draws its history from the imperial and feudal-nationalist assimilation of diverse traditions into a monolithic Hinduism. The Orientalist positioning of Hinduism as a world religion (Guha, 2002), began by the British in the 1830s, was amalgamated by the Bramho Samaj (1859), the Arya Samaj (founded 1875), and thereafter by the RSS (1925), and others (Bhattacharya and Thapar, 1986; Chatterjee, 1986; Chatterji, 1969).

“Hinduism,” Romila Thapar notes, “is a mosaic of belief systems, some linked, some not. Hindutva has the characteristics of a sect that reformulates selected beliefs to create a sociopolitical organization with an attempt at ideological coherence” (Thapar, 2015, in Bamzai).

In the 1990s, Gurharpal Singh (1999:35) described India as an “ethnic democracy,” structured around sharp divides “between the core and peripheral regions” (see also Mandair, Shackle, and Singh, 2001). “Ethnic democracy” has been described as a political system characterized by majoritarian dominance (Smootha, 1989, 2001), and particular to the South Asian context, by communalism (Mandair, Shackle, and Singh, 2001).

*The idealization of the
“heteronormative family”
positions majoritarian,
homophobic national identity “as
the privileged site... of power
and self-realization, threatened
by a host of internal and external
Others” (Paola Bacchetta and
Margaret Power, 2002: 8).*

Communalism, communal, communalization are terms commonly used to describe social and historical tensions between Hindus and Muslims (Panikkar, 1991), Hindus and Christians (Chatterji, 2009), and Hindus and Sikhs (Chakravarti and Haksar, 1987). Communalism in India refers to divisive politics and action consolidated around communal (religious, ethnic) identity for self-assertion and the targeting of others. “Communal” can refer to a group or community organized on the basis of religious identity and other social markers for the mobilization of “hate speech or action with the intent to impact, harm, and/or destroy, in whole or in part, another group organized on the basis of religion” and other social markers (Chatterji and Desai, 2006: 2; also Act Now for Harmony and Democracy [ANHAD], 2005; Khalidi, 2010).

While the framework of “communalism” presents relevant insights, it is inadequate in explicating majoritarianism, whose evolving dynamics are intimately linked to the racialization of the Other in contemporary India (Chatterji, 2009; Pandey, 1990; Puri, 2016). The term “communal” refers to “situations and tensions between groups structured around, and identified with, organized religion,” while obscuring issues relating to the politicization of religious differences (Chatterji, 2009: 12n36; Engineer, 1989; Gossman, 1999; Ray, 2005). The unequal historical and structural relations of power that condition majoritarian and sectarian political violence remain unarticulated in the discourse on communalism. Jyoti Puri elaborates,

“The party currently in power in India professes a right-wing ideology of Hindu nationalism and frequently points to Israel as the exemplary case of a country fiercely asserting its cultural identity based on religion and brooking no compromise against the threat posed by political Islam.”
(Partha Chatterjee, 2015)

“although pejorative representations of Muslims by mostly Hindu police... would typically be explained as communalist biases—that they are the result of mutual sectarian prejudices and hostilities—the inference of reciprocity makes communalism analytically inadequate in a context where some communities are at grave risk of prejudice, discrimination, and violent exclusion. Instead, race and racialization—defined here as processes through which social inequality is rationalized as natural, inheritable, and enduring—help understand why and how police malign particular communities (not all religious groups are racialized or represented in similar ways)...” (Puri, 2016: 75-76).

Minority groups in India are targeted and marginalized through dominant discourses and representations of actual and ascribed differences in religion, ethnicity, gender, tribe, and caste. Difference is pathologized as inferior and abnormal. These communities are erroneously marked for their proclivity for violence and depicted

as dangerous, anti-national (Ghassem-Fachandi, 2012; Jaffrelot, 2003). Religious freedom and religious and gender-based violence against minorities continue to be of serious concern (United States Commission on International Religious Freedom [USCIRF], 2014).⁹⁸

The Othering of minorities is accompanied by their simultaneous assimilation into national culture and “Indianness” (JanMohamed and Lloyd, 1990; Mahmood, 2012). The minority subject is both an outsider and an insider, always vulnerable, and seen as an impediment by majoritarian groups (Mufti, 2007). Hinduism functions as a “meta-ethnicity,” and although “minorities have been granted individual and, in some cases, collective rights, the recognition of these rights has been based on a tactical accommodation” of dominant Hinduism (Singh, 1999:47). This makes for fraught inter-communal dynamics that can lead to violent and sectarian assertions by majority groups and to minority reassertions for cultural and political control (Jaffrelot, 2011). Violence is “minoritized,” whereby physical and psychological aggression is used by a majority group to harm what is integral to the minority group—such as women of a social group, places of religious significance, and livelihood sources. In the Indian context, minoritization bears similarities to racialization, whereby “racial,” “inferior,” and even “anti-national,” connotations are ascribed to minorities (Chatterji, 2009; Hong and Ferguson, 2011; Loomba, 2009).⁹⁹ Ania Loomba’s work on the racialization of Muslims and Dalits provides a befitting example (2009). Hate-speech is used to target non-Hindus during and outside of episodes of violence. This is evidenced in the routine labeling of Manipuri peoples as “chinks,” in racialized and derogatory reference to differences in culture and phenotype (Singh, 2012)

In conflict areas, minority groups are also marked as monolithic in ways that assume that their political sensibilities correlate exclusively with their religious identities. Non-Hindu groups and peoples are both marginalized as Others and claim status as Other to escape inequality (Khalidi, 2009; Ludden, 2005). The hostilities that lead to conflict and upheaval are portrayed as primeval, as provocations inherent to tradition and culture, or

in response to minority reassertion (Sarkar, 2002). The excesses and problematics of such hostility are understood as ultimately counteracted by the secular nature of the state (Chatterjee, 1993; Jaffrelot, 2003). At the same time, scholars contend that the secularization of the postcolony is analogous to projects that nationalize the secular (Asad, 1993; Bilgrami, 2014; Chatterjee, 1993; Mufti, 2007). The notion of the secular is increasingly positioned as disloyal, even seditious, in

“Dalit activists argued that not only is caste, like race, a hierarchy based on lineage and descent, but it also involves a particular construction of the Dalit body and mind.” (Ania Loomba, 2009: 511)

majoritarian discourse, and its practice, including through free speech, targeted and infringed upon (Faleiro, 2015).

The implicatedness of majoritarian organizations in sites of social upheaval and episodic violence in India is long-standing. Majoritarian groups comprise a close-knit network of cultural, political, educational, and militant organizations known as the Sangh Parivar ('family' of Hindu nationalist-supremacist groups). These organizations include the Vishwa Hindu Parishad (VHP), RSS, Bajrang Dal, Ekal Vidyalaya, and the political parties, Bharatiya Janata Party (BJP) and Shiv Sena.¹⁰⁰ A multitude of cadres—in the tens of millions, constitutes a nationalist artery between the Sangh Parivar and state and non-state (cultural, civic, educational, judicial, law enforcement, military, and political and administrative) institutions beginning at the grassroots and extending regionally and nationally.

Their active leadership in planning and executing violence was exemplified in Gujarat in 2002 and Odisha in 2007 and 2008, and relatedly in Jammu and Kashmir in June 2008 (Jaleel, 2008; Sengupta, 2008). In June 2008, the BJP and Shiv Sena supported Hindu nationalist demands for control of eight hundred kanals (99.1 acres) of land related to the Amarnath shrine in Kashmir. Extensive non-violent local protests by (prevalently Muslim) Kashmiris followed. Curfews and shoot-at-sight orders were enforced to stop civilian protests, resulting in reportedly sixty deaths and two thousand civilian injuries. Doctors, ambulances, and journalists were reportedly targeted by India's security forces, and in instances, as men left to bury the dead, security personnel returned to reportedly to threaten women (Bubandt and van Beek, 2012; Chatterji, 2012; Roy, 2009).

Although various members of the cadre from various majoritarian organizations have been indicted for their role in political violence, it is rare for the organizations to be held actionable (see table in the appendix). Hindu majoritarian groups, too, have received foreign support, especially financial support from abroad, including, for example, from registered charities connected to the diasporic chapters of the VHP and RSS established in the United States and United Kingdom (Agrawal et al, 2002; Anonymous, 2014).¹⁰¹

The strength of minority militant organizations that use force as a strategy in India is not coequal to the strength of their Hindu nationalist counterparts. Minority organizations of different religious (e.g., Muslim) and non-religious (e.g., Maoist) prescriptions use targeted violence in instigating attacks, and in combating armed forces and majoritarian violence. Some have received external support, including from Pakistan. Lashkar-e-Taiba and Hizbul Mujahideen are two prominent Muslim militant groups that have been operational in India. As of September 2015, Lashkar-e-Taiba's estimated membership was sixty and that of Hizbul Mujahideen was approximately eighty in Jammu and Kashmir (Joseph, 2015).

In 2010, India banned approximately hundred organizations under the

Unlawful Activities (Prevention) Act (UAPA) of 1967, including Lashkar-e-Taiba and Hizbul Mujahideen (Mohan, 2010). They are among the thirty-eight groups currently on the banned list as of March 2015 (Ministry of Home Affairs, 2015). No Hindu nationalist groups are among the thirty-eight listed.

Politics is another sphere that shapes majority-minority relations in India. Decades of dynastic government, as fostered by the Congress Party, and conspiring relations between state and extra-state institutions as stimulated by both the Congress and the BJP, have historically fostered animosity between majority and minority, elite and subaltern. Currently, relations between state and extra-state majoritarian institutions are especially proximate with the BJP in power at the center. In early September 2015, Siddharth Vardarajan wrote that:

“the RSS held a conclave for which it summoned top ministers of the Narendra Modi [Central] Government to present themselves and provide an account of the official work they have been doing over the past fifteen months. Among those who turned up were the Prime Minister himself [a former member and an affiliate of the RSS], as well as the Defense Minister and the Home Minister... What makes this axis especially problematic is not just its extra-constitutionality but the sheer incompatibility of the RSS and its ideology with a democratic, inclusive polity and society” (n.a).

Communal Violence Bill

Following Gujarat 2002, civil society leaders and organizations in India worked for the passage of national legislation to address communal and targeted violence. In December 2005, the United Progressive Alliance and Congress Party-led government introduced the Communal Violence (Prevention, Control, and Rehabilitation) Bill of 2005. Citizens groups critiqued this version of the bill for weak reparation and rehabilitation measures for victims and its lack of accountability procedures with respect to state officials that are directly and indirectly complicit in enabling communal violence (*The Hindu*, 2005). Following years of debate, including civil society consultations organized by ANHAD, the government's National Advisory Council sent a draft of the bill to a thirty-two-member group of lawyers and civil society advocates for reformulation (ANHAD, 2010; *Indian Express*, 2010).

The reframed and civil society-supported bill, the Prevention of Communal Violence (Access to Justice and Reparations) Bill, was to replace the earlier version of the bill (Mumtaz, 2013). In February 2014, at a Rajya Sabha (Upper House) session, then home minister Sushilkumar Shinde withdrew the 2005 (version of the) bill (uncorrected transcripts, Rajya Sabha session, 2014: 22-23). The

introduction of the new bill was deferred (uncorrected transcripts, Rajya Sabha session, 2014: 63), following objections raised by opposition parties regarding the possible diminishment of the powers of the state due to the enactment of the bill (Joshi and Parsai, 2014).

Special Laws

Many in India profess confidence in the functioning of regular legal norms and institutions, and their capacity to deliver justice. Adjacently, the disproportionate use of force inside the country by state forces has come under criticism from human rights groups.¹⁰² In repeated instances personnel from the police, paramilitary, and armed forces have used violence on civilians in conflict areas and during social upheaval. The “hyper-masculinization”¹⁰³ of state forces and non-state armed groups in already communally charged contexts has resulted in the sexualized targeting of minority civilian populations. The psychological health of state forces personnel is also impacted by the prevailing conflicts. This has reportedly led to fratricidal killings, for example, in Kashmir, where thirty-four soldiers committed suicide in 2008, and fifty-two fratricidal killings were reported between January 21, 2004, and July 14, 2009 (Chatterji, 2012: 251-52). Teesta Setalvad (2002) has analyzed the practice of segregation within police forces, offering an example from Gujarat where Mulsim police personnel, already small in numbers and prejudicially racialized, have been refused promotions and managerial positions within the ranks, and the impact of such majoritarianization on the violence of 2002.

Several restrictive laws have been passed in conflict areas since the 1950s to the present day, and certain areas of social upheaval have witnessed the implementation of special laws prior to or following episodic violence. With the aim of protecting the persons who, in good faith, seek to maintain law and order in conflict areas, the state ordinarily provides safeguards against frivolous or vexatious allegations against its officers. These “special security laws” are commonly enforced in minority-prevalent, aggression-ridden areas. These laws circumvent the ordinary criminal legal system, curtail victims’ right to a remedy, immunize state agents from public or private prosecutions, and create a widespread system of abuse and impunity.

Furthermore, it is of note that section 144 of the Code of Criminal Procedure (CrPC) of 1973, which authorizes the prohibition of an assembly of more than ten people in a locality, is regularly imposed in violence-affected conflict areas. In various instances, curfews may be “undeclared,” allowing state forces to operate without evidencing cause and prior warning. Srinagar in Kashmir has experience curfew conditions frequently since 1989. A petition submitted by the Jammu Kashmir Coalition of Civil Society (JKCCS) before the Jammu and Kashmir High Court in November 2014 reportedly claimed that section 144 had been permanently imposed in Srinagar since 1989.¹⁰⁴ Relating to Punjab, the United States

Department of State (1995: n.a.) noted that authorities “frequently imposed [section 144] restrictions in previous years but limited their use in 1994.”

Prominent among “special security laws” is AFSPA, which sanctions legal immunity to armed forces and paramilitary personnel (HRW, 2011). AFSPA “regulates instances of use of special powers by the armed forces in regions termed “disturbed areas” of the country” (Heyns, 2013: 24, 21).¹⁰⁵ Currently, the following are classified as disturbed areas: Assam, Arunachal Pradesh, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, and Tripura (Heyns, 2013: 21). AFSPA permits armed forces personnel to use lethal force and prohibits individuals from bringing judicial action against officers who may have allegedly used excessive force or abused their powers. AFSPA provides military officials with broad powers to arrest, enter, search, and seize; and use force without warrant in disturbed areas, “even to the causing of death” (Heyns, 2013: 7). AFSPA prohibits the prosecution or punishment of members of the military acting in disturbed areas without the express authorization of the national government (Heyns, 2013: 7).

The statutory protection extended by special laws to state forces personnel more often than not translates into impunity for human rights violations in areas of conflict and social upheaval. The reported abuse of this protection following Manorama Thangjam’s murder led to widespread protests demanding justice for the deceased. The Justice Reddy Commission was constituted to inquire into the alleged rape and murder of 30-year old Manorama Devi in Manipur, on being arrested by the paramilitary (Civil Society Coalition on Human Rights in Manipur and the UN, 2013).

In 2005, the Reddy Commission submitted its report on the provisions of AFSPA, recommending the repeal of the repressive law as well as the setting up of grievance cells in the affected districts. The objective of these recommendations was to safeguard civil rights of the people in areas where the armed forces have been deployed. The recommendations of the Reddy Commission were not implemented, and AFSPA continues to be enforced in conflict areas, notwithstanding wide-ranging protests by the local communities, civil society, and members of the legal community (Laithangbam, 2014). Various international experts, including the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions recommend that AFSPA be repealed. In India, several domestic bodies—such as the 2004 special committee of the Government of India, the Second Administrative Reforms Commission, and the National Human Rights Committee—have repeatedly called for its repeal over the years (Laithangbam, 2014).

At times, persistent advocacy by civil society has led to the lapse or repeal of one extraordinary law, while its objective and spirit have been transmitted to another promulgation. For example, the Prevention of Terrorism Act (POTA), 2002, was presented as a considerable improvement over its precursor, the Terrorist

and Disruptive Activities Act (TADA), which was allowed to lapse in 1995 after a decade of drastic enforcement (Economic and Political Weekly [EPW], 2000). TADA was the first anti-terrorism legislation to define and provide special legal regulations in cases alleging terrorist activities. The Indian Parliament enacted TADA in 1985 but allowed it to elapse in 1995 because it had calamitous effects and spurred extreme human rights violations; and officers often invoked the “disruptive activities clause” against protestors, students, and bootleggers who could have been charged and received reduced punishment under the Criminal Procedure Code (EPW, 2000: 3-4). POTA was commenced after 9/11 as India committed to the “global war on terror” and “diluted a number of established safeguards in criminal law” by defining a broad range of actions as “terrorist activities” (Pelly, 2008: 43).

Criticized for its gross infringement on individual civil liberties, POTA was repealed in 2004.¹⁰⁶ Just before this repeal, legislators incorporated its major provisions through amendments to another piece of security legislation, the UAPA.¹⁰⁷ With the 2004 amendment, UAPA (a law passed in late 1960’s to outlaw organizations) became India’s primary anti-terrorism legislation (Nair, 2009). An “unlawful activity” is defined as any act that supports or propagates cession or disrupts the security and integrity of India.¹⁰⁸ Such an act need not be violent; it may be verbal, oral, or visual. The central government can declare any association unlawful.¹⁰⁹ In its present form, the UAPA provides for warrantless arrests, in camera trials, secret witnesses, and presumption of guilt against the accused (1967). Although civil society groups and human rights lawyers have called for disclosure of details of such actions under the Right to Information Act (RTI), 2005, the enforcement of the act remains obscured. There are no provisions for reparation; victims wrongfully prosecuted and/or subjected to illegal, incommunicado detention under UAPA are not eligible for reparations. While diminishing the rule of law (EPW, 2008), UAPA has been reported to target minorities, tribal groups, members of oppressed sections, and political activists (Jamia Teachers’ Solidarity Association, 2013).

Religious Freedom

The array of social diversity and cultural difference in India, including among groups noted as “Hindus,” leads to the point of view that no one community constitutes a definitive “majority.” Hindus, the designated national majority comprise various communities, castes, ethnicities, and sub-groups (PMHLC, 2006). The Constitution of India provides for the right to freedom of religion and cultural and educational rights, including for minority groups (Basu, 2001).¹¹⁰ Hindu nationalist arguments against the rights of religious conversion of non-Hindus predate independent India and are represented as crucial to maintaining the Hindu “character” of India (Chatterji, 2009). This subsequently both asserts the “Hinduness”

of India and seeks to deny constitutional and non-degorable freedoms to non-Hindus through their non-consensual incorporation into a majoritarian social body.

Targeting the livelihood of the Other is a method in saffronization.¹¹¹ In the past few decades, prior to and following episodic violence against minority groups, vulnerable areas have witnessed the economic boycott of religious minority and other marginalized groups. Enforced by majoritarian groups and individuals, economic and social embargos include the refusal to employ individuals of a minority group as wage laborers or the ban on certain economic activity ordinarily undertaken by individuals of a minority group (British Broadcasting Corporation, 2014; *New York Times*, 2014). An example of the latter is the ban on cow slaughter.

The prohibition of cow slaughter is a directive principle of states policy per Article 48 of the Indian Constitution. The prohibition is justified on the basis of economic, not religious, reasons. Gyanendra Pandey (1990) records the Hinduization (and brahminization) of the anti-colonial movement in India that included an aggressive cow protection movement in the 1880s and 1890s, which was met with strong support from a cross-section of landed and merchant classes across northern and eastern India. The Bajrang Dal, VHP, and RSS campaigns include the sacralization of the cow (Jha, 2002). The VHP commenced an aggressive campaign in 2006 for the enforcement of national laws to ban cow slaughter. Cow slaughter was proscribed in Odisha, where largely Muslims, Dalits, and in some places, Adivasis trade in cattle, meat and leather, through the passage of the Prevention of Cow Slaughter Act in 1960 (Chatterji, 2009). Eighteen other states have passed similar legislation. Through time, the legal prohibition on cow slaughter has been enforced in various parts of India, and is being expanded to include bullocks and bulls. In 2005, the Supreme Court of India, based on economic reasons, sanctioned such proscription. In September 2015, the Jammu and Kashmir High Court ordered the state government to enforce the ban on cow slaughter based on a section of the Ranbir Penal Code (*Hindustan Times*, 2015).¹¹²

There has been an increase in the drive to enact and implement Freedom of Religion Acts (American Center for Law and Justice, 2009). These Acts are interpreted and implemented in punitive and retaliative ways toward those who ostensibly migrate from Hinduism, thus calling for their “reconversion” (Aurora, 2008; Dasgupta, 2007).¹¹³ These laws usually state that the basis of conversion must be voluntary. Some of the laws require that the authorities be informed or give prior permission before conversion takes place. Although, explicitly, the laws do not prohibit conversation, they have been operationally used against minority communities. Hindu nationalist discourse argues that all “Indians” are “originally” Hindus, even those who do not self-identify as such (Chatterji, 2009: 35).

This is contrary to the understandings and self-representations of certain minority, marginalized caste, tribal, and casteless peoples, and their right

to conversion as an essential component in the practice of freedom of religion. Conversion out of Hinduism can act as a way to circumvent caste oppression even as the social, gendered, and economic hierarchies consolidated through the caste system often carryover, post-conversion, into other religions. Key Hindu nationalist strategies against conversions from Hinduism and for conversions to Hinduism include coercive induction of non-Hindus to Hinduism, advocacy to implement “freedom” of religion acts to stall or stop conversions to Christianity and other religions, and campaigns for the denial of reservation benefits to those who convert to other religions (Chatterji, 2009: 48n193; Osuri, 2013).¹¹⁴

Constitutional mandates in India decree several communities who self-identify as non-Hindu to be legally Hindu (Constitution of India, 2009; for further discussion, see next section). Article 25 of the Indian Constitution considers Buddhists, Jains, and Sikhs to be subsets of Hinduism. The issue of being recognized as a national minority is complex. In instances, although some state governments have accorded a particular group minority status, the Supreme (Apex) Court of India has rejected according them the status of a national minority. Six groups are designated as national minorities per the National Minorities Act, 1992. They are Buddhists, Christians, Jains, Muslims, Parsis, and Sikhs (National Commission for Minorities [NCM], 2015).¹¹⁵ This has wide-ranging impact for the communities with respect to personal law and reservation status. Here it is important to note that marking women as family subjects under personal law within a gender-discriminative state negates women’s rights as citizen-subjects (Visweswaran, 2004).

In a ruling in August 2005, the Supreme Court of India declined minority status to Jains, depicting this community as a subset of Hinduism (Negi, 2005; *The Hindu*, 2005). The Supreme Court contended that furnishing Sikhs and Jains with status as national minorities would support fragmentation and “multi-nationalism” (Negi, 2005). Jains attained minority status in 2014 (NCM, 2015). Currently Sikhs are still legally accounted as a subset of Hinduism (Singh, 2014), contrary to history, theology, and prevalent Sikh self-understanding (Macauliffe, 1909; Singh, 2000), while being designated as a national minority.

In areas of conflict and social upheaval, Muslims have been branded as internal/external enemy, as Other, and represented as a “foreign” identity that cannot be assimilated (Chatterji, 2012; Ghassem-Fachandi, 2012). This is akin to dominant Christian relations to Jewry in European history (Hilberg, 1985). Muslim women have been portrayed in dominant discourse as submissive and threatened by the hyper-sexualized and violent conduct of men in their communities and as in need of rescue—resonating with British and Dutch colonial positing of native women and men (Spivak, 1988; Stoler, 1995; Visweswaran, 2004).¹¹⁶ Sikh women have been portrayed in dominant discourse as assertive and enabling of the authoritative and violent conduct of men in their communities and as in need of domestication.

The categorizations of Adivasis and Dalits, too, remain disputed. Adivasis have been incorporated into the Census of India as “Hindus” since 1951, unless they expressly denote another religious affiliations. From 1871 to 1931, the British India Census used ethnocentric terms, such as “primitive,” “tribal,” and “animist,” to classify the spiritualities and faith traditions of Adivasi and, to a more limited extent, Dalit groups. Post-1947, the Constitution (Scheduled Castes) Order, 1950 and the Constitution (Scheduled Tribes) Order, 1950 classified certain Adivasi groups as “scheduled tribes” (ST) and certain Dalit and “lower caste” groups as “scheduled castes” (SC). Such groups were made beneficiaries to the “reservation” system. The history of the reservation system however dates to colonial times.

The British Government of India Act, 1935 named seventeen groups as “depressed classes” and classified them as SC. Post-1947, these and other groups were recognized by the mandate of the Commission for Scheduled Castes and Scheduled Tribes (1978) and then by the National Commission for Scheduled Castes and Scheduled Tribes (1990) and accorded the benefits of reservation (Singh, 1995). In 2004, the National Commission for Scheduled Castes and Scheduled Tribes was bifurcated into the National Commission for Scheduled Castes and the National Commission for Scheduled Tribes. In August 2007, the Parliament of India approved the Constitution (Scheduled Castes) Order (Amendment) Bill, 2007.¹¹⁷

The selection, notification, and de-notification of SC and ST, and the criminalization of certain tribes have been influenced by various factors, such as the recognitions of their claims to self-determination/governance and their conscription into dominant national culture and religion (Devi, 2002; D’Souza, 2001; Sinha, 2005). For example, Hindu Dalits who convert to Christianity or Islam lose their status as “Dalits,” and entitlements to reservation-mandated economic benefits (Ghildiyal, 2014). In public discourse, Adivasi and Dalit Christians have been identified as “originally” Hindu (Chatterji, 2009; Ghassem-Fachandi, 2012). In Odisha, for example, Adivasis have been required to chant, “Garbh se kaho hum Hindu hai [Say with pride that I am a Hindu]” at majoritarian rallies and Sangh Parivar-affiliated tribal leaders have identified as “Hindu Adivasi” (Chatterji, 2009: 111). There have been numerous targeted attacks against Dalits who convert to Christianity, including an event in Jagatsinghpur, Odisha, where upon the provocation of Sangh Parivar-affiliates, on February 10, 2004 “seven Dalit Christian women and a male pastor were tonsured [heads forcibly shaved] by upper caste and Hindu-identified Dalit neighbors, against their will, signifying their ‘return’ to Hinduism” (Chatterji, 2009: 229). In independent India, Adivasis and Dalits have been targeted with repeated abuse and violence, even death, simply for being alive, as well as for their beliefs, practices, and counter-memory, and for refusal to be forcibly assimilated into dominant Hinduism (Dalit Women’s Self Respect Movement, 2015; Rege, 2004).

Reservation benefits do not extend to sexual minorities, including those who are economically marginalized. Although the law in India does not protect lesbians, and only recently has recognized transgender women (2014),¹¹⁸ legal recognition of transgender people has not translated into legal protection including through being afforded the benefits of reservation.

Women and Sexualized Violence

Numerous women, including victim-survivors, have acted with formidable courage, agency, and leadership across India to overcome tremendous obstacles and secure justice. This is powerfully evinced in the case analyses and memory narratives in this text. Women's participation in the colonial and de/postcolonial era has been critical to configuring politics and discourse on issues of nation, caste, class, sexuality, religion, and ability in India. In this current phase, feminists and activists in the Indian women's movement (the latter may not identify as feminists) have acted to make visible the issue of women's individual and collective oppression and agency since the 1970s and 80s. We note the enormity of the grassroots work by women in rural areas encompassing issues of cultural survival, development, health, and public forests lands; the new Dalit women's movement (in continuity with women in Dalit struggles over several centuries); the national conferences on women's studies; and movements that draw tens of thousands women from all over the country.

Their struggles, scholarship, and advocacy led to significant policy and social shifts, including the passage of significant pro-women laws in the past decade and a half (Gandhi, 1992; Jayawardena, 1986; Menon, 2012).

Despite the strength, breadth, and import of this work, the chronic devaluation of female life and the glorification of violence against women, and minority women in particular, remain structurally condoned and historically–socially permissible across India (Current Cultural Issues, 2013). In public and domestic spheres this has led to abandonment, disinheritance, dowry deaths, acid throwing, torture through gang and collective rape, mutilation, custodial deaths, and honor killings (United States Department of State, 2013).

The Thomson Reuters Foundation (2014) ranked India as the fourth most dangerous country for women. Gender-inequitable cultural ethos and political structures subject women, as other vulnerable genders, to indignity and render them vulnerable to gendered and sexualized violence. According to the Indian government, a woman is raped in the country approximately every twenty minutes (National Crime Records Bureau, 2013); ninety-five thousand rape cases are pending within the court system; and three out of every four perpetrators of such crimes go free (*The Guardian*, 2013).

The UN Special Rapporteur on Violence against Women, Its Causes and Consequences described the female experience in India as commonly consisting of

a “continuum of violence...from the ‘womb to the tomb’” (2014: n.a.). A recent study showed that 65 percent of men in India believe women should tolerate violence and that 24 percent of men have committed sexual violence (Gaynair, 2011). Rape is the fourth most common crime against women and only one in ten rapes are reported (National Crime Records Bureau, 2013: 81; *The Guardian*, 2013). Significantly, the law in India does not extend to marital rape and domestic violence law does not include sexual violence (HRW, 2013). Conviction rates for rape have been as low as 24.2 percent in 2012, declining from previous years (*Times of India*, 2014). Fast-track courts for sexual crimes, instituted following the 2012 gang rape of a woman in New Delhi, demonstrate low conviction rates and high backlogs prevalent in regular courts (*Wall Street Journal*, 2013). Moreover, conviction rates do not adequately reflect or resolve the issue of sexualized violence given the stigmatized nature of the crime, which remains more underreported than other crimes. This occurs in the context of the “very serious issue of pervasive gender discrimination and violence in India” (Bhabha, 2013: n.a.).

Conflict Violence

Gendered violence in conflict, as an act of power, tactic of torture, and weapon of desecration, has a long history across independent India (Biswas, 2014).¹¹⁹ Gendered and sexualized violence in areas of conflict and upheaval is not limited to isolated acts of individuals, but is used as a tool of oppression by both state functionaries and combatants to subjugate communities and silence dissent.

In 2013, the UN Special Rapporteur on Violence against Women, Its Causes and Consequences asked that India address violence against women in conflict areas. Sexual violence in conflict is instantiated through multiple dynamics related to gender, sex, caste, ethnicity, race, indigeneity, faith, religion, irreligiosity, social class, political power,

ability, and land and landlessness. Women of all communities are particularly vulnerable to gender, sexual, and domestic violence during conflict and social upheaval in India, although women from religious minority, Dalit, and Adivasi groups are especially impacted. In struggles for political power, control over territory, or cultural and religious dominance, retributive vengeance against a social group is often transmitted through individual and collective violence against women of the group (Loomba and Lukose, 2012). The perpetrators of gendered and sexualized violence against women in conflict and upheaval may be from within the state forces or members of hostile communities. Rape, mass rape, gang rape, and stripping and torching of women and girls are common during social upheaval and episodic

“Women in conflict areas are entitled to all the security and dignity that is afforded to citizens in any other part of our country.”
(Verma Committee, 2013:149)

violence.¹²⁰ The chaos of conflict and protracted violence also creates opportunity for rape, mass rape, gang rape, and stripping of women and girls and the conditions for systemic abuse and impunity.¹²¹ The rape of women is a weapon to gain or consolidate power over members of the “enemy” or opponent group (Askin, 2003). Defilement of women in patriarchal cultures serves to assault the collective by publicly exposing men as weak and unable to protect their women or effectively assert the claims to sovereignty of the male-dominated collective (Watto, 2009).

Following episodic violence, there may be greater opportunities for *attempting* to secure justice through existing mechanisms, even as the imposition of special laws in conflict areas limits the scope of accountability.

LGBTIQA and Sexualized Violence

LGBTIQA communities are exceedingly vulnerable to gendered and sexualized violence. Evidence records that lesbians, gay men and boys, and transgender, third gender, or intersex individuals continue to be victimized by sexual violence under regular conditions of life (Narain and Gupta, 2011). Various factors, including deep social stigma, act as impediments to investigating such violence. Tripti Tandon of the Lawyers Collective reported that documentation of abuses continues to prove difficult, stating, “when the police is perpetrating the violence, then how do you resort to the same machinery to make a complaint?” (Paul, 2014: n.a.).

Introduced under British rule in 1860, section 377 of the Indian Penal Code criminalizes sodomy (Arondekar, 2009; Kapur, 2005; Puri, 2012, 2016).¹²² Challenged in the courts first in 1991, the latest judgment of the Supreme Court of India in *Koushal v. Naz Foundation* of December 11, 2013 ruled homosexuality to be a criminal offense.

Separately, in April 2014, the Supreme Court ruled that transgender persons might officially identify as third gender on state documents and records. This allows central and state governments to afford legal recognition and the categorization of transgender people as a socially or economically disadvantaged group. Now that transgender people are recognized as legal subjects, it is necessary that such recognition be extended into all realms, including that transgender women are also targets of conflict violence. Furthermore, in order that lesbians may receive recognition as subjects of conflict violence, it is also necessary to recognize lesbians as legal subjects. It is of significant concern that, to date, there is very little comprehension and no systematic documentation of gendered and sexualized violence against LGBTIQA communities in situations of conflict and social upheaval across India.

Gender and Minoritization

Violence against minority women, as a project of minoritization, has shifted and endured through modern history in India (Chatterjee, 1993; Hinnells and King,

2007). A large body of literature has analyzed the deployment of sexualized abuse on women of the Other in India, as vindication by members of a dominant culture (Chhachhi, 1998; Chatterji and Chaudhry, 2012; Raghavan, 2015; Sundar and Sundar, 2014). Violence against minority women is a means of attack whereby women's bodies become battlefields for cultural nationalism (Das, 2007; Kabir, 2010). The deployment of sexual violence against minority women by majoritarian vigilante groups is an example, where the severing of breasts and tearing open of wombs and vaginas "signal complex levels of deterrence against Muslim reproduction" (Bannerji, 2011:90).

Economic indicators demonstrate that women from ethnic and religious minorities are especially targeted preceding, during, and following conflict and social upheaval, including by men who perpetrate violence against women in their own communities (D'Costa, 2010; Kapoor, 2006; O'Rourke, 2013). Furthermore, majoritarian violence may be perpetrated by women against women and men of other communities, as witnessed in Gujarat and Odisha (Bacchetta, 2004; Bacchetta and Power, 2002; Chatterji, 2009). Sexualized violence in these contexts, whether orchestrated or opportunistic, frequently occurs with the participation or tolerance of Indian officials (Ganguly, 2013; Wenona et al., 2003).¹²³ The capacity of existing policies, law enforcement, and legal mechanisms to prevent and redress the impact of gendered and sexualized violence on minorities in conflict remains deficient (Kapoor, 2006; O'Rourke, 2013).

THE WILL AND CAPACITY OF THE STATE

There are inordinate delays in the provision of justice. 56,383 cases were pending in the Supreme Court of India at the end of October 2011. At the end of 2010, 4.2 million cases were pending in High Courts, and almost 28 million in subordinate courts.... There is still no national action plan for human rights.
National Human Rights Commission of India (2011: 2, 5)¹²⁴

How does the Indian state and federal justice system address and prevent conflict- and social upheaval-related mass, gendered, and sexualized violence and other violations against impacted communities? How does the state's response to conflict-related social and individual trauma and individual and collective victimization remain compromised? Do mechanisms exist that are adherent or akin to transitional, and transformative justice?

Conflict- and social upheaval-related issues in India are ordinarily addressed through the regular judicial system and ad hoc processes. In the Indian context, the absence of a well-developed reparatory justice mechanism delimits conflict-related prosecutions of individual perpetrators and compensation to victims. These insufficient efforts continue the animosity and mistrust between communities and escalate alienation. The successes and failures of these existing measures are under-reported in areas with concentrations of one or more minority groups, with secessionist movements, and/or where extensive nationalization of tribal lands has taken place.

There is a critical need for timely prosecutions, effective education and awareness, strengthening of justice institutions, and development of new institutions that promote leadership roles for affected women in the process of securing justice. An effective state system must undertake acknowledgment, investigation, prosecution, and reparation, including psychosocial and legal restitution (restoring to original condition); support for memorialization initiatives; monetary compensation; expedient rehabilitation; and guarantee of non-recurrence. Adapted to contexts of conflict and social upheaval in India, these would hold relevance in promoting the individual and collective right to truth as well as memory and healing for affected women. As an element of reparations, under its current treaty obligations that incorporate a right to a remedy, India is bound to provide guarantees of non-recurrence for violations of rights protected under those treaties, such as the rights protected in the ICCPR.

Although Indian forces and public officials participated in or tolerated attacks in Odisha, Kashmir, Punjab, and Gujarat, the Indian Government has neither recognized responsibility nor officially apologized to the victims.

Atonement, too, is offered through legal, individualized, and adversarial means. The limitations are inherent in such an approach, in that it often forces women survivors into greater social and economic isolation, and the ineffectiveness of the justice system in conflict-ridden areas has been repeatedly acknowledged. This was highlighted in the ██████████ case in Gujarat and the Kunan Poshpora case in Jammu and Kashmir. Furthermore, bureaucratic and administrative bottlenecks prove costly. In 2010, a Revised Scheme for Relief and Rehabilitation of Victims of Rape proposed a plan for financial compensation and other rehabilitative support services for victim-survivors of rape (NCW, 2010). Despite early expectations, the Scheme encountered “bureaucratic and procedural tangles, fund-allocation delays and tug-of-wars between the state and center” (Shetty, 2013: n.a.), rendering it ineffectual (Dhawan, 2010). Delays in obtaining approval from the Planning Commission resulted in the non-use of funds allocated between 2009 and 2012 (Pushkarna, 2013).

Internationally accepted measures, modified for conflict contexts in India, would hold great relevance. For example, widows of those reportedly involuntarily disappeared are denied the truth about the circumstances surrounding the deaths of their spouses/husbands (by state forces or non-state armed groups). “Half-widows” are often so-labeled because the status of life or death of their spouses, and therefore their status of “widowhood,” is not confirmed, and may remain unconfirmed indefinitely (APDR, 2011).

INTERNATIONAL INSTRUMENTS

India is party to several seminal international human rights instruments, including the Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG), ICCPR, ICESCR, CRC, and CEDAW. Furthermore, India has signed CED as well as CAT.

The two main human rights covenants, ICCPR and ICESCR, recognize collective rights (civil and political, as well as social and economic) and are particularly relevant to the rights of minority communities. ICCPR states that nations should not deny minorities—ethnic, religious or linguistic—“the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language” (Article 27). The ICESCR recognizes that poorer nations have limited resources and that rights can only be “progressively realized” but clarifies that this must not be employed as an excuse to discriminate between majority and minority communities while providing economic rights.

Especially relevant to gendered violence during conflict is the CAT, which India has signed but not ratified. As a party to the ICCPR, India is obligated to prosecute torture, which includes sexual violence against women that rises to the level of torture. The Supreme Court of India has on several occasions noted that

torture constitutes a violation of human rights.

The Prevention of Torture Bill (PRB) was introduced in the Lok Sabha (Lower House) on April 26, 2010 to allow India to ratify CAT and was passed in May 2010 (PRS Legislative Research, 2015). This bill fell critically short of international human rights standards. Rather than embodying the spirit of CAT, it in fact added further protections for alleged torturers (Asian Center for Human Rights, 2010; Commonwealth Human Rights Initiative, 2010). Following civil society advocacy, the Bill was presented to a Select Committee of the Rajya Sabha in 2010, and lapsed in June 2014 with the end of the administration of the fifteenth Lok Sabha (*Times of India*, 2010, *New Indian Express*, 2014). The resistance to CAT evidences state and social permissiveness for the institutionalized use of torture. The use and pervasiveness of torture among the armed forces and police are often justified in relation to curbing terrorism. In the conflict zones of India, in particular, law and culture accept torture for its supposed utilitarian value.

International bodies have recognized that rape and other forms of sexual violence may be used as a severe form of harm, often inflicted with the purposes of extracting information, intimidation, coercion, and/or punishment, thus fulfilling the legal elements of “torture” (REDRESS, 2013). Both the Inter-American Commission on Human Rights¹²⁵ and the European Court of Human Rights have recognized rape as torture.¹²⁶

India has signed ICPED, which is among the several international conventions that support the right to truth (Groome, 2011). ICPED guarantees access to information, prompt investigation, and protection of family members of the involuntarily disappeared (ICPED, 2006). Being a signatory of ICPED signals India’s acceptance of the right to truth as an international norm. As a signatory, India must not act contrary to the object and purpose of ICPED. Arguably, this minimal requirement may necessitate that India not obstruct individuals’ access to the right to truth.

India is a “dualist country.” International treaties do not automatically become municipal law in India without implementation by the Indian Parliament (Dupuy, 2011; Verma, 2007). However, even before implementing legislation brings the treaty in force domestically, the state’s ratification of a human rights treaty signals its commitment to a general obligation to not violate the rights laid out in the treaty and to ensure such rights to all individuals under the state’s jurisdiction.¹²⁷ Per Article 51 (c) in the Constitution of India, “the state shall endeavor to foster respect for international law and treaty obligations in the dealings of organized peoples with one another” (1949).

The ICCPR, CEDAW, and other international treaties firmly establish sexual and gender-based violence as a human rights violation. International law holds that states must use due diligence to respond to instances of such violence against

women.¹²⁸ According to CEDAW General Recommendation 19, due diligence requires states to “prevent, investigate, punish, and provide compensation for acts of violence against women” (Manjoo, 2010: 794), in accordance with national legislation, regardless of whether state or private actors committed the acts.¹²⁹

It is of note that India has ratified the Genocide Convention, 1958 and is, therefore, under a legal obligation to introduce legislation that penalizes genocide, including sexual violence as an instrument of genocide, as interpreted by the ICTR.

India’s international obligations bind it to the right to a remedy. India has ratified the ICCPR, the Geneva Conventions, CEDAW, ICERD, and CRC, which all contain provisions relating to the right. Despite India’s submitted reservations to the ICCPR,¹³⁰ India is still bound by the obligation to provide the right to a remedy for “violations of the right to life, torture, and other protections guaranteed under the ICCPR” (HRW, 2008).¹³¹ Notably, under the ICCPR, states must ensure access to a remedy through effective judicial, administrative, and/or legislative means.¹³² Once a violation has occurred, whether during time of peace or conflict, India is thus obligated to ensure that victims have access to a remedy.

NATIONAL FRAMEWORK AND PEOPLE’S RIGHTS

For those suffering from most extreme violations in conflict areas and in contexts of social upheaval, it is crucial that their survival struggles are urgently reflected in the discourses on, and practices of, human rights. A range of laws and institutions in India constitute the national human rights system. The Constitution of India, adopted in 1950, provides a comprehensive legal framework for human rights enforcement.¹³³ It provides special recognition and rights to minority and other structurally marginalized groups (Manchanda, 2009).

The Court System

The Supreme Court of India, in a series of cases, has referenced to and drawn from human rights treaties,¹³⁴ thus playing a proactive role in respecting intentional law, even as the issue of treaty implementation in the country remains contested and non-uniform. While international treaties are not self-executing and do not entitle individuals to bring international legal claims in domestic courts, the Indian Constitution mandates that the state “foster respect for international treaties” (Sekaggya, 2012: 6).¹³⁵ India adopted the Protection of Human Rights Act (PHRA), 1993, (amended 2006), which defines “human rights” as “the rights relating to life, liberty, equality, and dignity of the individual guaranteed by the

“Tracking the history of law making, it is important to understand that law is made not just by parliament but also by courts and sometimes on the streets with our feet.” (Indira Jaisingh, 2015)

Constitution or embodied in the International Covenants and enforceable by courts in India” (PHRA, 2006:1). The PHRA authorizes the establishment of Human Rights Courts across the country. West Bengal, the first state to announce these in 2011, had not allotted new courtrooms or personnel or clear procedural mandates to actualize the functioning of these courts (Khan, 2012; Shaikh, 2012). In July 2015, the Supreme Court of India directed all states to set up Human Rights Courts in each district, noting that only the state of Sikkim had had some success in this regard (Choudhary, 2015).

The Indian judiciary, a single and integrated system, has three main hierarchical levels: subordinate courts, High Courts with jurisdiction over one or more states, and the Supreme Court of India, the apex court in constitutional, civil, and criminal matters (Supreme Court of India, n.d). Although primarily a court of appeals, the Supreme Court also has original jurisdiction over writs alleging violations of fundamental rights.¹³⁶ Supreme Court decisions are binding on India’s lower courts.¹³⁷ Decisions by High Courts—the head of judicial administration for states—are binding in the respective state jurisdictions, but not on other High Courts.

India’s district courts adjudicate civil and criminal cases (Indian Courts, n.d). The jurisdiction on criminal matters of district courts, referred to as Sessions Courts, depends upon the severity of the crime and punishment. Sessions Courts usually have jurisdiction over rape and forced sodomy cases (Indian Courts, n.d). The state government may also direct a Sessions Court to function as a human rights court for the purpose of trying offenses arising out of violations of human rights, as noted earlier.¹³⁸ The jurisdiction on civil matters of the district courts depends upon territorial limitations and the matter’s pecuniary value.¹³⁹

Several recent and proposed legislations such as the Protection of Human Rights Act (PHRA), 1994; the RTI, 2005; the Prevention of Torture Bill (PTB), 2010; and the Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill of 2011, (PCTV), reflect commitments to the rights to truth, justice, and reparations. However, the Indian Parliament has adopted neither the PTB, criminalizing torture, nor the PCTV, criminalizing communal and targeted violence. The proposed law for addressing targeted and communal violence, PCTV, was withdrawn after heated debate in Parliament in early 2014 (see earlier in this section).

Human Rights Commissions

In India, quasi-legal bodies, including the National Human Rights Commission (NHRC) and State Human Rights Commissions (SHRC), are regularly entrusted with special responsibilities to investigate and recommend action following social upheaval and have weighed in on occasion in specific matters and cases in conflict areas. The NHRC and twenty-three SHRCs constitute important public

Table 2. India and International Instruments

Date	International Instrument	India's Record
1948	Universal Declaration of Human Rights (UDHR) (Genocide Convention)	Voted in favor of the Declaration's adoption by the UN General Assembly in 1948.
1948	Convention on the Punishment of the Crime of Genocide (Genocide Convention)	Ratified on August 27, 1959.
1965	International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)	Ratified on December 3, 1968.
1966	International Covenant on Economic, Social and Cultural Rights (ICESCR)	Acceded on April 10, 1979.
1966	International Covenant on Civil and Political Rights (ICCPR)	Acceded on April 19, 1979.
1979	Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	Ratified on July 9, 1993.
1984	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Torture Convention)	Signed on October 14, 1997. Article 2 of Torture Convention deemed to be binding as a matter of customary international law.
1989	Convention on the Rights of the Child (CRC)	Acceded on December 11, 1992.
2006	International Convention for the Protection of All Persons from Enforced Disappearances (ICPED)	Signed on February 6, 2007.

institutions for the protection of human rights in India. These quasi-judicial bodies were institutionalized in 1993, following the national and international concern about rights violations committed during the conflicts in Punjab, Jammu and Kashmir, and the northeastern states.¹⁴⁰

The NHRC's activities include conducting research and investigations,¹⁴¹ issuing important guidelines to protect and promote human rights (e.g., the Guidelines on Encounter Deaths),¹⁴² making recommendations for reparations and to ensure non-reoccurrence of violence,¹⁴³ and intervening in human rights cases pending before Indian courts.¹⁴⁴ Although the NHRC has been pivotal in

proving legal infrastructure to redress human rights violations in India,¹⁴⁵ it has been criticized for taking an overly “legalistic and deferential approach;”¹⁴⁶ for its limited mandate, which restricts its investigative powers to complaints filed within one year of the incident;¹⁴⁷ and for the lack of clarity about the extent to which it may examine violations by members of armed forces.¹⁴⁸ NHRC does not have jurisdiction to prosecute cases or punish guilty perpetrators and may be incapable of rigorously investigating “what really happened, why did it happen, and who is directly and indirectly responsible.”¹⁴⁹

Like the NHRC, SHRCs have the authority to investigate, report, and present recommendations regarding instances of rights violations at the state level.¹⁵⁰ Punjab, Jammu and Kashmir, Gujarat, and Odisha, each has respective SHRCs. At the same time, any special laws that are applied to any areas of conflict or upheaval supersede ordinary civil and criminal law and subsume the possible legal and administrative (non-legal) remedies. The SHRCs may not investigate or request information from the national government in cases involving the military,¹⁵¹ and the advisory opinions of the SHRC are often disregarded. However, in Jammu and Kashmir, the SHRC has at times definitively issued its advisory opinions on matters that reportedly involve the military, such as in the Kunan Poshpora case¹⁵² and regarding the matter of unknown graves in 2011 (Bukhari, 2011). There are no structural interventions to supersede laws such as AFSPA and UAPA, or even repealed laws such as TADA. These special laws continue to retain dominance over law-and-order decisions specific to where they are applied and generally to the rule-of-law situation within the country.¹⁵³ The Supreme Court of India, empowered to repeal laws that are in violation of fundamental rights, has not acted to revoke AFSPA, POTA, or TADA.

Other non-judicial institutions include the National Commission for Women (NCW), the State Commission for Women (SCW), and the National Commission for Minorities (NCM). These Commissions receive individual and collective petitions by victims, submit reports to Indian state governments with preliminary comments and recommendations, intervene to conduct fact-finding missions, and file petitions before various courts, including the Supreme Court of India.¹⁵⁴

Special laws continue to retain dominance over law and order decisions specific to where they are applied and generally to the rule of law situation within the country.

The NCW was created in 1992 to investigate the deprivation of women’s rights and the failure of the Indian government to implement laws, policies, guidelines, or instructions ensuring women’s rights.¹⁵⁵ The NCW may also intervene in court cases and fund litigation involving issues affecting women.¹⁵⁶

SECTION II. CASE IN POINT: INDIA

The NCM was created in 1992 to monitor the implementation of constitutional and other legal safeguards in India designed to protect the rights of minorities in both central and state governments.¹⁵⁷ The NCM submits reports and makes public recommendations to the national government.¹⁵⁸ When reviewing complaints, the NCM has “all the powers of a civil court trying a suit;” like the NHRC and SHRC, the NCM is authorized to subpoena witnesses, compel discovery, obtain public records from any court or office, and form commissions to examine witnesses or documents.¹⁵⁹ In a two-month period in 2014, the NCM received a total of 366 complaints from Muslims, Christians, and Sikhs.¹⁶⁰

In areas of armed conflict and mass social upheaval in India, the existing human rights framework is often strained. In these areas, state court systems are operational with attendant appellate oversight as well as quasi-legal bodies such as the NHRC, SHRC, NCW, and NCM. The record of the NHRC, SHRC, NCW, and NCM, in documenting and highlighting gender-based violence during events of mass violence in the country since 1946, is discouraging.

Notably, in the instance of Gujarat violence of 2002, the National Commission of Women constituted a fact-finding team, visited the sites of violence, and issued a report within the same year, making extensive recommendations to the government (National Commission for Women, 2002). However, the recommendatory nature of the rights bodies circumvents accountability and leaves victim-survivors unprotected.

Table 3. Mention of Gender-based Violence by Commissions of Inquiry

Incident	NHRC	SHRC	NCW	NCM	Other
Kandhamal 2008	✓	X	X	X	
Jammu 2008	X	X	X	X	
Mau 2005	X	X	X	X	
Marad 2003	✓	X	X	X	
Gujarat 2002	✓	X	✓	X	✓ (Nanavati-Mehta Commission Report, 2008)
✓: gender-based violence mentioned; X: no mention. Compiled from partial available data, including (NHRC, 2008:26-27); (NHRC, 2002); (HRW, 2002); (Merry, 2009); (Nanavati-Mehta Commission, 2008).					

Incident	Commission *NHRC, SHRC, NCM, NCW were <i>not</i> in existence before 1992
Bombay 1992	Justice B.N. Srikrishna Commission of Inquiry: ✓
Bhadrak 1991	
Bhagalpur 1989	
Delhi 1984	Nanavati Commission of Inquiry Report: ✓ Misra Commission Report: ✓
Assam 1983	Tewary Commission Report: X
Hyderabad 1983	
Meerut 1982	
Moradabad 1980	
Jamshedpur 1979	Justice Narain Commission of Inquiry: X
Aligarh 1978	
Bhiwandi 1970	Justice DP Madon Commission of Inquiry: X
Ahemdabad 1969	P Jagan Mohan Reddy Commission of Inquiry Report: X
Ranchi 1967	Justice Raghubar Dayal Commission of Inquiry: X Second Administrative Reforms Commission (Fifth Report): X
Rourkela 1964	
Kota 1953	
Calcutta 1946	
✓: gender-based violence mentioned; X: no mention. Compiled from partial available data, including reports of the Srikrishna Commission (1998), Nanavati Commission (2004), and Misra Commission (1985).	

Commissions of Inquiry

In responses to widespread targeting during instances of social upheaval, the Indian government has often utilized Commissions of Inquiry, which are ad hoc government commissions with recommendatory powers.¹⁶¹ The instatement of commissions regarding the 1984 targeting of the Sikh community in Delhi, the 2002 upheaval in Gujarat, and the 2008 upheaval in Odisha offers pertinent examples of these state initiatives.

Established in 2000, the Nanavati Commission was the tenth government-appointed inquiry into the matter of 1984 (HRW, 2014). It received 2,557 affidavits,¹⁶²

examined additional sworn statements filed before earlier abortive Commissions,¹⁶³ heard from about 197 witnesses,¹⁶⁴ and inspected cases registered against police officers for dereliction of duty during the violence.¹⁶⁵ The Commission's 2005 report "admitted that the attacks were organized and yet failed to attribute responsibility" (HRW, 2014: n.a). It recommended criminal prosecution of some police officers and some senior politicians as well as compensation to families of victims. In October 2014, HRW stated that, "no police officer has been convicted, and there were no prosecutions for rape, highlighting a comprehensive failure of the justice system" (HRW, 2014: n.a).

The Shah Commission of 2002 was established in the week following the Godhra train blast and deaths in Gujarat. The Shah Commission's mandate and timeframe were revised in subsequent months, as was its chair (becoming the Nanavati Commission in May 2002) (Nanavati, 2008). The Commission was eventually tasked with investigating of the role of then Gujarat state chief minister Narendra Modi and his cabinet ministers in the events and violence that following the Godhra blast (Nanavati, 2008). The Commission received 4,495 affidavits and, after the extension of the scope of inquiry, an additional 41,999 affidavits. The Commission held hearings at most district headquarters. In 2014, after twenty-four extensions, the Commission submitted its final report, explaining that it had found no reason to summon then chief minister Narendra Modi and found no evidence of complicity of the Government of Gujarat in the violence of 2002 (Dabhi, 2014).

The Panigrahi Commission, created by the Government of Odisha following the Kandhamal violence of 2007, was scheduled to complete its report in four months (Patnaik, 2011). By August 2010, the Panigrahi Commission had received 488 affidavits of which it examined 180 (*Daily News & Analysis*, 2010). The state approved the Commission's request to extend its mandate in 2011, and on a number of occasions since (Patnaik, 2011). The head of the Panigrahi Commission stated that people feared testifying before the Commission despite police protection (Zee News, 2009). Another inquiry via the Mohapatra (later renamed Naidu) Commission was set up to specifically examine the killing of Lakshmanananda Saraswati, a prominent Hindu nationalist and religious leader, in 2008 (Pradhan, 2013). His death was cited as the rationale for the subsequent violence in Odisha executed by Hindu right-wing activists. This Commission was expected to submit an interim report by mid-2014 (Zee News, 2013). There is little public information available about the progress or reports of either of the Odisha Commissions (Pradhan, 2013).

"Failure to frame a domestic law, which is the requisite for dealing with violence against women, will constitute a breach of the International Convention." (Verma Committee, 2013: 68)

The commissions utilized by the Government of India are not *truth commissions* and differ starkly in form and consequence from transitional justice approaches applied in other countries. These “Commissions of Inquiry” in India are smaller in scale and have examined episodic violence taking place during social upheavals rather than protracted violence, such as in conflict zones, or systemic and everyday violence that takes place during conflict and upheaval. These commissions routinely engage with relatively few victim-survivors and may have decidedly limited mandates. For instance, the Jan Commission in Kashmir focused on the rape and murder of two women in 2009.¹⁶⁶

The integrity of truth commissions, established as part of political processes dedicated to transitioning a society from epic violence, are connected to reestablishing the legitimacy and ethics of the state system itself. Such commissions, as in Latin America, have investigated patterns and practices of violence that targeted entire communities, reportedly two hundred thousand persons in Guatemala, for example. The government-instituted commissions in India have been shaped by national politics rather than in adherence to international norms or in relation to comparative contexts. The Commissions following the violence of Delhi 1984, Gujarat 2002, and Odisha 2007 and 2008 have been largely compromised by reported political interference and inefficiency. Generally, commissions in the Indian context have failed to assess liability, “who did what to whom,” and expose systemic and collective vulnerabilities, with pernicious effects for historically marginalized groups, for example, victim-survivors of rape and minority communities.

The Srikrishna Commission and Liberhan Aydhoya Commission were certain anomalies. The Srikrishna Commission was established in January 1993 to investigate the 1992-1993 violence in Mumbai, following the demolition of the Babri Masjid (mosque) in Ayodhya in 1992,¹⁶⁷ and the Mumbai bomb blast of 1993 were added to its mandate. The Srikrishna Commission report (1998) found the RSS, VHP, BJP, and Shiv Sena responsible for escalating communal tensions, and, in particular, the Shiv Sena for leading organized anti-Muslim attacks. The report also found substantial evidence of police bias against Muslims and that the local and federal authorities had not been able to respond to the upheaval adequately or effectively. In its review of the Ayodhya violence, Human Rights Watch stated that: “The majority of those who organized or participated in communal violence, though readily identifiable, were not detained or prosecuted by either the police or judicial authorities. Furthermore, in clear violation of the right not to be subjected to arbitrary arrest, a number of Muslims were arrested under the provisions of TADA” (1996). The Liberhan Aydhoya Commission was established in December 1992 and its report (2009) found the “top leadership of the RSS, VHP, Shiv Sena, Bajrang Dal and the BJP” to have “primary responsibility” in the destruction of the Babri Mosque and “other associated incidents”, and named 68

Hindu nationalist leaders as well as police and government officials as individually culpable (Liberhan, 2009: 936-940; 958-962). The powers of the Srikrishna and Liberhan Commissions were recommendatory and their findings and recommendations have had little substantive impact.

Answerability for Sexualized Violence

Indian laws criminalizing sexualized violence remained predominantly unchanged from colonial times until 1983; following the acquittal of a policeman accused of raping a [REDACTED]; and from 1983 to 2012; after the gang rape of a [REDACTED] woman in New Delhi in December 2012.¹⁶⁸ The Delhi gang rape led to the victim's death. This event, and the profusion of resistance and protests across the body politic, led to the amendment of the rape law in India.

A few days following the New Delhi rape, as protests against violence against women took place across India, the Justice Verma Committee on Amendments to Criminal Law was convened on December 23, 2012. Headed by Justice Verma, retired chief justice of India, its mandate was to investigate the New Delhi rape and propose changes to criminal law relating to violence against women. The Verma Committee invited suggestions from a variety of stakeholders, reviewed over seventy thousand responses, and analyzed data from state and central government departments and considered judgments and global standards of gendered violence. The Verma Committee analyzed constitutional obligations to gender equality in India¹⁶⁹ as well as India's obligations under international conventions.¹⁷⁰

"A state's obligation to investigate, prosecute, and punish perpetrators of gross human rights violations co-exists with the victim's right to justice." (Roxanna Altholz, 2014: 1530)

Under extensive public pressure, the Committee issued a report on January 23, 2013, making several critical suggestions to address violence against women, including addressing rape in police custody as well as in conflict zones. It noted that the "failure to frame a domestic law, which is the requisite for dealing with violence against women, will constitute a breach of the International Convention" (Verma, 2012:68).¹⁷¹

The process commenced by the Verma Committee was short-circuited by the hasty adoption of the Criminal Law (Amendment) Act, signed by the president of India on February 3, 2013. This act provides for the amendments pertaining to sexual offense in the Indian Penal Code, the Indian Evidence Act, and the CrPC. The Verma Committee's recommendations were implemented in part in the Act. The definition of "rape" under section 375 of the Indian Penal Code, 1862, was expanded to include any non-consensual penetration of a sexual nature, as opposed to the previous definition, limited to peno-vaginal penetration. The Act

also defines consent as “an unequivocal voluntary agreement” and does not require physical resistance to show lack of consent.¹⁷² Additionally, the Act establishes longer and harsher sentences for crimes of sexual violence,¹⁷³ while requiring that trials for rape cases be completed within two months of filing a charge sheet.¹⁷⁴

The Verma Committee recommended the criminalization of all non-consensual non-penetrative acts under the term “sexual assault,” wherein the intent of sexual gratification would not be an essential component in constituting the offense. It strongly condemned the use of the two-finger test during medical examination.¹⁷⁵ Regarding offenders, the Committee rejected performing castrations as retribution or awarding the death penalty, and suggested life imprisonment as appropriate punishment. It recommended the criminalization of marital rape.

Although the Act makes important changes, it ignores the structural problems identified by the Verma Committee. Several of these are relevant to areas of mass violence and conflict, where, the Committee recognized, “women in conflict areas are entitled to all the security and dignity that is afforded to citizens in any other part of our country” (Verma Committee, 2013:149).¹⁷⁶ The Verma Committee report “emphasized the need to bring offenses of sexual violence committed by members of the armed forces under [the ambit of] ordinary criminal laws codified in the Indian Penal Code [1862]” (Rajwade, 2015: n.a). The 2013 Act endeavored to implement the Verma Committee’s recommendations by discontinuing the need for sanction from the central government for prosecuting cases involving public officials charged with committing sexual offenses.¹⁷⁷ However, the Act did not over-ride the requirement for sanction from the central government for actions taken invoking the provisions of AFSPA in cases of rape, thereby continuing the status quo for crimes committed by state forces (Amnesty International, 2013).¹⁷⁸

The incorporation of the act into state law encountered various obstacles in Jammu and Kashmir. For example, after the passage of the act, although the Jammu and Kashmir State Assembly adopted certain amendments in March 2014, as Muzameel Jaleel (2014: n.a) writes,

“the state law [in Jammu and Kashmir] left intact the need for sanction for prosecution of public servants... of the major criticisms of AFSPA is that once the police file and investigate a case against members of the armed forces, they need sanction, which is frequently denied, from the Ministry of Defense (to prosecute army personnel) or Home (paramilitary forces.)”

In January 2013, Jammu and Kashmir High Court reportedly established fast-track courts for domestic and sexual violence against women (*Kashmir Observer*, 2013). In February 2013, the Punjab Cabinet reportedly approved the establishment

SECTION II. CASE IN POINT: INDIA

of twenty fast-track courts for sexual assault cases, though not in relation to assaults during the militancy (Pandher, 2013). In 2015, Amnesty International reported that “violence against women remained widespread. The authorities did not effectively implement new laws on crimes against women that were enacted in 2013, or undertake important police and judicial reforms to ensure that they were enforced” (n.a).

Table 4. Verma Committee and Criminal Law

Verma Committee Recommendations	Criminal Law (Amendment) Act, 2013
Punishment for any officer who fails to register or tries to abort investigation in a reported case of rape	Created specific offenses for public servants’ failure to record sexual offences
<p>In conflict areas:</p> <ul style="list-style-type: none"> • Sexual violence by armed forces & uniformed personnel be brought under “the purview of ordinary criminal law.” • Safety measures be instituted for women complainants and witnesses against armed personnel. • Special commissioners with relevant credentials be appointed, judicially or legislatively, to address safety of women. • Security of women detainees and women at checkpoints be ensured. • Immediate review of AFSPA and AFSPA-like laws. 	<ul style="list-style-type: none"> • Created a new penal section with separate provisions to punish rape by public officials, including police officers, as well as members of armed forces deployed in an area by the central or state governments. • Includes “<i>rape during communal or sectarian violence.</i>” • Does not address the issue of immunity under special laws such as AFSPA. • No other changes corresponding to the recommendations.
Minimum sentence for rape be enhanced to 10-years and the maximum to life sentence, but not the death penalty.	Enhanced the punishment for rape resulting in death or vegetative state to death penalty (which, contrary to extensive advocacy, India still administers).
Specifically penalize rape by armed personnel within their area of deployment. The requirement for sanction to prosecute armed personnel should be removed in relation to sexual offences.	Created a specific offence. Shall be punished with rigorous imprisonment of either description for a term which shall not be less than seven years, but which may extend to imprisonment for life. However, does not address the issue of immunity under special laws such as AFSPA.
Removal of the exception of marital rape through the institution of a specific law.	No Action; Marital rape not outlawed.

The lack of specialized mechanisms for addressing conflict and social upheaval often results in the de facto failure of remedy systems. Even when the national human rights system is responsive to the affected community, it may still relegate gender-based violence to the background, further impairing the healing of victim-survivors. For example, the registration of the First Information Report (FIR), ordinarily a prerequisite to commencing a criminal prosecution in India, is routinely contentious and may become impossible when the alleged perpetrator is a member of the state forces. The fear of reprisal results in increased impediments for victim-survivors and repeated re-traumatization. Pursuing legal or administrative remedies often involve “severe financial and emotional costs over multiple year timelines” that prove “deterrent enough for most and leads to further dejection” (APDP, 2011: n.a).

THE RECORD BEFORE US

This monograph focuses on two areas of internal, armed conflict—Jammu and Kashmir and Punjab, and two areas of social upheaval—Gujarat and Odisha, across India. The continuities and discontinuities between history (colonial-feudal) and the present (independent Indian state) that are foundational to the conflicts and political violence in Punjab and Jammu and Kashmir are emblematic of decolonial encounters and “epistemic disobedience” (Mignolo, 2011: 122-23)¹⁷⁹ recurrent in postcolonial states. They further evidence the state’s relation to the politicization of religion. The politicization of religion refers to the use of religion with the objective of attaining a political goal.¹⁸⁰ The social upheaval in Gujarat and Odisha bears witness to a postcolonial state’s increasingly majoritarian relation to its “Others,” and highlights fault lines in the development of national identity, political economy, and culture.

FOUR AREAS UNDER STUDY

The causation, political underpinnings, and nature of these conflicts and upheavals are varied, although they all involve multiple parties and are rooted in historical, cultural, religious, ethnic, political, identitarian, economic, and rights-based issues, elements of which are both highly specific and common to all. The conflict in Punjab carried both internal and international dimensions. The conflict in Jammu and Kashmir carries both internal and international dimensions. This text focuses on the former aspects of the issue.

Various factors inform the types of engagements that policy-makers and academics have had with these conflicts and the differing information and analyses that are available. In Jammu and Kashmir and Punjab, and in Gujarat and Odisha, persons from ethnic, religious, caste, tribal, and linguistic minority groups have been affected by violence. In Punjab and Jammu and Kashmir, for example, the Indian state has responded to claims for political and socio-economic rights by Sikhs and Muslims through increased militarization, mass arrests, torture, extrajudicial killings, enforced disappearances, and rape (HRW, 1993, 2002; Kumar et al. 2003: 39). In Gujarat, claims for political and

What intersecting relationships exist between internal conflict and social upheaval in India? How are these states of violence gendered? In what ways do they prompt each other? How do they impact the course of the law? Corroborate the project of minoritization? What nexus between state, nonstate, and extra-state institutions are manifest? What alliances are formed between civil society and victim-survivors? What structures of accountability are made imperative?

socioeconomic rights by Muslims and Christians have led to episodes of majoritarian upheaval. The struggle for human rights, including cultural rights, by Christians in Odisha has been perceived as a threat to cultural nationalism by the Hindu majority and has sparked episodes of social upheaval (Chatterji, 2009). The pressures of cultural nationalism, majoritarian identity politics, and minoritization have historically aggravated the racialization of politics and culture in these sites of upheaval and conflict, resulting in retributive violence as an offshoot involving the same ethnic or religious group elsewhere.

The following subsections offer a context to the four areas, beginning, chronologically, with the two conflicts in Punjab in the 1980s and in Jammu and Kashmir since the 1990s, followed by social upheaval in Gujarat in 2002 and Odisha in 2008.

Table 5. Areas in Focus

Internal Conflict	Timeframe Chronology	Total Population
Punjab	1984-1995	(1981): 16.8 million (1991): 20.1 million (2011): 27.7 million
Jammu and Kashmir	1990-2004 2005-present	(1991): no census (2001): 10.1 million (2011): 12.5 million

Social Upheaval	Timeframe	Total Population
Gujarat	2002	(2001): 50.7 million (2011): 60.4 million
Odisha	2008	(2001): 36.8 million (2011): 41.9 million

(Census of India, 1981, 1991, 2001, 2011.)

SECTION II. CASE IN POINT: INDIA

Table 6. Population: Jammu and Kashmir and Punjab, 1981–2011

	1981	1991	2001	2011
Jammu and Kashmir				
Hindus	32.2%	No census	29.6%	28.4%
SC	8.3%	No census	7.6%	7.4%
ST	No figure given	No census	10.9%	11.9%
Muslims	64.2%	No census	67.0%	68.3%
Others	3.6%	No census	3.4%	3.2%
Punjab				
Sikhs	60.8%	163.0%	59.9%	57.7%
Hindus	36.9%	34.5%	36.9%	38.5%
SC	4,512 26.9%	28.3%	28.9%	31.9%
ST	No figure given	0	0	0
Others	3.2%	2.6%	3.2%	3.8%

(Numbers in the thousands, Census of India, 1981, 1991, 2001, 2011; Ministry of Social Justice and Empowerment, 1981, 1991; Note: 1991 Census data does not include the state of Jammu and Kashmir.)

Table 7. Population: Gujarat and Odisha, 1981–2011

	1981	1991	2001	2011
Gujarat				
Hindu	89.53%	89.5%	89.1%	88.6%
SC	7.2%	7.4%	7.1%	6.7%
ST	14.2%	14.9%	14.8%	14.8%
Christians	0.39%	0.4%	0.6%	0.5%
Muslims	8.53%	8.7%	9.1%	9.7%
Others	1.5%	1.3%	1.3%	1.2%
Odisha				
Hindus	95.4%	94.7%	94.4%	93.6%
SC	14.7%	16.2%	16.5%	17.1%
ST	22.4%	22.2%	22.1%	22.8%
Christians	1.8%	2.1%	2.4%	2.8%
Muslims	1.6%	1.8%	2.1%	2.2%
Others	1.2%	1.4%	1.1%	1.2%

(Numbers in the thousands, Census of India, 1981, 1991, 2001, 2011; Ministry of Social Justice and Empowerment, 1981, 1991)

PUNJAB: THE CONFLICT OF 1984-1995

Punjab has been impacted by widespread and armed conflict between Indian state actors and Sikh separatist groups between 1984 and 1995, with conflict-related issues recurring intermittently between 1996 and the present. Divided between India and Pakistan in 1947, Indian Punjab, in northwestern India, is home to the Sikhs. Whereas Sikhs constitute a majority of the population in the state of Punjab, they are a national minority in India. Sikhs constitute 60 percent of the 27.7 million people that reside there, and less than 2 percent of the population of India.¹⁸¹

Prior to the violence of 1984, the political movement in Punjab involved decades of negotiations for federalism and increased state-based rights following the Partition of 1947. This was accompanied by the repeated reorganization of Punjab's boundaries,¹⁸² and the breakdown of conversations between Sikh politicians and the Indian government.

It is of note that President's Rule has been imposed in Punjab between March 1953 and March 1954;¹⁸³ June 1951 and April 1952; July 1966 and November 1966; August 1968 and February 1969; June 1971 and March 1972; April 1977 and June 1977; February 1980 and June 1980; October 1983 and September 1985; and June 1987 and February 1992 (Arora, 1990: 160, 216; Ghosh, 2012: 350-351; People's Union for Democratic Rights, 1985; Srivastava, 1980: 43-8).¹⁸⁴

In 1984, more than 250,000 troops were reportedly deployed in Punjab as part of an army operation code-named "Bluestar."¹⁸⁵ The operation included attacks on gurdwaras (Sikh places of congregation and worship) across the state.¹⁸⁶ According to official government reports, 493 "civilians/terrorists" were killed during the operation. Non-government sources estimate that, in June 1984, Operation Bluestar led to the reported killing of five thousand to eight thousand people in the Harmandir Sahib Gurdwara Complex in Amrtisar [also Darbar Sahib, sanctum sanctorum of Sikhs].¹⁸⁷

Reportedly, another forty-two to seventy-five gurdwaras were targeted. Although casualties remain unknown, "especially because of the curfew enforced in the period after Operation Bluestar," local civil liberties organizations estimated that the dead exceeded ten thousand (Pettigrew, 1995:24). The government's white paper reported twenty-three deaths as a result although a government inquiry two years later reportedly estimated 257 casualties at one gurdwara in Patiala (Kumar et al. 2003: 39).

Between June and September of 1984, the Indian armed forces commenced Operation Woodrose, expressly targeting Sikh males across the Punjab countryside to derail future uprisings. Sangat Singh, a former member of the Indian Foreign Services, reported—from inquiries into 1984 undertaken in a personal capacity, that an estimated one hundred thousand Sikh men were taken into custody in the first four to six weeks following the army operation (Singh, 1995: 384). On October 15, 1984, *The Indian Express* reported data from just one district,

Gurdaspur, in Punjab, noting that eight thousand Sikh men were missing (Jaijee, 2002:72). A government estimate claimed that 4,712 people were apprehended (Grewal, 1998: 228).

On October 31, 1984, two Sikh bodyguards assassinated Prime Minister Indira Gandhi of India, responsible for authorizing Operation Bluestar. Mass violence against Sikhs followed in Delhi and beyond, targeting civilians. In three days, between 2,733 and 3,000 Sikhs were reportedly killed in Delhi alone (Mitta and Phoolka, 2008).¹⁸⁸ The estimates of the death count from across India vary between seven thousand and twenty thousand (Sharma, 2013; Jaijee, 2002).

The events of 1984, and the incapacity of instituting measures for accountability and redress, contributed to the escalation of events in Punjab in 1985-1995. Following 1984, a variety of local responses ensued in Punjab. This included a locally driven call for self-determination as well as the formation of armed Sikh militant groups that campaigned to establish a separate state. The armed militancy of 1985-1995 was quelled through the intervention of the armed forces, paramilitary, and state police.¹⁸⁹ Following 1984, the social and institutional othering of Sikhs was prevalent, practiced through their exclusion from institutions, such as the ban on recruiting Sikhs in the Delhi Police (Khalidi, 2010).

The military and paramilitary executed a majority of the actions during June 1984, even as Punjab Police remained a local focal point in the operations following 1984. Between the years of 1985 and 1995, approximately, an estimated two hundred thousand to three hundred thousand army personnel (Jaijee, 2002: 277-78; Singh, 1999: 166), together with an estimated 200,000 paramilitary forces personnel (Jaijee, 2002: 274), were deployed in Punjab. Furthermore, an estimated seventy-five thousand armored police from other states were deployed in Punjab (Jaijee, 2002: 273), and Punjab's police force grew to include seventy thousand personnel (Jaijee, 2002: 267). Reportedly, approximately forty thousand special

"The impunity gap in India is nowhere more evident than in Punjab...Police abducted young Sikh men on suspicion that they were involved in the militancy, often in the presence of witnesses, yet later denied having them in custody. Most of the victims of such enforced disappearances are believed to have been killed. To hide the evidence of their crimes, security forces secretly disposed of the bodies, usually by cremating them. When the government was questioned about "disappeared" youth in Punjab, it often claimed that they had gone abroad to Western countries...In 1994, HRW and Physicians for Human Rights described the government's operations as "the most extreme example of a policy in which the end appeared to justify any and all means, including torture and murder." (HRW and Ensaaf, 2007: 1)

police officers (SPOs) and village defense officers assisted the Punjab Police in espionage and vigilante actions (Jaijee, 2002: 267). Operation Rakshak I and II were introduced in Punjab in 1990 and 1991 and initiated “a major influx of army officers into Punjab” (Silva et al, 2009: 24). Operation Rakshak II reportedly comprised of thirty-four army brigades, and included 150,000 soldiers, 40,000 paramilitary personnel, 53,000 Punjab police personnel, 20,000 home guards, and 12,000 SPOs (Singh, 1999: 166).

As of 2009, there were 71,869 police officers stationed in the Punjab with 66,498 actual deployments (Bureau of Police Research and Development, 2010: 36). In 2010, the state police announced the establishment of eighteen special weapons and tactics (SWAT) teams, trained by Israeli professionals, across the state (Bajwa, 2010). In July 2015, one such team was stated to be pivotal in responding to an attack on a police station in Gurdaspur, Punjab, committed allegedly by Pakistanis (Press Trust of India, 2015). The Government of Punjab has announced several enhancements, including increased training and arsenal, to the police force since the July 2015 attack that left five dead in a prolonged gun battle (Press Trust of India, 2015). Currently, the Punjab Police is reported to have approximately seventy thousand police personnel (Yadav, 2015), although figures for army and paramilitary deployment are unavailable.

Impact

Between 1984 and 1995, “the Indian government ordered counterinsurgency operations that led to the arbitrary detention, torture, extrajudicial execution, and enforced disappearance of thousands of Sikhs” (HRW, 2007: 1), and to clandestine cremations, including, reportedly, mass cremations (Kumar et al., 2003:10). The exact scale of involuntary disappearances, extrajudicial executions, and sexualized violence perpetrated by Indian forces remains unknown (Kumar et al., 2003). The Armed Forces (Punjab and Chandigarh) (Special Powers) Act, 1983, shielded participating members of the armed forces from prosecution.¹⁹

The actions taken by the armed militants included assassinations, robbery, and gendered violence. The violence of militancy included incidents of waylaying travellers on highways and the targeted killings of Hindu passengers, including women and children (Hazarika, 1987; Chellaney, 1987; Crossette, 1991). In many of these instances, no Sikh militant group claimed responsibility (Crossette, 1991; Hazarika, 1987). Certain Indian media sources spoke of the alleged complicity of state intelligence agencies in orchestrating the violence to animate dissonance between communities (Sidhu, 2014) Certain prominent militant groups introduced a dress code, invoking modesty and religion in policing women’s attire. They forbade “Western dress,” including jeans (Nanda, 1990), and mandated that women cover their heads (Bhargava, Reifeld, and Chenoy, 2005). Some militants were charged with forcing

marriages at gun-point, raping and gang raping girls abducted from the homes of alleged police informers, raping and gang raping women in opportunistic crimes and retributive acts, and forcing women to partake in militant activities (Vinayak, 1992). Sikh women also joined the separatist movement voluntarily, claiming it to be an act of choice and agency. Furthermore, Sikh women entered into marriage with militants as a strategic act that enabled them to join the movement, which was not permitted to them as single women (Gayer, 2012). There are recorded instances where police personnel allegedly abused and killed Sikh women combatants, for example ██████████, a member of the Khalistan Commando Force (Mahmood, 1996). Widows of militants routinely experienced continued social stigma and destitution, and lived without the accolades “of martyrdom... which is sometimes bestowed upon the slain terrorists” (Vinayak, 1992: n.a).

Civilian Sikhs, who chose not to participate in the violence, were extensively impacted by it. Dalits and Hindus were also affected by the conflict, either in the crossfire or in targeted violent acts. Women found themselves caught in this struggle: on the one hand, threatened and targeted by an increasingly militarized and masculinized society (including its armed groups and civilian men confronted with the dominant criminalization of their identity), and on the other hand, detained and tortured by Indian police, paramilitary, and armed forces. The years 1985-1995 marked the Decade of Disappearances in Punjab.¹⁹¹ “Special” laws, including AFSPA, enforced

Laws and Measures (select examples) in Punjab (1984–1993)

- 1984: The National Security Act was amended specifically to address “the disturbed areas of Punjab and Chandigarh.”
- June 1984–July 1985, then November 1991–December 1993: The Armed Forces (Punjab and Chandigarh) Special Powers Act was in force.
- May 11, 1987–February 25, 1992: The federal government dismissed the state government and imposed President’s Rule on the state of Punjab (direct rule by the federal government).
- 1985–1995: The Terrorist and Disruptive Activities (Prevention) Act was in effect in India in the context of internal conflict in Punjab.

in Punjab in 1983 and withdrawn in 1993; the Terrorist and Disruptive Activities (Prevention) Act, 1985; and the UAPA, served to deny due process, falsify charges, violate habeas corpus, and enabled armed forces to operate with impunity. In 2006, a resolution to implement 7.81 billion Indian Rupees in compensation packages for victims of the militancy was passed by the Punjab government, which included rehabilitation. As of May 2015, the package was still pending with the central government (Tribune News Service, 2015).

The death toll during the conflict remains unknown. Estimates of casualties range from thirty thousand to two hundred thousand, without possibility of verification (Jaijee, 2002: 104). The chief of the Punjab Police had

reportedly noted that 25,000 deaths took place between 1981 and 1993 (Singh, 1999: 163). The Government of India has noted that 16,462 deaths had taken place in Punjab by the end of 1991 (Singh, 1999: 163). Non-governmental and media sources, including *Asian Age* (1999) and *Pioneer* (1995), have stated that between 30,000 and 60,000 were reportedly missing (Jaijee, 2002: 100) and that 145,000 to 180,000 reportedly died (Jaijee, 2002: 93). The availability of certain documented records compiled by human rights defenders provide an understanding of the depth of the crimes and impunity available to perpetrators.

In January 1995, Jaswant Singh Khalra and his team released official records they had obtained, including firewood purchase registers from three crematoria that recorded police purchase of wood for bodies they brought to be cremated (Kumar et al., 2003). From this documentation, Khalra estimated that approximately six thousand cremations had been undertaken in secrecy in one of Punjab's then thirteen districts (Kumar et al., 2003).¹⁹²

Eight months later, Khalra was abducted from outside his home and “disappeared” (HRW and Ensaaf, 2007). These bodies “were cremated as ‘unidentified’ not because their identities were not known or not knowable or because there was no one to claim the dead, but as a matter of deliberate policy,” as per the Committee for Information and Initiative (CIIP) in Punjab, which pursued the investigation of the illegal cremations for the next decade (Kumar et al., 2003: 5). In 1996, the Central Bureau of Investigation (CBI) verified 2,097 secret cremations from three crematoria (Kumar et al., 2003: xi). The NHRC, which oversaw the matter of illegal cremations in Punjab, issued its final order in 2006. Since the 1995 disclosure, no new evidence has been established (HRW and Ensaaf, 2007).

With respect to the unidentified bodies in column 3 in the following table, the NHRC appointed the Bhalla Commission to investigate the unidentified cases. The report of HRW and Ensaaf states that

“the NHRC and Bhalla Commissions never acknowledged the possibility that the remaining 800 unidentified bodies could not be identified from the pool of 1,857 prior claims, and that a more inclusive process of participation was required if the Commissions were serious about establishing the identities of all 800 victims. At least 10 percent of the victims previously identified by the NHRC as having been secretly cremated in Amritsar lived outside of Amritsar District. The CIIP repeatedly suggested issuing a public notice throughout Punjab, inviting all victim families who believed their relatives may have been cremated in Amritsar to submit claims; these suggestions were rejected by the Bhalla Commission” (HRW and Ensaaf, 2007: 52)

Table 8. Illegal Cremations

Year and District	Authentic- ation of the Number of Cremations	Composition	Crema- tions with More Than One Body	Figures Derived from Below Sources
1995 Amritsar: Within 3 crematoria, namely Amritsar, Majitha, Tarn Taran	6000 (cases discovered)	("unidentified and unclaimed" bodies)	unknown	Khalra, and Dhillon and team released official govern- ment records
1996 Amritsar: Within 3 crematoria namely Amritsar, Majitha, Tarn Taran	2097 (of 6000 documented in 1995, 2097 were authen- ticated in 1996)	582 (identified bodies) + 278 (partially identi- fied bodies) + 1238 (unidentified bodies)	unknown	CBI report as disclosed to Supreme Court of India
2006 Amritsar: Within 3 crematoria namely Amritsar, Majitha, Tarn Taran	2059 (of 2097 au- thenticated in 1996, 38 duplicates found and excluded by NHRC in 2006)	1051 (“wrongful cremations”) + 194 (cremations following from police custody) + 814 (unidentified bodies)	unknown	National Human Rights Commis- sion Order

Data sources: *Reduced To Ashes: The Insurgency and Human Rights in Punjab* (Kumar, Singh, et al., 2007: ix-xiv); *Protecting the Killers: A Policy of Impunity in Punjab, India* (HRW and Ensaaf, 2007: 35-38); and *Order Reference Case No.1/97/NHRC, October 9* (NHRC, 2006).

The NHRC awarded compensation in a 1,245 cases (after initially in 2000 approving compensation in 18 of the 2,097 cases, which was unanimously rejected by surviving families), but it has, “throughout the entire proceedings, ... refused to investigate a single case of illegal cremation” (HRW and Ensaaf, 2007: 34). The verification and matching of cremation records to the involuntarily disappeared

were entrusted to the Punjab police, although investigation of direct criminal liability for any of the deaths leading to these cremations truncated. The government did not act to inquire beyond the initial verifications confirmed by the CBI, limiting the mandate to only three crematoria in one district (Redress et al., 2007). Furthermore, neither the fact that “police often bought firewood for one or two bodies, but dumped many more on a single pyre” (Kumar et al., 2003: 5), nor that the police routinely employed other methods of mass disposal of bodies, notably in Punjab’s canals, have thus far been accounted for (Redress et al., 2007).

Enforced disappearances have had lasting and gendered effects in Punjab. Sikh men were involuntarily disappeared while their families, in many instances their spouses/wives, are punished for transgressing the gendered roles expected of them as submissive and private mourners. Women’s “victimhood” or “militancy” gained popular and often problematic attention.¹⁹³ Various Sikh women found themselves in various positions in-between. Many survived by keeping silent stories of victimhood at the hands of the police, paramilitary, or military; others have chosen to re-marry and move away from public view to stop being seen as from a “victim family.” Paramjit Kaur Khalra, who was married to Jaswant Singh Khalra, has successfully pursued the case of his disappearance through the Supreme Court of India. Khalra is a founding member of KMO. She has worked with hundreds of widows of the disappeared and noted that their own families who fear police reprisal, often ostracize them. Many women have been forced into the impossible choice between pursuing justice for their lost and disappeared partner or providing for their families by accepting some form of government “compromise.” The compromise may include obtaining a government position for themselves or their children on compassionate grounds by officially admitting and accepting that the involuntarily disappeared person suffered a “natural death.”

During the conflict, army and paramilitary officials routinely arrested and tortured Sikh women in acts of individual or collective retribution. Stigmatization and the internalization of a sense of shame have led to few recorded incidents across the state, even as these are indicative of a larger and pernicious prevalence of conflict-related sexual violence in Punjab. Women who were (even distantly) related to militants, suspected of having information about male relatives who were allegedly involved with Sikh combatant groups, or suspected of supporting

Social and personal counter-memory of the conflict can take the form of story and circulate across the cultural landscape. In local mythos, for example, it is storied that some of the marble inlays with red patches located at the center of the Harmandir Sahib Gurdwara Complex are stained with the blood of those who died there in 1984.

militants through food or shelter at some point were often held hostage or killed in reprisal (HRW and Ensaaf, 2007: 87-91; Jaijee, 2002: 148). Civilian women, Sikhs and non-Sikhs, entirely unrelated to the militancy were also publicly and privately threatened with and subjected to sexualized violence by state forces under the highly militarized state during the conflict years. The efforts to pursue justice by victim-survivors and their families were thwarted and met with violence (HRW and Ensaaf, 2007: 176-78; Jaijee, 2002: 202). During Operation Rakshak, an army commander, Brigadier Sinha, is reported to have gathered members of various village panchayats¹⁹⁴ and announced to them that women would be raped to “breed a race through his soldiers that will be loyal to India” (Jaijee, 2002:200). Another police officer that was killed by Sikh militants in 1990 (Amnesty International, 1991) was for a length of time widely feared for his targeted abuse of women. His abusive conduct included the demeaning of the Sikh initiation ceremony, which includes the drinking of sacralized water (amrit), by insisting his victims drink his urine instead (Mahmood, 1996: 46).

After the abduction, torture, sexual molestation, and near-death of two Sikh women in 1989, highlighted by the local human rights groups, then governor of Punjab admitted that some officers had become “sadistic” and ordered that women were not to be taken into police stations for questioning (Jaijee, 2002: 176). The violence inside and outside police stations continued well beyond 1989 (Jaijee, 2002). A human rights attorney noted that only a fraction of the caseload of extrajudicial killings, enforced disappearances, detentions, and tortures over the years had focused on the abuse of women, even as many of the vocal petitioners—spouses, sisters, daughters, and mothers—were women (ACRes, 2013).

Following 1995, alerts regarding “heightened security threats” have re-appeared with regular periodicity in Punjab, as news cycles warn of “cross-border” agents supporting “Sikh extremism,” often through the supply of explosives.¹⁹⁵ The trepidation toward police forces continues in Punjab even today. This is influenced by the impunity accorded conflict-era perpetrators from among state forces personnel. In 1993, the Punjab chief minister reported to the Punjab State Assembly that between 1991 and 1993, more than forty-one thousand cash bounties were paid to the Punjab police for extrajudicial killings (United States Department of State, 1994). Reportedly, numerous officers who were perpetrators in the conflict continue to function without repercussions, and some have been rewarded through promotions (Nair, 2015). An article from 2001 lists that 32 cases against Punjab police personnel had been investigated by the CBI, 264 officials were facing trial (at that time), 107 officials were facing investigation, 6 trials had ended with convictions, 18 trials had ended in acquittal or the dropping of cases, 47 police officers had been acquitted, 9 police officers were in jail, and 249 police officers had received bail (Swami, 2001).

Furthermore, torture, which has led to many of the custodial deaths, remains an accepted police practice in Punjab, as elsewhere in India (Chakma, 2009; HRW, 2012). Torture of civil society activists and leaders in Punjab has included farm worker-unionists allegedly associated with Maoist groups and politics (Singh, 2015). The rights violations of prisoners, particularly political prisoners from the conflict era, reportedly remain in neglect despite civil disobedience movements and actions, such as the hunger strike commenced by eighty-two-year-old Surat Singh Khalsa on January 16, 2015 (People's Union for Civil Liberties, 2015; Yadav, 2015). In an increasing socio-economic decline, Punjab has witnessed approximately fifty thousand predominantly Sikh, farmer suicides in the last two decades and extensive alcohol and drug addiction in several areas of the state (Deol, 2000; Jaijee, 2002; Kaur, 2010, 2014). These conditions have further marginalized women and their capacity for rehabilitation.

Sexual Violence: Examples

District Hoshiarpur: The gang rape of ██████████ of ██████████ Village in ██████████ took place in 1989. Four police officials of the ██████████ Police Station subjected ██████████ to illegal detention and subsequent gang rape. During her long quest for justice in the years that followed, ██████████ reported that her home was burned down by the police and witnesses and allies were repeatedly tortured by the police, while she was forced to flee from her village for several months at a time. The defendants failed to appear until the twenty-fifth hearing of the case, despite repeated summons and warrants. The hearings were held at least a month apart: the delay caused due to failure to appear was at least twenty-five months, as per ██████████'s attorney. ██████████ attended more than eighty court hearings during the eight-year trial process alone.¹⁹⁶ In 2014, ██████████ recounted the terror experienced by Sikh women in Punjab's countryside in the 1980s and recalled one woman who was detained at the same police station for a month, stating, "if in one night, they didn't spare me, imagine what went on for a month" (██████████, Punjab, ACRes). To the best of ██████████'s recollection, that woman's case was never reported or publicized after her release.

District Amritsar In December 1986, a militant leader escaped from e ██████████ Village, and in response, the police and paramilitary retaliated with a cordon-and-search operation in Village ██████████ during which at least five women were reportedly raped. One spent the night hiding behind bushes, naked. Following the operation, aggrieved villagers unsuccessfully organized to demand the transfer of the allegedly responsible Central Reserve Police Force (CRPF) Battalion, in recognition of the collective violence experienced by the village (Punjab Human Rights Organization, PHRO, 1989).

District Gurdaspur Police personnel of the Border Security Forces raided

several villages in the area and collected the residents at [REDACTED], Village. Villagers were subjected to verbal and physical abuse and accused of sympathizing with militants. Sexualized threats and violence were used, as many villagers were made to lie prostrate on the ground and beaten. There were reports of men and women being stripped naked and forced to stand together, while police confiscated chunnis (women's scarves) from the gathered women. The villagers were asked to repeat slogans after the police officer leading the raid as he berated a woman political leader of the village, who had been recently arrested by the police, and her minor daughters. When an elderly male villager, a retired army officer, refused, he was abducted and detained at a nearby police station for three days. Before leaving, the police officer leading the raid threatened that the woman leader would be paraded naked when he returned. Following this raid, many families sent their young daughters away from the village to live with relatives (PHRO, 1989).

[REDACTED] from [REDACTED] in Punjab, [REDACTED] years of age, was allegedly tortured, including through rape. From reported accounts, both [REDACTED] and her [REDACTED] had been imprisoned for approximately two years for allegedly sheltering armed Sikh groups. Punjab Police had arrested [REDACTED] and released her following questioning. She was rearrested the next day, taken to a village, and had reported to human rights advocates that she "was then blindfolded, beaten, repeatedly hung upside down and that chilli powder was put in her eyes," following which she was sexually assaulted by police officers "until she fainted" (Amnesty International, 1991:20).

Girls of a very young age were subjected to sexualized violence, at times leading to death. A [REDACTED]-year-old daughter of a village [REDACTED], [REDACTED] was found raped and killed along with her [REDACTED]-year-old [REDACTED] (Jaijee, 2002: 176). Following a search for the teenagers undertaken by villagers through the day, police arrived during the night and reported that two naked, dead bodies had been found in a drain. When the parents approached a local judicial officer for custody of the dead bodies (which had been shown to the villagers very briefly), the police assaulted the father and other relatives, accusing them of murdering the girls and implicating the police (Jaijee, 2002: 177).

Religionized and sexualized violence against Sikh women related to the Punjab conflict remains non-repaired.

JAMMU AND KASHMIR: ONGOING CONFLICT SINCE 1990

The ongoing conflict in Jammu and Kashmir spans issues of history, identity, territory, resources, and religionization. The issues encompass the incorporation of Jammu and Kashmir into India versus demands for enhanced autonomy, federation, and a people's self-determination movement. Kashmiris also define the latter as a movement for *azadi* (freedom) from Indian occupation (Bukhari, 2010;

Mishra, 2010; Roy, 2012).¹⁹⁷ Kashmir's population includes the majority Muslim community and Hindu Pandits, who are in a minority locally, among others. Territorial disputes, together with large-scale civilian targeting, have left the state of Jammu and Kashmir in constant internal discord.

The conflict has been ongoing since 1931,¹⁹⁸ with the establishment of the All India Kashmir Committee and the July uprising, and thereafter since October 1947 between Indian forces and local groups, including armed groups. Jammu and Kashmir falls under the purview of special autonomy under Article 370 of the Constitution of India, a temporary and transitional provision that limits the authority of the Indian Constitution over Jammu and Kashmir (Manchanda, 2009; Noorani, 2011).

According to Article 370, the Parliament of India may not enact laws relating to Jammu and Kashmir, except pertaining to defense, communication, and foreign policy. The UN Resolution 47, passed in 1948, called for a plebiscite to decide Kashmir's future.¹⁹⁹ Various Presidential Orders have curtailed the provisions of Article 370. Various parties dispute Kashmir's political status, among them Kashmiris who are not all reconciled to the same point of view (Kak, 2007; Kaul, 2015; Rai, 2004).

Through the protracted conflict, state and nonstate armed actors have committed atrocities against the civilian populations, including mass killings, forced disappearances, mass displacement, rape, and torture.

India, Pakistan, and China retain possession over the territory of Jammu and Kashmir and remain contenders for its future. India holds the largest fragment of Jammu and Kashmir, including the Kashmir Valley, Jammu, Ladakh, and a major portion of the Siachen Glacier. Pakistan controls Azad Kashmir and northern areas of Gilgit and Baltistan. China controls Aksai Chin and the Shaksgam Valley. Regional wars have been fought between India and Pakistan over Kashmir, during 1947-1948, and again in 1965, 1971, and 1999. India governs the largest land area of Jammu and Kashmir, including the Kashmir Valley, Jammu, Ladakh, and a major portion of the Siachen Glacier. The Office of the High Commissioner of Human Rights (2014: n.a.) has stated that "the final status of Jammu and Kashmir has not yet been agreed upon by the parties."

The conflict in Kashmir has involved armed militancy and non-violent protest. The period between 1947 and 1987 saw the emergence of a people's movement for the right of self-determination through non-violent action. The local and armed resistance in Kashmir began in 1988, and the armed militancy began to consolidate by 1990 (Bastick, Grimm, and Kunz, 2007; Kazi, 2011). During the armed militancy, external relations existed with allied groups in Pakistan that allowed for training and access to resources for mobilization.²⁰⁰ Local and

cross-border armed militancy received support from Pakistan, including from the misogynist Inter Services Intelligence (ISI), responsible for domestic and foreign intelligence, with links to groups such as the Taliban. Following the Gawakadal killings in Srinagar in January 1990, a state of emergency was imposed. By mid-1990, there were reportedly 150,000 Indian troops were stationed in Kashmir together with approximately 17,000 local police personnel (Asia Watch, 1991; Clad, 1990). By the end of 2002, the number of military, paramilitary, and police deployment had reportedly increased to seven hundred thousand (Global Security, 2002). The armed militancy abated between 2004 and 2007. A peace process with neighboring Pakistan was initiated in 2004, with reciprocal multitrack diplomacy initiatives in Kashmir. In 2007, the troop count (not including police personnel) was reportedly 337,000 (Swami, 2014). This included personnel from the CRPF and the Border Security Force (BSF)

Governor's Rule (per section 92 of the Jammu and Kashmir Constitution, 1956) was imposed in Jammu and Kashmir from March 1977 and July 1977, March 1986 and September 1986, January 1990 and July 1990, October 2002 and November 2002, July 2008 and January 2009 and January 2015 and March 2015 (Arora, 1990: 271; *Business Line*, 2015; *India Abroad*, 1996; *First Post*, 2015). President's Rule was imposed between September 1986 and November 1986 and July 1990 and October 1996 (Arora, 1990: 216; Joshi, 1996).²⁰¹

Dialogues, events, programs, plans, and exercises on demilitarization and conflict resolution in and between governments, Delhi and Srinagar, and civil society, have kept open channels of communication, even as they have frequently ended in political impasse or produced sparse long-term effect. In a working paper on transitional justice in Kashmir, Mahapatra (2010: 6) writes that the conflict "has

"In Baramulla, of the 1,122 graves, approximately 99 percent of those buried were men. Gravediggers and caretakers were unable to give an exact count, given the extent of defacement of some of the bodies. In Kupwara, of the 1,453 graves, 1,451 were of men and 2 of women. In Bandipora, all 125 graves were of men.

The context of killings in Kashmir has engendered a landscape where the death of men has rendered vulnerable the living, especially women, children, and other gender identified groups....Post-death, the bodies of these victims were routinely handled by military and paramilitary personnel, including the local police. The bodies were then brought to the 'secret graveyards,' primarily by personnel of the Jammu and Kashmir Police. In one instance, we learned that the body had been buried on the premises of a police station." (*Buried Evidence*, 2009: 11)

affected important sources of livelihood (e.g. tourism). It is estimated that the state lost twenty-seven million potential tourists between 1989 and 2002, totaling [a loss of] US \$3.6 billion in... tourism revenue.”

Between 2008 and 2010, each summer witnessed major civilians protests. State forces personnel reportedly characterized the protests, some of which involved stone pelting, as “agitational terrorism,” and Internet-based protests as “cyber-terrorism” (Chatterji, 2011). In 2010, there were reportedly 671 security camps in Kashmir. Recent official figures have reportedly referred to the presence of approximately two hundred to one thousand militants (Chatterji, 2012; Joseph, 2015). In 2011, it was reported that approximately three hundred thousand to five hundred thousand troops administered Kashmir with talk of withdrawing 25 percent of the deployment within the year (Pasricha, 2011).

Jammu and Kashmir’s Constitution and laws regulate all matters in the territory, except in the areas of defense, currency, and foreign affairs, which remain under the control of the national Indian government.²⁰² Jammu and Kashmir’s penal code, the Ranbir Penal Code, 1932, is materially similar to the Indian Penal Code. In 1990, Jammu and Kashmir was determined to be a disturbed area by the state government.²⁰³ That same year, the Indian government enacted the Armed Forces (Jammu and Kashmir) (Special Powers) Act, 1990 (AFSPA).²⁰⁴ Armed forces personnel stationed in Jammu and Kashmir are immune to prosecution per section 6 of AFSPA and section 197 of CrPC.

HRW (2006:28) has noted that “army and paramilitary forces deployed in the state by the federal government are protected by the immunity provisions of the Criminal Procedure Code of 1973.” Impunity laws allow soldiers to question persons, raid houses, and make arrests without bringing charges, and even kill based on suspicion citing “national security,” while being immune from prosecution (Amnesty International, 2014; Chatterji, 2012).

The armed forces maintain that “any move to revoke AFSPA in Jammu and Kashmir would be detrimental to the security of the Valley and would provide a boost to the terrorists” (*Times of India*, 2009). The AFSPA has accorded armed forces and the paramilitary with considerable protection from prosecution for gross human rights violations and acts of sexual violence.²⁰⁵ This is one among several laws in force in Jammu and Kashmir that have come under severe criticism. This law remains in force despite the Criminal Amendment, 2013, Article 370. Conflict violence continues to interrupt civilian life regularly,²⁰⁶ as Jammu and Kashmir remains “one of the world’s most militarized regions” (Basu, 2010: n.a).

By identifying Jammu and Kashmir as a “disturbed” area, rather than an area of “armed conflict,” India may avoid incurring obligations under IHL and increased scrutiny under IHRL.

Impact

Through the protracted conflict, state and non-state armed actors have committed atrocities against the civilian populations, including mass killings, forced disappearances, mass displacement, and torture.²⁰⁷ Indian forces inflicted collective punishment on communities suspected of, or portrayed as, sympathizing with militants (Asia Watch and Physicians for Human Rights, 1993). Kashmir has witnessed the prolonged presence of the military in the area together with the recurrent perpetration of sexual violence, often as a technique of retribution and subjugation (Rajwade, 2015). During cordon-and-search operations, Indian forces routinely and indiscriminately detained men, searched and burned houses, and raped women (Asia Watch and Physicians for Human Rights, 1993). Women have been “raped and killed after being held hostage in exchange for male relative... There have also been reports of women and girls abducted and brought to soldiers’ camps, where they were held for sexual slavery and often killed” (Bastick, Grimm, and Kunz, 2007: 97; also Asia Watch and Physicians for Human Rights, 1993; HRW, 1999). Sexual violence has been used to “punish and humiliate” communities in militant-prevalent areas (Asia Watch and Physicians for Human Rights, 1993). Reportedly, drug, money, and human trafficking has taken place at certain times in the border areas.

The Indian government has used repressive policies, including unlawful detentions and torture, to silence political dissent and weaken opposition parties.²⁰⁸ For example, Indian forces reacted to militant bombings in 1990 by killing hundreds of unarmed protesters.

Threats and perpetration of sexual violence against men have been reported, starting in the 1990s (Asia Watch and Physicians for Human Rights, 1993). Furthermore, “sexual violence committed by Pakistani security forces against Kashmiri detainees in Azad Kashmir has also been reported” (Bastick, Grimm, and Kunz, 2007: 97; HRW, 2006).

Through time, it has been reported that tens of thousands have died even as an accurate accounting of the number of deaths is unavailable. The Indian government reports that forty-seven thousand have been killed, excluding the number of enforced disappearances (Reuters, 2008). Non-governmental sources have estimated that between reportedly twenty thousand and seventy thousand people have died since 1989, including by extrajudicial or fake encounter executions (HRW, 2006: 1; Scott-Clark, 2012). More than eight thousand have reportedly been involuntarily disappeared (Chatterji, Imroz et al, 2009: 10). Amid misrepresentation and denial, “encounter” killings across Kashmir have, on numerous occasions, “been authenticated as ‘fake encounter’ killings” (Chatterji, Imroz et al, 2009: 11).

The mandate of the Indian forces extends beyond conventional parameters. For example, certain units of the Indian forces have collaborated with Hindu

nationalist groups to implement development programs such as Operation Sadhbhavana, started in the late 1990s. In response to armed militancy by Muslim groups, village defense committees (VDCs), constituted in Jammu as civilian “self-defense” units with memberships comprising of predominantly Hindu and Sikh men and former servicemen, have been operationalized by Indian forces and supported by the state (Freedom House, 2002; Ul-Haq, 2013).

In Jammu and Kashmir, Muslims as well as Pandits have been impacted, along with a small group of Sikhs and Christians. The armed militancy by Muslim groups especially impacted the Hindu Pandit community. Estimates record that between 209 and 765 Kashmiri Pandits were reportedly killed in the conflict (Chatterji, Imroz et al., 2009: 35n92; Kaur Sarkaria, 2009). Militant groups in Kashmir have committed various forms of violence against civilians, including targeted violence against people of Hindu descent, government employees, and suspected government informers (HRW, 1993). Besides extortions, kidnapping, and executions, militants also committed gendered violence, including forced marriage and rape, often in acts of retaliation against families of suspected informers or rival militant groups (HRW, 1993; Gupta, 2006).

A 1992 incident against a Hindu family, involving rape and murder, resulted in protests by five thousand women against the violence; no militant group claimed responsibility (Baweja, 1992; HRW and Physicians for Human Rights, 1993). Civilian fear of reprisal by the militants reportedly led to the low reporting of the violence perpetrated by militants (HRW, 1993). Since the early years of the conflict, certain militant groups have sought to enforce dress codes on women in the guise of religious propriety, including burqas (enveloping outer garment worn by women in accordance Islamic culture and tradition), and issued diktats against reproductive choice, including abortion (HRW, 1993; Bhargava, Reifeld, and Chenoy, 2005). Conflict-induced conservatism also stigmatized the use of contraception while a 2002 study noted the impact of deteriorating healthcare on stillbirths (Chatterji, 2012). Militants have also used coercion and threats against victim-survivors, including spouses of the reportedly involuntarily disappeared, termed “half-widows,” prohibiting them from pursuing cases for compensation or

Laws and Measures (select examples) in Jammu and Kashmir (1989-2004)

- January 1990-October 1996: Governor’s Rule (direct rule by federal government) imposed.
- The Armed Forces Special Powers Act came into effect in 1990 and remains in force in 2015.
- The Jammu and Kashmir Public Safety Act (PSA, 1978 amended 2012) is also in effect.
- The Jammu and Kashmir Disturbed Areas Act was in effect, but the Mufti Government declared in March 2015 that the act had lapsed in 1998.

other engagement or negotiations with the government (APDP, 2011).

Hundreds of thousands of people have been displaced and/or exiled, including minority Kashmiri Pandits of Hindu descent (HRW, 2006: 1; Rai, 2004). Alexander Evans (2005) notes that 95 percent of Pandit residents of the Kashmir Valley were displaced or left in 1990, approximately between 150,000 and 160,000. The Internal Displacement Monitoring Centre of the Norwegian Refugee Council report of 2010 states that two hundred and fifty thousand Pandits were displaced (Rao, 2012). A Central Intelligence Agency report (Kanungo, 2012) and HRW report (2006) suggests that figure of three hundred thousand Pandits were displaced. Some of the displaced received compensation starting in 1990, which included continued salaries for Pandit government servants who left the Kashmir Valley, while others received compensation years later, for example for the destruction of property (Kaur Sarkaria, 2009). In 2008, a compensation package for internally displaced Hindu Pandits included rations, cash relief of 1,000 Indian Rupees per month, per individual with a maximum of 4,000 Indian Rupees per month, per family. At least 2.9 billion Indian Rupees was put aside for fifty-two hundred and forty-two units of housing, available to displaced Pandits at a subsidized rate (Internal Displacement Monitoring Centre, 2008:150).

The participation of locals, including what has been termed a “collaborator class” in the subjugation of Kashmiris, and their actions and allegiances are laden with complexity (Kak, 2011; Roy, 2012; Waheed, 2011). The population lives with trauma, according to local psychiatrists, and with a very high rate of suicidal behaviors (International People’s Tribunal, 2010). In 2014, the Institute of Mental Health and Neurosciences, the only government-run hospital specializing in psychiatric care in the Kashmir Valley, treated approximately 120,000 to 130,000 patients, 70 percent of whom were women (Bashir, 2014).

Based on investigative research in fifty-five villages in three districts between November 2006 and November 2009, the International People’s Tribunal in Kashmir (IPTK) published its report entitled, *Buried Evidence: Unknown, Unmarked, and Mass Graves in Kashmir*, documenting the existence of 2,700 unknown and unmarked graves, including mass graves, that contained more than 2,943 bodies (Chatterji, Imroz et al., (2009: 11-15).²⁰⁹

Of those buried in the twenty-seven hundred unknown graves, records were available for only forty-nine bodies that were buried and for one body that had been drowned (Chatterji, Imroz et al., 2009: 11-15). These bodies were from, and had been killed and buried in, numerous districts. Of them, thirty-nine were of Muslim descent; four were of Hindu descent; seven were not determined. Of these fifty bodies, thirty bodies were exhumed, one was recovered from a lake, and all thirty-one were identified as male, and all thirty-one were of Muslim descent. Post-exhumation, thirty were identified as local civilians, one was identified as a

local militant, and none were identified as foreign insurgents. Of them, forty-nine were recorded as militants or foreign insurgents by Indian forces. The above was established through exhumation records, identity cards, witness testimonials, and Jammu and Kashmir High court petitions and orders (Chatterji, Imroz et al., (2009: 15, 69-83).

Table 9. Unknown and Unmarked Graves

District	Graves Documented by IPTK* between 2006 and 2009	Unnamed Graves (of Those Documented)	Graves with Two Bodies	Graves with More Than Two Bodies
Baramulla <i>33 villages investigated</i>	1,122 w. 1,321 bodies	1,013 90.3%	140	17 [total 76+ bodies]
Kupwara <i>14 villages investigated</i>	1,453 w. 1,487 bodies	1,278 87.9%	8	4 [total 30 bodies]
Bandipora <i>8 villages investigated</i>	125 w. 135 bodies	82 65.6%	6	2 [total 6 bodies]
Total <i>3 districts 55 villages</i>	Total 2,700 w. 2,943+ bodies	Total 2,373 87.9%	Total 154 w. 308 bodies	Total 23 w. 112+ bodies

* IPTK: International People’s Tribunal in Kashmir. Data source: *Buried Evidence: Unknown, Unmarked, and Mass Graves in Kashmir* (Chatterji, Imroz et al., 2009: 11–15).

Following research by the People’s Tribunal, it was found that of the forty-nine bodies that had been killed in fake encounters, forty-one were identified to be local civilians, one was identified as a local militant, and seven were unidentified. None were identified as foreign insurgents and all those identified were male. During the course of the investigation, certain IPTK conveners and team members were intimidated, physically threatened, and accused of seditious acts.²¹⁰ The SHRC of the Government of Jammu and Kashmir authenticated these findings in July 2011, leading to the first formal acknowledgment of the existence of unknown and unidentified graves (HRW, 2011; *Greater Kashmir*, 2011; Jaleel, 2011).

Allegations of serious human rights violations have been routinely denied and the requisite government sanction required for prosecution refused, while those who have been sanctioned have been pending trial for years. In response “to an RTI application,” Jaleel (2014: n.a.) writes that the “integrated Headquarters of

MoD [Ministry of Defense] (Army) in April 2012 revealed that 44 cases had been received during 1990 and 2011 for sanction for prosecution under AFSPA from J&K Government. The Centre denied sanction in thirty-five of the cases while nine were ‘under process in MoD/integrated headquarters of MoD (Army).’” Furthermore, “in one case, the Army conducted a court-martial and convicted and punished a soldier with dismissal and ten years’ imprisonment” (Jaleel, 2014).

The conflict in Kashmir has precipitated a social-scape where the killings of men (it is largely men who have died) “have rendered vulnerable women, children, and other gender identified groups” (Chatterji, Imroz et al., 2009: 11). Women have disproportionately assumed the task of care giving for disintegrated families and undertaken the work of seeking justice following disappearances and deaths. Many have reportedly been forced to witness the rape of family members who are women and girls (International People’s Tribunal, 2010).

Sexual Violence: Examples

Kupwara District: In Nunan Poshpora, in Kupwara District, in northern Kashmir, the Indian army reportedly carried out mass rape in 1991. After cordoning off the villages, the army reportedly forced men out of their homes for interrogation. They then allegedly proceeded to rape between twenty-three and one hundred women from the two villages who were between the ages of eight and seventy. The morning after the incident, the army required that the villagers sign “No Objection Certificates” and delay filing a complaint with the local police.

In 1991, the case was closed following an investigation by a non-judicial body. The investigators failed to file a final report before a judicial magistrate, a legal requirement. However, the judicial magistrate of Kupwara who directed the police to conduct further investigation reopened the case in 2013.²¹¹ The constitution of the SHRC, following the introduction of the Jammu and Kashmir PHRA, 1997, provided the aggrieved villagers a forum to seek relief for the atrocities committed by the armed forces. The Commission directed the state to pay a compensation package of two hundred thousand Indian Rupees to the victims, while the Supreme Court of India passed a stay order on the case in March 2015 (*The Hindu*, 2015). Meanwhile, an appeal against the Jammu and Kashmir High Court’s January 2015 stay on the investigation is pending before the Supreme Court of India (*Hindustan Times*, 2015).

District Shopian: There were widespread protests in the Kashmir Valley following the deaths of ██████████ and ██████████ in May 2009. Their bodies were found in a stream with reported signs of sexual or sexualized violence. Despite the absence of water in the lungs or signs of struggle, for example mud under the nails, the cause of death was reported as “death by drowning.” The government was compelled to appoint the Justice Jan Commission to investigate the matter amidst allegations of gang rape by CRPF officers. Justice Jan refused to claim responsibility

for the entire report, claiming that the army had annexed a substantial volume of pages to his original draft (International People's Tribunal, 2009).

The negligence in adhering to due process by state forces personnel, the course of action followed, the failure to register FIRs expediently and safeguard evidence according to acceptable standards, and the "obfuscation of evidence and medical findings, and their uncooperative, combative stance in general, and reported intimidation of witnesses, point to their involvement in misdirecting the course of justice" (Rajwade, 2015: n.a). Furthermore, "the Central Bureau of Investigation, which investigated the circumstances of these deaths, went a step further and filed criminal charges against a number of individuals who had allegedly sought to incriminate the Indian forces in the incident" (*The Hindu*, 2009; see also International People's Tribunal, 2009).

District Doda: On October 5, 1998, ██████████, a resident of Doda, was reportedly taken from her home by personnel of the Eighth Rashtriya Rifles, along with ██████████ and her eight-month-old ██████████. They were taken to the military base approximately fifteen kilometers away and then separated. ██████████ stated that she was beaten for reportedly "feeding the militants."

Electric shocks were administered on her feet. She was raped, stripped naked, and threatened with death. ██████████ stated that, "there were many soldiers and a captain. The captain raped me, keeping everyone else outside. He told me: 'You are Muslims, and you will all be treated like this.' He was a Hindu, but he told me that he was a Muslim, and that his name was ██████████. He forced me to confess that I had been feeding the militants" (HRW, 1999: n.a).

GUJARAT: SOCIAL UPHEAVAL, 2002

The upheaval in Gujarat in 2002 was instigated by majoritarian politics. Gujarat has a long history of religionized violence. Since 1947, Hindu and Muslim communities living in the western state of Gujarat have experienced political, economic, and religious tensions which periodically erupt into social upheaval and violence. In the 1960s,²¹² the tensions were exacerbated by a housing shortage in Gujarat generated by population growth, struggles over public resources, and job losses in the textile industry (Desai and D'Cosa, 1994). In September 1969, the first major post-1947 Gujarat violence resulted in 660 dead, 1,074 injured, and widespread destruction to property (Jaffrelot and Thomas, 2011: 53). Major riots in 1990 and 1992 coincided with incidents of religionized violence throughout India.²¹³ A significant section of those targeted were Muslims, the largest religious minority in India.

By the late 1990s-early 2000s, after decades of tensions and periodic violence, many members of Hindu and Muslim communities in Ahmedabad, Gujarat, lived segregated lives.²¹⁴ Many members of the Muslim community, which comprised 12

percent of the city's population in 2001, lived in ghettos located in the outskirts of the city.²¹⁵ Juhapura, Ahmedabad's largest Muslim ghetto of three hundred thousand inhabitants (prior to 2002), lacked basic services including access to clean water, sanitation, and education (Peer, 2014). Muslims were and continue to be underrepresented in government, including in the judiciary, and in business (PMHLC: 170-171).²¹⁶ In 2001, the Hindu nationalist Bharatiya Janata Party (BJP) came to power in Gujarat. The Hindu majoritarian movement advocates for the establishment of a Hindu state in India and contends that minority religious communities, including Muslims, are "foreigners" and a threat to the security of the Hindu majority.²¹⁷ Over a dozen official judicial commission reports since the early 1960s have indicted and held responsible Hindu majoritarian groups for generating an atmosphere of aggression that acted to trigger for the upheaval (Sabrang, n.d).

Impact

On February 27, 2002, a Muslim mob allegedly set fire to two train cars traveling in Godhra in eastern Gujarat and carrying Hindu pilgrims (Punwani, 2003). In total, fifty-nine Hindu passengers, including ten children and twenty-seven women, were killed.²¹⁸ Later investigations revealed that, in fact, the fire was not set from the outside of the train, suggesting that it was not the result of Muslim on Hindu violence (Punwani, 2003). The Nanavati-Mehta Commission, in its 2008 report, concluded that liquid accelerant was "thrown" into the S-6 coach from S-7 (2008: 157). However, the Commission supported the notion that there was a conspiracy to burn the train cars (2008: 174-175), though the Muslim man that the Commission indicted as the leader of this conspiracy was acquitted at trial in 2011 (Anand, 2013).²¹⁹

For three days following the train incident, from February 28 to March 02, a series of events took place in which seven hundred and sixty-two to two thousand persons were murdered (International Initiative for Justice, 2003: 2). The Gujarat Government's figures state the number of dead to be 1,180 (Misra, 2009). Most of those murdered were Muslims (Chaudhury Basu Roy, 2009).²²⁰ The Muslim community was primarily impacted together with some Parsis, Christians, Adivasis, Dalits, and Hindus.

Prior to 2002, a systematic build up of intra-community tensions has been subsequently evidenced through the collection of evidence in the Zakia Jafri v/s Narendra Modi case. This evidence shows that since December 2001, but more specifically since early February 2002, State Intelligence Bureau messages recorded hate speech and writings against the minorities and mobilization of activists and leaders of Hindu majoritarian organizations.²²¹

"How does it feel to be Indian Muslim?" asks Ratna Kapur (2006: 1), elaborating on the normalization of violence and ongoing process of justice following

Gujarat 2002. The archive of materials relating to Gujarat 2002 is extensive. The events of the social upheaval have been meticulously documented by civil society groups, scholars, and journalists, and in court statements. Various statements made on record report the participation of police personnel during the violence, indicate exchanges between them and the perpetrators, and allude to connivance between them. Furthermore, although some have claimed that the mass violence was a spontaneous reaction to the killings of Hindu pilgrims, reportedly an Indian court later determined that members of Hindu nationalist-supremacist organizations had orchestrated the violence.²²² This is evidenced by the pattern of targeting, for example, whereby Muslim homes were selected for targeting from within neighborhoods with mixed Hindu and Muslim homes. HRW (2002:15) states that in Naroda Patiya, “Muslim homes were completely burned while the Hindu homes stood unscathed.” Following the events, certain officials of the then ruling state government, including those at the highest levels, were charged with complicity and participation, and some were convicted (British Broadcasting Corporation, 2012) .

One of the incidents during those three days took place in the Pirwali Bhagol area in Ode in Anand District on March 1, 2002, and was later investigated by the SIT ordered/appointed by the Supreme Court of India. Here twenty Muslim homes were targeted by a mob of more than approximately fifteen hundred people, and twenty-three persons were torched and killed, including nine women and nine children. In May 2008, the SIT recovered the remains of victims from a well in Pirwali Bhagol. On April 11, 2012, forty-seven were accused; twenty-three were acquitted, one died during trial, and twenty-three were convicted by a Special Court in Anand District of criminal conspiracy (*Daily News and Analysis*, 2012), whereby eighteen were sentenced to life imprisonment and five were sentenced to seven years in prison (*Times of India*, 2012). There were 150 witnesses in the case, 35 of whom turned hostile (NDTV, 2012). The Special Investigation Team (SIT) premised its case on the testimony of twelve witnesses; the eighteen were fined 5,800 Indian rupees each, and the five were fined 3,800 Indian rupees each (British Broadcasting Corporation, 2012).

A distinct feature of the events was the systematic sexual violence perpetrated on

Measures	Gujarat (2002)
Curfew	March 1, 2002: 34 cities and towns were placed under curfew, and shoot on sight orders were extended to areas under curfew.
Prohibitory orders (ban on assembly)	March 11, 2002, a ban on the assembly of more than four persons was imposed in parts of Gujarat.
Deployment of army / paramilitary forces	March 1, 2002: Nine columns of the army (3,000 soldiers) were transported to Ahmedabad.

young girls and women. The total number of women who were subjected to attacks in Gujarat, according to the Gujarat State Intelligence Bureau Records, is 149. Cases registered, however, were 63. Additionally, 44 children were attacked. As, many of the gendered violence cases were against girls; this figure is significant (ACRes).²²³ Rape was used repeatedly to punish, humiliate, and subjugate women, and the Muslim community at large. In disproportionate instances of sexual violence against women in Gujarat 2002, the victimization evidences a pattern of stripping, parading naked, gang rape, hacking, and torching (Concerned Citizens Tribunal-Gujarat, 2002).

In a large number of cases, the evidence was destroyed, following the incidents. The police and the courts rejected more than half of the five thousand proposed cases brought before them (Kabir, 2010; Kannabiran, 2012). The partisan role of the Gujarat Police was another distinct feature of the Gujarat 2002 violence (Setalvad, 2002). Significant legal and advocacy work in seeking justice for the sexualized violence pertaining to Gujarat 2002 has been initiated, supported, and undertaken by civil society organizations and leaders. These include Citizens for Justice and Peace (CJP) and its secretary, Teesta Setalvad,²²⁴ Mihir Desai, Mukul Sinha, Indira Jaisingh, ANHAD and Shabnam Hashmi, Harsh Mander, and many others. Some have borne the brunt of repercussions, reportedly connected to their work in seeking accountability. Teesta Setalvad, herself of Hindu descent, has been especially targeted and termed an “anti-Hindu hatemonger” (Barstow, 2015).²²⁵ International institutions like the Ford Foundation, which has supported conflict resolution work,²²⁶ have also come under scrutiny and received sanctions under the current central administration.

The participation of Hinduized Adivasis in the attacks on Muslims was a unique aspect of the violence, even as, in various instances, Adivasis and Dalits provided assistance and protection to their/targeted Muslim neighbors. Siddharth Varadarajan notes, “Adivasis were the third group—they provided mass to the mob but their activities were mostly confined to looting and burning” (2002: 88). Furthermore, Varadarajan adds (2002: 148):

“On 28 February, a groups of Adivasi youth on their way home from a wedding party stoned some Muslim houses in Nani Sanjeli. There was some retaliatory firing in which eight Adivasis boys were injured, two requiring minor surgery. They were taken to a hospital in Limkheda and a complaint lodged... a local VHP Adivasi activist. He used this incident, however, to go around villages telling people that seventy to eighty boys had been injured in Muslim firing and that the bodies of eight girls had been found in Sanjeli Masjid... Owing to this and other VHP mobilization, a massive crown came to the village on 1 March at around 3:00 PM

and started burning the outlying houses. About 100 to 150 houses were burned that day, and their residents fled to the masjid. The mob stayed outside the village all night throwing stones, shouting, and shooting arrows. The next morning...VHP leaders went around the neighboring villages ostensibly to spread the peace message, but actually, it turns out in hindsight, to mobilize crowds...”

The violence was characterized by the perilous destruction of private property and loss or harm to economic opportunities and well-being (Baruah, 2012; Freedman, 2012; Sonwalkar, 2006). Tens of thousands of persons were displaced to shantytowns, segregated from the larger population, and a large number of survivors remain unable to return to their homes and livelihoods (Baruah, 2012; Freedman, 2012; Gangoli, 2012). Little effort has been made to determine psycho-social rehabilitation for women victim-survivors (*The Hindu*, 2012; Jaffrelot, 2003; Martin-Lucas, 2010). In 2010, CEDAW expressed “regret” that a three-member Women’s Cell had been constituted in relation to the Gujarat 2002 violence with “no expertise whatsoever in trauma counseling and management” (UN Committee on the Elimination of Discrimination against Women, 2010: 3).

Table 10. Number of Complaints

Filed, Closed, and Reopened	Figure
As of March 2005: Total number of complaints registered pertaining to the Gujarat violence of 2002	4,252
As of March 2005: Number of cases closed without bringing charges (In August 2004, the Indian Supreme Court instructed the High Court of Gujarat to constitute a committee of senior police officials to review these cases to decide whether any of them ought to be reopened)	2,032
February 8, 2006: Number of cases that Gujarat Police re-opened	1,594

(*Hindustan Times*, 2006; United States Department of State, 2006.)

Table 11. Government of India's Update

Submitted to CEDAW Regarding Supreme Court-Ordered Reopened Cases:	1,958
Cases determined not fit for detailed review	59.
Cases in which charge sheets were filed (of the 1,958 cases deemed fit for detailed review)	104 cases, in connection with which 1,185 persons were arrested.
What happened to the remaining cases?	As of 2010, of the remaining 1,854 cases, 3 were pending investigation, and 1,851 had been closed and classified as "A" summary cases (closed due to insufficient evidence). Such cases may be reopened if further evidence is acquired.
New cases filed following facts established during the review:	15 cases

Sexual Violence: Examples

██████████ alias ██████████ was gang raped. On regaining consciousness, she found that her ██████████ and her ██████████ had been murdered along with several relatives. ██████████ filed complaints against ██████████ persons (Anand, 2008). The police refused to register her complaint (Anand, 2008). Following efforts to intimidate her into withdrawing the complaint, the Gujarat Government eventually closed the case on technical grounds (Bhat, 2004). In 2004, the Central Bureau of Investigation (CBI) was directed by the Supreme Court of India to oversee the case and the matter was transferred out of Gujarat (Anand, 2008). The CBI uncovered that local police personnel had been negligent in investigating the case. Furthermore, police personnel had buried numerous bodies in a mass grave and used sixty kilograms of salt in an attempt to escalate the process of decomposition (Anand, 2008). The NHRC pursued this case, and thirteen of the twenty accused were convicted (Langa, 2012). The transfer of the ██████████ case (2004) and the Best Bakery Case (2004) out of Gujarat afforded recognition by the Supreme Court of India that the situation in Gujarat remained vitiated and not conducive to legal justice.²²⁷

Naroda Patiya: On February 28, about approximately five thousand to ten thousand armed individuals carrying spears, tridents, petrol bombs, acid bombs, and other weapons were used to target the Muslim community of Naroda Patiya. Grievous crimes of sexual violence were committed during the attack. Hindu rioters raped,

gang raped, inserted foreign objects into, and stripped victims (Citizens' Initiative, 2002; HRW, 2002: 15-17). According to witnesses, most of the female victims—girls and women—were raped before they were murdered and burned. A stay by the Supreme Court of India from 2003 to 2008 delayed the beginning of trial.²²⁸ In 2009, the Supreme Court appointed a Special Court, and a special prosecutor was appointed,²²⁹ and charges were filed against sixty-two accused. A minister in the state cabinet, Mayaben Surendrabhai Kodnani, and a VHP leader, Jaideep Patel, were arrested for assisting a mob whose actions led to the desecration of property, and whose members caused several injuries, sexual assault of women, and the death of 96 persons (*Indian Express*, 2009; Naroda Patiya Judgment, 2012: 1478). In 2012, the Special Court judge convicted thirty-two defendants of murder, attempted murder, conspiracy, spreading enmity and communal hatred, and unlawful assembly, and acquitted twenty-nine defendants.²³⁰ Although nine of the sixty-two defendants were charged with crimes of sexual violence, including rape, only one of the accused was convicted of rape under sections 354 and 376 of the Indian Penal Code (Naroda Patiya Judgment, 2012: 1708).²³¹

Gulberg Society: On February 28, about ten thousand to twenty-five thousand persons attacked the compound of former Muslim member of Parliament from the Congress Party, Ehsan Jafri, at Gulberg (also spelled as Gulbarg) Housing Society in Chamanpura, Ahmedabad, where about thirty families had sought safety (HRW, 2002: 18-20).²³² Official figures stated that sixty-nine were killed, including Jafri, who was torched and decapitated (Citizens for Justice and Peace, 2002: 27; *Indian Express*, 2009a). Reportedly, Jafri called a number of well-placed persons, including the incumbent Chief Minister, who responded, "You have not died yet?" (██████████, of Gujarat, ACRes). According to witnesses, at least 10-12 women were raped, dismembered, and then burned (Citizens for Justice and Peace, 2002: 27). The Supreme Court of India stayed the Gulberg case in 2003, and in 2008 designated it as one of fourteen cases to be investigated by a SIT constituted by the Gujarat Government (*Rediff*, 2003; Venkatesan, 2008). Charges were filed on August 11, 2009, including murder, conspiracy, and gang rape (Dasgupta, 2009; *Rediff*, 2003; Venkatesan, 2008). As of the time of writing in July 2015, the case had sixty-six accused and had had hearings before four judges;²³³ the case had not yet concluded. (Khan, 2015).

On July 8, 2006, Zakia Jafri, the widow of Ehsan Jafri, filed a police complaint against then chief minister Narendra Modi, and sixty-two other government officials and police officers. While Zakia Jafri is from Gulberg Society, this complaint (not pertaining to the "Gulberg case") was separate from the preceding case (*Hindustan Times*, 2006, 2013). In March 2009, the Supreme Court of India directed the SIT to look into Jafri's allegations (*Hindustan Times*, 2013). In February 2012, the SIT submitted its report, seeking that the case be closed without pursuing charges against

any of the accused (*Hindustan Times*, 2013). In April 2013, Jafri filed a *protest petition* against the proposed closure of the case, which was rejected by the metropolitan court in December 2013 (*Hindustan Times*, 2013). In March 2014, Jafri filed an appeal before the Gujarat High Court (Bhan, 2014; Setalvad, 2012, 2013). The Zakia Jafri case is ongoing before the Gujarat High Court (Zee News, 2015).

“Outside [at Gulberg Society on February 28, 2002] they [the mob] were yelling his name, ‘Jafri,’ ‘Jafri’... Ehsan Jafri himself said, ‘If by me giving myself up these lives are saved, I will come out [of his home, and face the mob].’ He died so we could survive.”
 [REDACTED], *Of Gujarat, ACRes*

ODISHA: SOCIAL UPHEAVAL, 2008

Historically, in Odisha, Christians and Muslims have been affected by social upheavals, together with Adivasis and Dalits. One of the most economically impoverished states in India, Odisha has been a site of religious and class tensions for decades.²³⁴ Since the 1860s, marginalized groups in the region, including Dalits and Adivasis,²³⁵ have converted to Christianity to have access to education, healthcare, and employment.²³⁶ Post-1947, Hindu nationalist groups viewed conversions to Christianity as a threat to the security and the future of a Hindu India.²³⁷ Ethnocentric representations of Christians posit them as “foreign” [inherently affiliated with the colonial] and “evangelist.” When the rate of conversions rose in the 1960s, Hindu nationalists forced Dalit Christians and Adivasi Christians to convert to Hinduism. Hindutva organizations have framed these conversions as “reconversions” as Adivasis and Dalits in Odisha were viewed as originally Hindu, and their forcible conversion to Hinduism is thus “ghar vapasi” (“return home”) to their original faith (Chatterji, 2009: 351138; 243-44, 296-97). Although the Government of Odisha outlawed the practice of forced conversion in 1967, the Odisha Freedom of Religion Act has been interpreted and used against Adivasi and Dalit conversions to Christianity (see earlier discussion on Freedom of Religion Acts in section II).²³⁸

In February 1938, the Muslim League launched its center in Cuttack, and in January 1940, the Hindu Mahasabha instituted its

Measures	Odisha (2007-2008)
Curfew	December 25, 2007: Curfew imposed in affected areas. August 25, 2008: Curfew imposed in parts of Kandhamal District.
Prohibitory orders (ban on assembly)	December 26, 2007: Precautionary prohibitory order was imposed.
Deployment of army /paramilitary forces	December 26, 2007: CRPF and Rapid Action Force deployed. August 25, 2008: 20 platoons of state police and four companies of CRPF deployed.

local office in Puri (Chatterji, 2009). In March 1964, the RSS and various Hindu groups and some Adivasis targeted Muslims resulting in the death of seventy-two persons (Kanungo, 2003; Rajeshwari, 2004). The next riot took place in Cuttack City, the mercantile center of Odisha, in 1968. Muslim homes and businesses were looted and set afire (Kanungo, 2003). In 1969, majoritarian groups extended their reach to Adivasi localities through the VHP and appointed Lakshmanananda Saraswati, and Raghunath Sethi to oversee the Hinduization and Sanskritization of Adivasi and Dalit-prevalent Phulbani/(later) Kandhamal District (Chatterji, 2009).

The recent wave of violence by Hindu supremacists against Christians in Odisha began in 1986 when nationalists reportedly set fire to sixteen churches in Kandhamal District (Chatterji, 2009). In 1991, mass targeting of Muslims took place in Bhadrak (Chatterji, 2009). Since the mid-1990s, Hindu nationalist groups have mobilized and revamped cultural, political, and militia organizations in the state.²³⁹ The Vanavasi Kalyan Ashrams were instituted in 1987,²⁴⁰ and since the mid-1990s, majoritarian organizations have worked extensively among Kandha (also Kondh) and Kui Adivasi groups, seeking to Hinduize them. This has been generative of economic and political hostilities between the Adivasi groups and the Pana Dalit community, especially Christians among them, and has adversely impacted the latter's campaign for scheduled tribe status. Vrinda Grover (2010: 14; see also Pattnaik, 2009: 86) writes:

“Dalits in Kandhamal, otherwise known as Panas, constitute 17 percent of the district population. More than 90 percent of them are Christians. The Dalits are poorer than the Adivasis and have no access to resources. However, the Adivasis–Kandhas–are also a disenfranchised community. Seventy-eight percent of the Adivasis in Kandhamal are living below poverty line. The Panas are designated as Scheduled Castes, comprise about 17 percent of the district population and hold 9 percent of the cultivable land. By contrast, the tribal Kandhas, who are designated as Scheduled Tribes own about 77 percent of the cultivable land.”

In September 1999, Catholic priest Arul Das was murdered in Jamabani Village in Mayurbhanj, followed by the destruction of churches in Kandhamal. In August 2004, Our Lady of Charity Catholic Church was vandalized in Raikia and eight Christian homes were burned. The Raikia incident has led to the economic and social ghettoization of the Christian community since 2004. Between 2004 and 2008, various economic boycotts were enacted against the Christian community, and campaigns were mounted for strict implementation of the Odisha Prevention of Cow Slaughter Act. In 2004, Hindu-identified upper-caste and Dalit men and women neighbors forcibly tonsured seven Dalit Christian women and a

male pastor for converting to Christianity (Chatterji, 2009: 229–76).

In October 2005, converting two hundred Bonda Adivasi Christians to Hinduism in Malkangiri, Saraswati, reportedly stated, “How will we... make India a completely Hindu country? This is our aim and this is what we want to do” (New Kerala, 2005). By 2006, Hindu nationalist organizations were present in twenty-five of thirty districts in Odisha (Chatterji, 2009: 287). In 2006, the People’s Tribunal conducted in 2005 and 2006 published its report entitled, *Communalism in Orissa*,²⁴¹ and forewarned of the violence that came to pass in 2008 (Chatterji and Desai, 2006). In October 2002, a Shiv Sena unit in Balasore District reportedly declared that it had formed the first Hindu “suicide squad” to train youth for high-risk assignments. As of 2005–9, the RSS reportedly operated six thousand centers with a 175,000 cadre, and the VHP reportedly had more than 150,000 primary workers. The Bajrang Dal reportedly had sixty thousand workers in about two hundred centers (Chatterji, 2009: 164–66).

An episode of violence against Christians took place in Kandhamal District in 2007, beginning on December 25 (Christmas) and continuing for several days. Mobs destroyed dozens of Christian churches and hundreds of Christian homes.²⁴² Although the police were warned about the attacks, measures were not taken to prevent the violence,²⁴³ and majoritarian organizers were able to block roadways and sever power and telephone lines in preparation for the violence.²⁴⁴ Following the violence of 2007, majoritarian discourse named Christians as “conversion terrorists,” and numbers and rates of conversion to Christianity were inflated. Amid this, in January 2008, majoritarian activists reportedly claimed that they had succeeded in converting more than ten thousand Christians to Hinduism in Odisha in 2007 (Chatterji, 2009: 268–269).

Another episode of Hindu nationalist violence took place between August and October 2008. On August 23, 2008, Saraswati and four of his disciples were assassinated in the district of Kandhamal.²⁴⁵ Some state officials claimed the attackers to be Maoist insurgents.²⁴⁶ Although a Maoist group even claimed responsibility for Saraswati’s killing, Maoist groups had largely not been operational in the riot-impacted areas. Saraswati had been involved in creating a confrontational situation between Hindutva workers, Hinduized Adivasis, and Maoists in the area. Various Hindu nationalist groups accused the local Christian community of carrying out the attack.²⁴⁷

Prior to the violence, in May 2008, pamphlets calling for the targeting and destruction of Christians in Kandhamal were widely circulated across the district by Hindu nationalists. Later, in mid-September, 2008, RSS leader, K. S. Sudarshan, alleged the involvement of “foreign hands” in the mobilization of the church *and* Maoists against Hindus. Certain members of the Christian community who were associated with Maoists began to be labeled “Christian Maoists.”

Impact

The episodes of 2007 and 2008 primarily impacted the Dalit and Adivasi Christian community. In 2008, at its most intense, the violence targeting the Christian community took place in Kandhamal District during August 24-26 and continued through October 28 (with some violence in other districts). During the violence, the predominantly middle-class and middle-caste Hindus crowds participated in the violence, including rape, mutilation, and murder, and engaged in looting and the destruction and torching of property with rods, tridents, swords, kerosene, crude bombs, and guns (Chatterji, 2009: 277-263; Grover, 2010).

Dalit and Adivasi Christians were displaced from approximately 450 villages (Chatterji, 2009). Approximately 4,901 homes were torched, and numerous houses were looted (Chatterji, 2009). Local majoritarian militias attacked and looted religious and educational institutions, and businesses, and approximately 264 churches and prayer halls and 13 schools and colleges were desecrated (Chatterji, 2009; Grover, 2010). More than eighteen thousand persons were injured and fifty-three thousand displaced, as thousands sought refuge in nearby forests and makeshift relief camps. Over weeks, approximately twenty-seven thousand to forty thousand obtained shelter in fifteen to twenty-five relief camps (Chatterji, 2009; Grover, 2010). The targeted were largely poor. There were reports of involuntary disappearances and torture, including through rape. Approximately 75-123 persons were reportedly killed, while the Odisha Government confirmed 54 deaths (Chatterji, 2009; Grover, 2010). While three rapes were reported between 24 August-31 October, the extent of sexualized violence remains uninvestigated and unaccounted for by the state (Chatterji, 2009; Grover, 2010). The targeting was characterized by the heightened destruction of private property and the inability of survivors to return to their homes, and by the loss or lack of economic opportunities (Bauman, 2014). Some of the first targets were reportedly priests and nuns, to weaken the spirit of the community. Murder was reportedly, at times, accompanied by forced conversion ceremonies administered by Kandhamal's majoritarian activists (Chatterji, 2009).

In 2013, many of those displaced were yet to be rehabilitated (USCIRF, 2013). The number of persons who sought shelter in the relief camps operated by the state was twenty-seven thousand at its highest. At end of December 2008, the Government of Odisha stated that 698 FIRs had been registered, naming 11,348 accused and eight times that number of "unknown" participants in the attacks, and stated that 700 persons had been arrested (Vikas Adhyayan Kendra, 2010: 56). As of 2012, 3,300 complaints were lodged with the police by victim-survivors, and as few as 831 were registered as FIRs. Forced conversions of non-Hindus to Hinduism (posed as "reconversion") continued in varied forms (USCIRF, 2009, 2013, 2014). Economic and social boycotts have continued in various places. The

justice system has been inadequate in protecting survivors and witnesses (USCIRF, 2010). A composite recollection rendered by Christian and other women survivors of the 2008 riots in Kandhamal attests to the scope of the violence:

“In the first days of the riots about 60 people surrounded the body. About 80 people surrounded the body. Five hundred people surrounded the body. His body was aflame. They asked I become Hindu. The body took a long time to die. Some Hindus aided our escape. They [others] killed Christians, buried them, then placed stones over the bodies to stop ‘resurrection.’ They beat him with a crowbar. Another hacked him. People were afraid to give us shelter but still did. They hit me. My husband was axed. I saw him buried. After this what life is possible? We cannot live at home. They killed his mother. We have lost our identity, our ration cards, identification papers, our bodies, ourselves. Who are we now?” (Chatterji, 2009: 357-358).

By September 2008, the Odisha government had formed 354 peace committees to restore harmony (Panda, 2008). Women victim-survivors were excluded from peace committee meetings, whereas perpetrators were included (National People’s Tribunal on Kandhamal, 2011: 63; Uma, 2014).

Sexual Violence: Examples

██████████: Four persons were implicated in the gang rape case that took place at ██████████ under ██████████ Police Station on September 19, 2008. In ██████████, ██████████ and other villagers were reportedly and forcibly removed from their homes during an operation by state forces to detain suspected Naxalites. It is of note that “the majority of the areas that have [been] declared Naxal-affected are rich in minerals (Rajshkhar, 2015). ██████████ was reportedly taken to the forest, shown salacious images, and gang raped. Male police personnel reportedly arrested her (without female officers being present, per the law) for possessing arms, and refused to register her complaint or provide her with legal representation, and no medical examinations were undertaken.²⁴⁸

██████████: A ██████████ year-old woman was reportedly gang raped by four men on September 20. She had

By September 2008, the Orissa government had formed 354 peace committees to restore harmony (Panda, 2008). Women victim-survivors were excluded from peace committee meetings, whereas perpetrators were included (National People’s Tribunal on Kandhamal, 2011: 63; Uma, 2014).

traveled from a relief shelter to her [REDACTED] home, a distance away. Her [REDACTED] were reportedly forced to accept Hinduism, in order to reside in their village (Chaterji, 2009).

[REDACTED] District: On August 25, [REDACTED], a [REDACTED], was reportedly raped, then stripped and paraded naked in the streets in [REDACTED]'s statement documents inaction and negligence on the part of nearly a dozen armed police personnel who were present at the site where the event took place. Furthermore, the victim's statement noted that the police personnel present at the scene reportedly conversed amiably with the assaulters.²⁴⁹ One of the accused was acquitted by the judgment of the Odisha High Court. A Special Leave Petition disputing the judgment was filed before the Supreme Court of India. In February 2012, in response to the petitioner's plea, the Supreme Court issued a stay order to postpone the proceedings. In 2014, the trial court found three of the accused to be guilty and six others were set free.

Section III

Part One: Four Seminal Cases

SELECTION AND OBJECTIVES

Sexual violence precedes and survives conflict, and creates a continuum of violence.

— Jelke Boesten and Melissa Fisher (2012:1)

This section examines four significant cases dealing with sexual violence against women in the Indian states of Jammu and Kashmir, Punjab, Gujarat, and Odisha. The four cases exemplify general patterns of violence and difficulties faced by women during the accountability process and for which a legal record is available. The cases were selected with the aim of identifying examples from different regions and different contexts that illustrate ways in which the state has responded to situations of gender and sexual violence but that are rarely discussed in the same analysis. These cases, though representative of the underlying violence, are also exceptional by virtue of having been reported, recorded, publicized, and litigated.

The case examples focus on the efforts of women victims of sexual violence and their allies to seek justice and the response of the Indian justice system to these crimes. Though the incidents of targeted, sexualized violence against women and girls in the context of conflict and social upheaval take different forms, involve different players, and display different types of violence, common to nearly all of these incidents is the impunity accorded to the perpetrators and the systemic failures of the Indian justice system to prevent, investigate, and prosecute sexual violence or provide effective redress to women victims.

The monograph notes that the analysis of these four cases, while indicative of the situation at large in each area, offers a partial and limited account of the issues emblematic of the different scenarios. The four examples represent a diverse range of incidents and legal outcomes, all of which gained significant attention within each region, if not nationally and internationally.

Through these emblematic cases, the text aims to identify and explore the multiple forms of discrimination and subordination that impact the experience of women victim-survivors of sexual violence. The objective is to examine the measures adopted by the Indian State to prevent, investigate, prosecute, punish, and

Only on the more rare of occasions does a woman victim of sexual violence succeed in bringing her case through the Indian justice system. More typically, her efforts to secure justice are disregarded or even thwarted by the state. In the aftermath of mass violence and during and after conflict, the criminal justice system rarely is an ally in the quest for redress and frequently and discriminatorily denies women's access to justice.

provide redress for acts of sexual violence and to identify common patterns of weakness in the state's response.

Furthermore, based on the explication and analysis undertaken in this section, the monograph uses international standards to put forward recommendations for legal and institutional reforms in section III, Part Three that promote the efficacious protection of the rights of women and girls in conflict and upheaval.

The legal analyses of the case studies are based on relevant international human rights treaties India has ratified, namely, the International Covenant on Civil and Political Rights (ICCPR), Convention on the Elimination of Discrimination Against Women (CEDAW), and the Convention on the Rights of the Child (CRC). Additional legal and social science sources of interpretation of international law and standards were consulted, along with jurisprudence from international and regional human rights bodies.

The objective of this section is not to determine whether India's actions or omissions constitute violations of its international obligations, although it does make note of prima facie violations of IHRL recognized in official documents. Instead, the goal of this section is to examine the efforts of women victims of sexual violence and their allies in accessing justice in particular contexts and to identify emblematic ways the Indian legal system succeeded or failed to provide effective redress. This section draws on international legal standards to identify structural weaknesses that foster impunity. To the extent those standards comprise efficacious approaches to rights protection, this section also employs international human rights, humanitarian, and criminal standards to suggest legal and institutional reforms.

The following subsection begins with a discussion of the two conflicts, chronologically, Punjab in the 1980s and Jammu and Kashmir since the 1990s, followed by social upheaval in Gujarat in 2002 and Odisha in 2008. The incidents in the different states took place at different times. While the violence in Kunan Poshpura, Kashmir, occurred in 1991, the rape of ██████████ in Odisha took place nearly twenty years later, in 2008. Kashmir and Punjab lie in the north of India, whereas Odisha and Gujarat are in the east and west respectively. The incidents in Jammu and Kashmir, and Gujarat each involved mass rape, whereas in Odisha and Punjab, the incidents involved individual rapes.

The actions and negligence of the police, state administration, and legal system highlight the absence of a coherent national mechanism that is capacitated to address gendered and sexualized violence during and after conflict and following social upheaval.

In addition, all of the case examples highlight acts of sexual violence perpetrated by men, with the participation or complicity of state actors. Furthermore,

all of the case examples highlight acts of sexual violence against women who experienced marginalization not only because of their gender but also owing to their religious affiliation and minority status. The religionization of sexualized violence in these case examples is apparent in the victim-survivors targeted. Military officers raped Muslim women during a raid of two villages in Kashmir, a region beset with violence in 1947 and again since 1990. In Punjab, the police raped a Sikh woman and tortured several Sikh villagers supporting her in the context of the conflict of the late 1980s and early 1990s. Hindu attackers committed mass rape and murder against Muslims in Gujarat in 2002, following the burning of a train carrying Hindu pilgrims. A Hindu mob abducted and raped ██████████ in Odisha in 2008, after the assassination of a Hindu religious and nationalist leader.

In all of these instances, the Indian State fell short of its obligations to prevent, investigate, prosecute and punish, and ensure redress. Responses ranged from refusing to assist victim-survivors (in Gujarat and Odisha) to justifying violence that occurred as a necessary to protect 'law and order' against the threat of terrorism (Jammu and Kashmir and Punjab). Some of the criminal cases were resolved within six years (Odisha), while others remained unresolved more than twenty years after the incident (Jammu and Kashmir). The relative successes of the legal procedures implemented—measured by convictions of perpetrators, compensation received, and assurances of protection—likewise vary significantly. In each case, the actions of the police and legal system raise concerns about the protection of the rights of minority women. Furthermore, the actions and negligence of the police, state administration, and the legal system highlight the absence of a coherent national mechanism that is capacitated to address gendered and sexualized violence during and after conflict and following social upheaval.

PUNJAB: DOABA

Various parts of Doaba were witness to heightened conflict.²⁵⁰ The arrest, interrogation, custodial assault, and collective rape of ██████████ by ██████████ policemen in 1989 illustrate the structure of collective violence against minority, Sikh, women in Punjab in the midst of heightened conflict. This case is one example of Indian forces systematically using sexual violence against women to punish and inflict terror on entire communities (Jaijee, 2002: 200-203). Among a handful of legal cases of conflict-related sexualized violence to be pursued in Punjab, ██████████'s endeavors for accountability illuminate the profound social and personal costs faced by women survivors of conflict-related sexualized violence who elect to pursue justice.

On the morning of February 9, 1989, the murder of a popular principal of a local school in Village ██████████ was blamed on Sikh separatists.²⁵¹ Court documents note that thousands gathered at the scene of the murder and some in the crowd alleged that "terrorists" frequented ██████████'s house.²⁵² Later that morning, police officers illegally and arbitrarily detained a Sikh woman who worked at a local ██████████, ██████████ for allegedly harboring those responsible for the principal's murder.

Later that morning, a group of police led by Police Station House Officer Radha Krishan (SHO Krishan) entered ██████████'s home to ask her about the location of her relative, ██████████.²⁵³ According to court records, when ██████████ was unable to provide information about her relative's whereabouts, the officers illegally detained ██████████, a woman named ██████████, and a boy.²⁵⁴ The detainees were taken to the murder site where the officers released the boy. The two women were taken to the police station in ██████████.²⁵⁵ ██████████ was released later that evening.²⁵⁶ At the station, ██████████ was asked to sign a blank document and when she refused, she was beaten and kicked by SHO Krishan and Constable Charanjit (SHC Charanjit).²⁵⁷ ██████████ remained in police custody that day and night. Police officers did not register her arrest or detention, as was required by law.²⁵⁸

Around midnight on February 10, 1989, SHO Krishan and SHC Charanjit entered the cell where ██████████ was detained. After she rebuffed their sexual requests, the two officers raped her, one after the other.²⁵⁹ About one hour after the two officers left, two other officers, Kashmiri Lal (K. Lal) and Hussan Lal (H. Lal), entered ██████████'s cell and raped her.²⁶⁰ ██████████ stated that SHO Krishan threatened to implicate her in a heinous crime if she did not remain quiet about the rapes.²⁶¹ ██████████ was kept in custody until 4:30 PM on February 10.²⁶² Upon release, ██████████ told her spouse and ██████████, a neighbor, who had been waiting outside of the police station, that she had been raped.²⁶³

██████████ sought medical care at local hospitals but was refused assistance by attending physicians.²⁶⁴

INVESTIGATION

On February 13, 1989, ██████████ sent a letter to the governor of Punjab describing the crimes committed by the police three days earlier.²⁶⁵ Police officers investigated the incident, but took no action against the accused.²⁶⁶ On July 17, 1989, the inspector general of police of Punjab ordered a deputy superintendent of police to record victim-survivor and witness statements, but the police did not arrest or discipline the accused officers.²⁶⁷ Five months after the rape, on July 25, 1989, ██████████ filed an initial complaint before Chief Judicial Magistrate ██████████.²⁶⁸

Almost one year after the attack, the four officers appeared in court for the first time.²⁶⁹ The police officers were accused of minor offenses, including voluntarily causing hurt and intentional insult with intent to provoke breach of the peace.²⁷⁰ They pled not guilty and posted bail.²⁷¹ H. Lal died shortly after he was released.²⁷² ██████████ then petitioned the High Court of Punjab and Haryana to charge the three officers with the more serious offenses of kidnapping, wrongful confinement, rape, and criminal intimidation.²⁷³ A year later, on July 29, 1991 the High Court transferred ██████████'s case from the Chief Judicial Magistrate ██████████ to the Chief Judicial Magistrate in Punjab's capital city, Chandigarh.²⁷⁴ There, the magistrate charged the three officers with wrongful confinement, kidnapping, and criminal intimidation, but not rape.²⁷⁵ After a three-year delay, ██████████'s case was again transferred, this time to Additional Sessions Judge Madaan in Chandigarh.²⁷⁶ On August 5, 1994, the accused officers pled not guilty to the charges.²⁷⁷ On July 8, 1995, the court added the charge of rape committed during communal (and)/or sectarian violence.²⁷⁸ The officers, however, were released on bail. They failed to appear in court despite repeated summons, and were not formally charged with rape until a year later.²⁷⁹ The case was transferred for a fourth time, and assigned to Additional Sessions Judge Batra in Chandigarh on March 14, 1997.²⁸⁰

PROSECUTION

Eight years after the incident, the trial against SHO Krishan, SHC Charanjit, and K. Lal began before Judge Batra. To substantiate the charges against the officers, the prosecution called three witnesses: ██████████, ██████████'s husband; ██████████, a neighbor; and ██████████.²⁸¹ The three officers who testified in their defense alleged that ██████████ was arrested for sheltering militants who were connected to the murder of the principal, and denied that she was held overnight.²⁸² Doctors from the two hospitals who had refused to provide

██████████ medical attention testified on behalf of the defense that ██████████ had never sought medical care.²⁸³

The judge found ██████████'s testimony credible, noting that her account had remained consistent, from her initial letter to the governor in 1989, to her testimony at trial in 1997.²⁸⁴ The judge also praised ██████████'s bravery and courage, describing ██████████ as a "hapless" woman who belonged to an "illiterate village community," but wrote to the governor of Punjab requesting an investigation against the officers who were "persons of great authority."²⁸⁵ When the governor and police failed to act, the judge noted that ██████████ resorted to the "cumbersome, time and money consuming process of filing the complaint in the court of law."²⁸⁶ The judge also recognized that police officers had "harassed and tortured" potential witnesses "so as to prevent them" from testifying in ██████████'s support.²⁸⁷ On August 14, 1997, the judge found the three defendants guilty of rape, kidnapping, and wrongful confinement and sentenced each to ten years in prison.²⁸⁸

SHO Krishan, SHC Charanjit, and K. Lal immediately appealed the convictions.²⁸⁹ The appeal alleged that ██████████ was a terrorist, and that she had fabricated the rape story to "pre-empt [the] effective investigation of her involvement in the murder of [the principal]."²⁹⁰ The appeal was admitted on January 21, 1998, and on September 9, 1998, ██████████ petitioned the High Court to be named as respondent in the appeal.²⁹¹ In that petition, ██████████ alleged that police officers had burned her home and tortured her relatives to compel her to withdraw her complaint.²⁹² She also stated that she had attended more than eighty court hearings during the trial process.²⁹³

On October 3, 2000, after four years in custody, the High Court of Punjab and Haryana granted SHO Krishan's application for bail.²⁹⁴ According to the victim's briefs, SHO Krishan had continued to receive his salary while in custody, had not been disciplined, and had returned to the police force after he was released on bail.²⁹⁵ Between September 2003 and November 2005, SHO Krishan moved to adjourn the appeals hearing or failed to appear on several occasions.²⁹⁶ The defendants were detained in November 2005 after the High Court upheld their conviction. The police department later dismissed the officers from service.

On July 4, 2013, the Supreme Court of India upheld the convictions. Crediting the consistency of ██████████'s account, and finding the officers'

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version unreliable, the Supreme Court concluded that she had been detained and raped in February 1989.²⁹⁷ The defendants served a sentence of almost six years and were released although available court records do not indicate when the defendants served their sentences. Though the three officers were convicted of rape, the process was lengthy, onerous, and dangerous for the victim-survivor and her family. The police department had failed to properly investigate the incident or discipline the officers. Additionally, there is no evidence available that the acts of intimidation or torture suffered by the victim's family were investigated and those responsible punished.

JAMMU AND KASHMIR: KUNAN POSHPORA

In Konan Poshpora, state forces personnel deployed collective sexual violence against women. The long and complex search for accountability evidences how accumulated incapacities to address entangled histories have fostered social isolation and engendered the militarization of state in Jammu and Kashmir.

On February 23, 1991, between twenty-three and one hundred women, including minors and the elderly, a pregnant woman, and some women with disabilities, were allegedly raped in Kunan Poshpora.²⁹⁸ Located in the northwestern corner of the Kashmir Valley, in Kupwara District, the twin villages of Kunan and Poshpora²⁹⁹ are approximately ninety kilometers from Jammu and Kashmir's summer capital, Srinagar.³⁰⁰ On February 23, 1991, at approximately 11:00 PM, villagers reported that approximately 125 soldiers of the Fourth Rajputana Rifles and the Sixty-Eighth Mountain Brigade cordoned off the villages and forcibly removed the male villagers from their homes and detained them in two houses.³⁰¹ While army personnel interrogated and tortured the men,³⁰² small groups of soldiers allegedly raided most of the village homes and gang raped women. Before the soldiers left at around 9:00 AM the morning of February 24, they secured "No Objection Certificates" from the villagers (Ganai, 2011).³⁰³

In court documents, women from Kunan Poshpora narrated the incidents of sexualized violence in graphic detail. They described groups of up to eight soldiers raping girls and women ranging in ages from eight years old to seventy years old.³⁰⁴ The soldiers also allegedly gang raped a woman who gave birth four days after the attack.³⁰⁵ Most of the women reported that the soldiers smelled of alcohol or were drinking alcohol while they gagged and bound their victims before gang raping them.³⁰⁶

INVESTIGATION

On February 27, 1991, villagers reported the attack to army headquarters located approximately five kilometers from Kunan Poshpora.³⁰⁷ According to army officials, the villagers stated that "women had been molested at Kunan on the night of the search[,]” but the villagers stated that they did not know the victims or any of the victims' names and no one filed a complaint.³⁰⁸ Village leaders reported that in response to their serious accusations, army officials "denied the charges and took no further action."³⁰⁹

On March 4, 1991, villagers of Kunan Poshpora sent a letter to the District Magistrate/Deputy Commissioner S.M. Yasin that described the incident.³¹⁰ Yasin visited Kunan Poshpora the following day³¹¹ with police officers from Trehgam, including two constables who allegedly had accompanied the army into the villages on the night of the search.³¹² Yasin interviewed twenty-three women in Kunan Poshpora against whom "atrocities ha[d] been committed."³¹³ He also "was shown

the rooms which were used for gang raping and was shown the clothes which were torn by the Army.³¹⁴ His report recommended that the government investigate and prosecute those responsible, and that “measures be taken to prevent any more such unfortunate incident[s] in the district.”³¹⁵ Yasin sent the report to the head of the Kashmir civil authority, Divisional Commissioner Wajahat Habibullah and to the Superintendent of Police in Kupwara.³¹⁶ Fifteen days after filing his report, Yasin was transferred from his post (Zargar and Massod, 2014).

On March 18, almost three weeks after the village raid, the Trehgam Police Station registered a First Incident Report (FIR).³¹⁷ The FIR alleged the crimes of rape, trespass with the intention of assault, and wrongful confinement.³¹⁸ Between March 15 and 21, 1991, medical officers examined thirty-two women and found evidence of rape, including healing abrasions and contusions.³¹⁹ The medical reports also stated that, four days after allegedly being kicked in the stomach by a soldier, a woman gave birth to a baby with a fractured arm.³²⁰

The highest-ranking police officer in Trehgam concluded that “[a]s per medical examination report, offense...[of rape] stands prima facie proved and made out.”³²¹ On March 22, 1991, the Director General of Police, the highest-ranking police officer in Jammu and Kashmir, reassigned the investigation to a Kupwara police official, Assistant Superintendent Dilbagh Singh.³²² Singh worked with a SIT to interview witnesses, victim-survivors, and army officials.³²³ The SIT also gathered physical evidence, including the victims’ clothes, and compiled a list of 125 soldiers who participated in the village attack.³²⁴ In July, Singh was transferred from Kupwara.³²⁵ The police investigation was reassigned in July to a Senior Superintendent of Police (SSP), who “started afresh” the investigation.³²⁶

A fact-finding delegation led by a former Chief Justice of the High Court of Jammu and Kashmir in March 1991 interviewed fifty-three rape victim-survivors.³²⁷ The delegation’s report expressed concern that local officials had failed to follow “normal investigative procedures.”³²⁸ Intense coverage of the attack by the national and international press elicited “strong denials from army officials.”³²⁹ On March 18, 1991, Divisional Commissioner Habibullah also visited Kunan Poshpora.³³⁰ Following his visit, Habibullah concluded in his report that “[i]t is impossible to believe that officers of a Force such as the Indian Army would lead their men into a village with the sole aim of violating its women.”³³¹ Finding the

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allegations of mass rape “highly doubtful,” he argued that “[i]f in each case rape was committed by 5 to 15 persons as alleged there would have had to have been at least 300 men in the village doing nothing but this!”³³² He reasoned that the villagers may “have acted under militant pressure” and “[t]hat elements wishing to discredit the army as brutal, the civilian administration as ineffective and the Govt of India as uncaring ha[d] orchestrated a campaign...”³³³

At the request of the Indian army, the Press Council of India appointed a committee to investigate the incident.³³⁴ In June of 1991, Council members interviewed alleged victim-survivors and hospital officials.³³⁵ The Council concluded that abrasions described by the medical reports were “common among village folk in Kashmir” and that “such a delayed medical examination prove[d] nothing.”³³⁶ The Council also noted that the baby’s broken arm may have been caused by doctors’ efforts “to position the foetus [sic] correctly or otherwise to ease the delivery.”³³⁷ The Council determined that the evidence “simply d[id] not add up [and] [wa]s riddled with contradictions of the most elementary kind.”³³⁸ “In the absence of any credible evidence,” the Council reasoned that the allegations “appear[ed] to be an invention, a hurriedly contrived piece of dissimulation which finally broke down under the weight of its own contradictions... [The story was] a carefully rehearsed piece of disinformation that was made and marketed to arouse anger and hatred...”³³⁹

In September of 1991, the police forwarded the criminal investigation to the director prosecution (DP), located in the office of the Director General of Police.³⁴⁰ The DP concluded that the “challenge [wa]s not maintainable,”³⁴¹ and the allegations were “unfit for launching criminal prosecution.”³⁴² He enumerated four “defects” with the accusations: (1) “[t]he statements of witnesses [were] not only stereotyped but also suffer[ed] from serious discrepancies and contradictions”; (2) the crime was not immediately reported to the police; (3) the district magistrate did not receive the initial complaint from villagers until March 4, “which could give rise to the legal presumption that the incident ha[d] been stage managed”; and (4) “[t]he inability of the witnesses to identify the alleged accused ha[d] introduced a fatal and incurable lacuna in the prosecution story.”³⁴³

On September 12, 1991, the police closed the investigation as “untraced” without filing the required “closure report” to the district magistrate.³⁴⁴ The CrPC requires that a police officer closing an investigation submit a report to the court.³⁴⁵ Despite repeated attempts by the alleged victim-survivors to file complaints, no further investigations were conducted.³⁴⁶

Between 2004 and 2011, thirty-nine alleged victim-survivors submitted individual and group petitions to the SHRC.³⁴⁷ The SHRC consolidated the complaints and issued a report in October of 2011.³⁴⁸ The report concluded that army officials had “turned into beasts,” consumed alcohol, and “gagged the mouths of

the victims and committed forced gang rape...”³⁴⁹ The SHRC recommended that the Jammu and Kashmir Government prosecute officers allegedly responsible for the cover up, reopen the investigation, and compensate all of the victim-survivors named in the various petitions (Verma, 2013).³⁵⁰ At the time of the publication of this monograph, the state government had yet to inform, as required by law, the SHRC of the efforts to comply with its recommendations.³⁵¹

In March 2013, twenty-two years after the village attack, the police filed a closure report—a document police submit when the investigation does not uncover sufficient evidence of a crime—in Kupwara District Court for judicial evaluation.³⁵² The High Court subsequently denied a public interest litigation (PIL) petition to investigate the military’s crimes, ruling that the litigation would be “premature” due to the filing of the closure report.³⁵³ Two survivors filed a protest petition in response and requested that the court reopen the investigation.³⁵⁴

On June 18, 2013, the Kupwara District Court rejected the closure report and found that the circumstances of the allegations “ma[de] an unbreakable chain to put the suspects on trial.”³⁵⁵ The court criticized the DP’s 1991 findings and the failure of investigating agency to “unveil[] the identity of the culprits despite having a clear cut nominal role of 125 suspects[,]” and it ordered the police to hold an “investigation parade” to determine the identities of the accused.³⁵⁶ The court also ordered the police to conduct an investigation within three months.³⁵⁷

In November of 2013, after the District Court’s deadline expired, the army appealed the court’s order to the Kupwara Sessions Court. The army appeal argued that an “identification parade” was too difficult to organize so many years after the incident (Tantry, 2015). The appeal denied the allegations of rape and torture, asserted the goal of “total [immunity] for the alleged perpetrators,” and stated that the army would not cooperate with the investigations but make “every effort...to stall them” (Manecksha, 2014). In response, the Sessions Court criticized the army for its “non-seriousness” and “casual irresponsible manner” before dismissing the army’s appeal and ordering an investigation of the crimes (JKCCS et al, 2014).

On January 15, 2015, the Jammu and Kashmir High Court stayed both the District Court order to reopen the investigation and the Sessions Court order to continue the investigation (*Hindustan Times*, 2015). An appeal of the High Court’s stay is pending before the Supreme Court of India.

In March 2015, the Supreme Court also stayed the compensation order for the victim-survivors issued by the Jammu and Kashmir High Court. As of the time of writing, the government has not investigated, charged, or prosecuted those responsible for the acts of sexual violence (*The Hindu*, 2015; Masood, 2015).

In 2015, twenty-four years after the mass rape in the villages of Kunan and Poshpora, the victim-survivors still await justice.

GUJARAT: NARODA PATIYA

In Naroda Patiya, the ideologically ritualized sexual violence by vigilante Hindus against women led to the mutilation of victims by severing breasts and tearing open wombs and vaginas and to the forced abortion of fetuses and displaying them on trishuls—while, in numerous instances, the local police stood by and watched (Ghassem-Fachandi, 2012; HRW, 2002; Kapur, 2006; Varadarajan, 2003). A trishul is a three-pronged (usually metal) trident of religious significance to many Hindus and in militant Hinduism (Sarkar, 2002). The sexualizing of religionized aggression led to the display of public violence on Muslim sexuality.

On February 28, 2002, at approximately 8:00 AM, about five thousand to ten thousand armed persons carrying spears, swords, tridents, gas cylinders, petrol bombs, and acid bombs attacked the Muslim community of Naroda Patiya.³⁵⁸ Located in eastern Ahmedabad, Naroda Patiya was a community of nearly one thousand low-income Muslim families.³⁵⁹ Attackers, led by members of the BJP and the VHP, another Hindu nationalist organization, shouted “Jai Sri Ram [long live Lord Ram],” “Not a single Miya [Muslim] should be able to survive,” and “Slaughter, Cut.”³⁶⁰ Some perpetrators used trishuls and wore saffron scarves and khaki shorts—the uniform of Hindu nationalist groups.³⁶¹

The attack on the neighborhood lasted until 10:00 PM.³⁶² A court judgment found that “[members of the mob] were shattering the property of Muslims into pieces; they were ransacking the property of Muslims by getting into their homes; they were outraging the modesty of Muslim women; they were torching even women, children and cripples, burning them alive.”³⁶³ According to officials, 96 persons were killed, including 25 children and 35 women, and 125 persons were injured.³⁶⁴

Grievous crimes of sexual violence were committed during the attack on Naroda Patiya. Hindu rioters raped, gang raped, inserted foreign objects into, and stripped victims.³⁶⁵ According to witnesses, most of the women victims—girls and women—were raped before they were murdered and burned.³⁶⁶ Several victims observed an attacker slice open the womb of a pregnant Muslim woman with a sword, extract her fetus, and subsequently throw both the woman and her fetus into a nearby fire; the woman was at or near full term in her pregnancy.³⁶⁷ Another witness described how a perpetrator sliced a young girl’s vagina open and threw her onto a fire.³⁶⁸ Witnesses also observed the rape of girls as young as twelve -years old.³⁶⁹

Muslim women were killed by sword or burned alive in front of their families and alongside their children.³⁷⁰ One witness reported that his daughter was dragged away, raped by four to five men, and beaten.³⁷¹ She later died at a hospital.³⁷² The witness’s spouse and two other daughters were also dragged away and burned alive.³⁷³ Members of fleeing Muslim families were detained, stripped, raped, and then murdered.³⁷⁴ One woman recalled seeing “a naked girl running

from twenty-five men.³⁷⁵ Another survivor testified that four men cut off the string of her petticoat, sliced her hand with a sword, and gang raped her.³⁷⁶

Victims and eyewitnesses stated that police officers were complicit in the sexual crimes against women both during and after the incident.³⁷⁷ According to human rights reports, Muslim requests for help went unheeded.³⁷⁸ For example, one victim-survivor recalled: “The police was on the spot but helping the mob. We fell in their feet but they said they were ordered from above [not to help]. Since the telephone wires were snapped we could not inform the fire brigade.”³⁷⁹ The local police station did not erect a barrier to block entry into the Muslim area³⁸⁰ or deploy mahila [women] police.³⁸¹ Until evening on February 28, 2002, R. B. Sreekumar of the Indian Police Service had ordered that the godown (warehouse) area be kept open which enabled many escaping survivors to seek shelter. This was closed down by a subsequent reversal of the order signed by another officer.

Some police officers also actively participated in the violence. For example, witnesses reported that police officers led the mob to Muslim homes and fired on Muslims.³⁸² One perpetrator testified that “there were 50-60 policemen.”³⁸³ At midnight, when victims of the attack were taken to a relief camp under police protection, groups attempted to block the vehicles carrying victim-survivors.³⁸⁴ Victim-survivors remained in relief camps for months until the government of Gujarat ordered the camps closed in October 2002.³⁸⁵ Four hundred survivor families have returned to the Naroda Patiya locality since 2002 and live with significant threat. Other survivors never returned to their homes in Naroda Patiya and resettled in homes provided by the Islamic Relief Committee.³⁸⁶

INVESTIGATION

The FIR was filed at the Naroda Police Station on the night of the massacre. From February 28, 2002, to March 8, 2002, the First Investigation Officer (IO) of Naroda Police Station led the criminal investigation.³⁸⁷ The IO is authorized to record statements from witnesses, collect evidence, and arrest suspects.³⁸⁸ The first IO did not preserve physical evidence of the massacre, including victim remains or weapons, nor did he explore investigative leads, such as the source of the agent used to burn the victims, or arrest the perpetrators identified by witnesses and victim-survivors.³⁸⁹ Survivors and witnesses criticized the IO for his ill treatment of Muslims, insensitivity towards victim-survivors, and refusal to take statements from witness.³⁹⁰

On March 8, 2002, the Assistant Police Commissioner of Gujarat took over the investigation.³⁹¹ Although he recorded statements from a few of the injured

In Naroda Patiya, the sexualizing of religionized aggression led to the display of public violence on Muslim sexuality.

parties at the hospital, he did not arrest any of the accused named in the FIRs.³⁹² The investigator interviewed Hindus, but did not visit the victim-survivors' relief camps.³⁹³ The Special Court concluded, "He was too careless to even know that the complainants and victims were Muslims."³⁹⁴

In May 2002, the investigation was transferred to the Crime Branch in Ahmedabad, where it remained until April 2008.³⁹⁵ According to a court ruling, the investigators within the Crime Branch often refused to record the names of perpetrators provided by witnesses.³⁹⁶ A witness alleged that the investigators only asked for the names and addresses of witnesses and completed the remainder of the witness statements according to their "whim and will."³⁹⁷

The NHRC, NCW, and NCM criticized the police investigation and police operations.³⁹⁸ According to the final judgment in the case, "the entire police record of statements [wa]s suspect and unreliable."³⁹⁹ One attorney at the NHRC noted,

"When witnesses file complaints, the police enter their statements according to their [own] preference. They don't file complaints properly. People are uneducated and the police don't show them the statement, they just get them to sign it... In some cases, [the police] won't write the name of the accused. In one case, for example, seven people were identified but they didn't write their names."⁴⁰⁰

The NCW criticized the way police in Gujarat registered details of violence against women (NCW, 2002). The chair of the NCW stated that, "the number of FIRs registered was much less than the incidents of violence against women reported to the NCW" (*Rediff*, 2002b). An article in the *New York Times* stated that, "thousands of cases against rioters were dismissed by the police for lack of evidence despite eyewitness accounts" (Harris, 2012).

There is evidence that, during the investigation, police mistreated and re-traumatized victim-survivors of sexual violence. According to the Special Court, "the psychological aspect and the result of such crimes which...traumatiz[ed] victims is [a] very important factor. It is clear that none of the previous investigators has taken any care for the victims of the crime[s] all of which was necessary for effective investigation of [the] crime[s] to unearth the modus, the preparation, the conspiracy, the perpetrators, etc."⁴⁰¹ Moreover, investigating officers did not follow up with witnesses to obtain accurate, detailed information.⁴⁰²

Police merged the 120 reports filed by victim-survivors of sexual violence into 26 official complaints two to three months following the massacre.⁴⁰³ These "omnibus" FIRs did not identify individual perpetrators but attributed the violence to anonymous "mobs."⁴⁰⁴ The prosecutor was unable to bring charges of rape without information about the identities of the perpetrators of sexual violence, and the court was unable to determine criminal liability for the crimes.⁴⁰⁵ One victim-survivor reported, "I am not a 'mob,' I am a woman who was gang raped by three men. How can I hope for justice when they don't even register my complaint properly?" (Lakshmi, 2002: n.a).

PROSECUTION

A stay by the Supreme Court of India from 2003 to 2008 delayed the beginning of trial (*Rediff*, 2002a; Mitta, 2005). In 2008, the Supreme Court ordered a reinvestigation of the case in response to petitions filed by the NHRC and the civil rights NGO (non-governmental organization), Citizens for Justice and Peace.⁴⁰⁶ The Supreme Court appointed a SIT to conduct the new investigation (Jaffrelot, 2012).

In 2009, the Supreme Court constituted a fast-track court, a special prosecutor was appointed,⁴⁰⁷ and charges were filed against sixty-two accused, including prominent figures within the BJP and VHP.⁴⁰⁸ Of the sixty-two accused, fifty-seven had been arrested and released on bail between 2002 and 2009.⁴⁰⁹ Some of the accused released on bail threatened witnesses and pressured victim-survivors to get them to withdraw their cases and witnesses.⁴¹⁰ During the trial, 327 witnesses testified,⁴¹¹ including 25 women and 42 doctors.⁴¹² Trial records reveal that the doctors who examined women after the attack did not testify about the evidence of sexual violence.⁴¹³

In 2012, approximately three years after the trial began and ten years after the attack on Naroda Patiya, an Indian court rendered the only judgment in the case. The Special Court judge convicted thirty-two defendants of murder, attempted murder, conspiracy, spreading enmity and communal hatred, and unlawful assembly, and acquitted twenty-nine defendants.⁴¹⁴ A former government cabinet member and a leader of the Bajrang Dal were among those found guilty.⁴¹⁵

Although ten of the sixty-two defendants were charged with crimes of sexual violence, including rape, “assault or criminal force to woman with intent to outrage her modesty,” and an “act done with intention of preventing child from being born alive,”⁴¹⁶ only one of the accused was convicted.⁴¹⁷ The Special Court judge concluded that, although acts of sexual assault, rape, and gang rape did in fact occur, the prosecution did not successfully make the case against the identified individuals.⁴¹⁸ The solitary conviction was premised upon the confession of a defendant who raped a ■-year-old Muslim girl and killed her by throwing her from a roof.⁴¹⁹ At the time of publication of this monograph, appeals against both convictions and acquittals were pending before the Gujarat High Court.

The trial judge found another victim was gang raped but concluded that the government had not proven the guilt of any of the accused.⁴²⁰ The trial judge ordered the government to compensate the gang rape victim-survivor in the amount of 500,000 Indian Rupees.⁴²¹ The victim-survivor did not receive the compensation until months later, following several visits from the victim’s lawyers to the state Social Welfare Department and an additional court order.⁴²² Allegations of police participation and complicity were not investigated and the government of Gujarat did not initiate disciplinary proceedings against police officers or public officials involved in the Naroda Patiya massacre. The judgment of the Special

Court noted remarks criticizing the investigation by the police and, in part, by the Supreme Court-appointed SIT, especially regarding the phone call message links between powerful accused, policemen and politicians.⁴²³

ODISHA: KANDHAMAL

As in Gujarat 2002 and Odisha 2007, the violence of August-October 2008 in Kandhamal renders visible how Adivasi and Dalit Christians and majoritarian Hindus are divided by the very social and historical proximities that have shaped them.

On August 23, 2008, a prominent Hindu nationalist and religious leader and four of his disciples were assassinated in the district of Kandhamal.⁴²⁴ Some state officials claimed the attackers were Maoist insurgents.⁴²⁵ Various Hindu nationalist groups accused the local Christian community of carrying out the attack.⁴²⁶ Between August and October 2008, Hindu nationalists forced Christians out of 450 villages, burned 4,901 homes, and injured 18,000 people, displacing 53,000 individuals, many of whom sought shelter in nearby forests and makeshift relief camps. Approximately fifty-four to eighty-six persons were killed.⁴²⁷

According to court records, on August 24, 2008, fleeing from Hindu mobs, a █-year-old █, █, and █ left their residence at a Christian-run center to seek safety in the home of █'s █.⁴²⁸ On August 25, 2008, an armed mob of forty to fifty people entered the private home and forcibly removed █ and █.⁴²⁹ After dragging █ from the residence by her hair, the mob brought the pair to a Catholic-█ organization that mobs had ransacked and burned the previous day.⁴³⁰ There, men removed █'s clothes, including her underwear, while pushing her onto the veranda.⁴³¹ When █ begged the mob not to hurt █, he was dragged away, doused with kerosene, and forced to kneel on the road.⁴³² Men stood on █'s hands while she was raped by █.⁴³³ Observers clapped while █ was raped.⁴³⁴

After the rape, the mob took █ to the road where the Father was kneeling.⁴³⁵ Members of the police watched while the mob paraded half-naked █ and █ through the village and physically and verbally abused them.⁴³⁶ █ later stated that, during this ordeal, "he saw police personnel and prayed for help, but they paid a deaf ear to him."⁴³⁷ In a later account of her attack to newspapers, █ stated that "State Police failed to stop the crimes, failed to protect me from the attackers, [rather,] they were friendly with the attackers."⁴³⁸ The mob later left █ and █ at a police outpost.⁴³⁹

INVESTIGATION

█ reported that the police at the village police outpost were "very insensitive towards [the victims]."⁴⁴⁰ A doctor provided medical treatment to both █ and █ before they were escorted to the █ police station that same night.⁴⁴¹ When █ arrived at the █

police station, she disclosed to the investigating officer that she had been raped.⁴⁴² The investigating officer asked ██████████ whether she knew “the meaning of rape and the consequences she [would] face for lodging a complaint.”⁴⁴³ A female Special Investigator took ██████████ to a closed room to question her about the attack and reported ██████████’s account of her rape back to the investigating officers.⁴⁴⁴ The female special investigator then accompanied ██████████ to the ██████████ hospital for a medical examination.⁴⁴⁵

At the hospital, two female doctors examined the victim-survivor by using the “two-finger test” and concluded: “The vaginal canal admitted two fingers loose and [was] severely tender.”⁴⁴⁶ The medical examination report filed by the doctors documented abrasions and scratches on ██████████’s chest, a swollen left eye, and bruises on her cheek, neck, and back.⁴⁴⁷ According to the report, ██████████’s injuries indicated that she was “raped over a cemented floor without clothing on her back.”⁴⁴⁸

The next morning, on August 26, 2008, both ██████████ and ██████████ were taken to ██████████ police station, where they lodged a written First Information Report (FIR).⁴⁴⁹ Although the FIR included the allegation of rape, the police officers ordered ██████████ not to write the details of the incident in her official complaint and advised her not to press charges.⁴⁵⁰ According to ██████████, “they tried their best to keep me from registering a formal investigation request.”⁴⁵¹ ██████████ filed a second FIR about his ordeal, however, his FIR did not include details about ██████████’s rape or the suspects’ identities.⁴⁵²

Later that day, the police put ██████████ and ██████████ on a public bus from ██████████ toward Bhubaneswar, the capital of Odisha.⁴⁵³ The police escorted the bus for the approximately five-hour journey.⁴⁵⁴ Without police protection, ██████████ then transferred to a bus from ██████████ to ██████████ and traveled from place to place in search of shelter and protection.⁴⁵⁵

The police visited the site where ██████████ was raped for the first time a week after the incident.⁴⁵⁶ The judgment later determined that the evidence collected there by the scientific officer had “no evidentiary value.”⁴⁵⁷ Although the female Special Investigator requested a copy of the medical report on several occasions, the hospital did not release the report to the police until October 1, 2008, more than a month after the incident.⁴⁵⁸

The case was subsequently transferred to the inspector of police at the Crime Branch of Odisha.⁴⁵⁹ Almost five months after the incident, on January

As in Gujarat 2002 and Odisha 2007, the violence of August-October 2008 in Kandhamal renders visible how Adivasi and Dalit Christians and majoritarian Hindus are divided by the very social and historical proximities that have shaped them.

5, 2009, the Crime Branch arranged the first test identification parade (TIP) for [REDACTED] and [REDACTED] to identify their attackers.⁴⁶⁰ Over the course of three TIPs, [REDACTED] identified Santosh Patnaik as the person who raped her and [REDACTED], Gajendra Digal, and Saroj Badhei as persons who were present when she was raped.⁴⁶¹ Charges were filed against ten persons for gang rape, “assault, or criminal force to a woman with intent to outrage her modesty;” “assault or criminal force with intent to dishonor a person;” rioting, armed with a deadly weapon; criminal intimidation; unlawful assembly; and obscene acts and songs.⁴⁶² All of the accused resided in [REDACTED] knew [REDACTED] and [REDACTED] personally, and denied the charges.⁴⁶³

Once Santosh Patnaik had been identified as a suspect, a medical officer conducted an examination. The report determined that Santosh Patnaik was capable of sexual intercourse.⁴⁶⁴

PROSECUTION

On March 24, 2009, the trial began in a fast-track judicial magistrate court in [REDACTED].⁴⁶⁵ Feeling unsafe in [REDACTED], [REDACTED] requested that [REDACTED] court transfer the case to [REDACTED],⁴⁶⁶ roughly 180 miles east and the second-largest city in Odisha, but the District Court denied her request.⁴⁶⁷ The Odisha High Court intervened to transfer the case to a [REDACTED] court.⁴⁶⁸

At trial, the accused pled not guilty.⁴⁶⁹ The suspects’ defense lawyers reportedly characterized the rape as an act of retaliation for the death of a prominent Hindu nationalist and religious leader, which occurred a few days prior to the attack on [REDACTED].⁴⁷⁰ During the trial, a BJP spokesman criticized the local archbishop for using the story of [REDACTED]’s rape as a means of rallying Christians against Hindus.⁴⁷¹

Twenty-nine witnesses testified at trial.⁴⁷² During cross-examination, most witnesses admitted that although they saw [REDACTED] and [REDACTED] paraded half-naked [REDACTED] through the streets, they had not witnessed the rape.⁴⁷³ One of the female doctors who had examined [REDACTED] testified during trial and detailed [REDACTED]’s injuries as described in the medical examination report.⁴⁷⁴ The doctor concluded in her testimony that the findings of the medical report were “consistent with recent signs and symptoms of forceful attempted sexual intercourse.”⁴⁷⁵

When [REDACTED] testified, the defense argued that [REDACTED]’s failure to mention [REDACTED]’s rape in the FIR was evidence that the rape had not occurred.⁴⁷⁶ The court noted that [REDACTED] had not identified a single assailant during the TIPs.⁴⁷⁷ The court concluded however that [REDACTED]’s testimony that Santosh Patnaik, Gajendra Digal, and three others not facing trial were at the scene of the rape “inspires confidence.”⁴⁷⁸

The court concluded that [REDACTED]’s religious affiliations called into

question the credibility of her testimony, noting that “she was being financially and morally supported by the Christian organization.”⁴⁷⁹ As evidence of her bias, the court referred to her participation in a conference organized by Christian bishops after the attack, the presence of her advocates during the TIP, and her failure to disclose “how the journey expenses were met by her.”⁴⁸⁰ The court also questioned the credibility of ██████’s testimony because she did not give a description of her assailants in her FIR, although she had stated that the police had told her to keep her FIR short and “did not take down [her] statement as [she] narrated in detail.”⁴⁸¹ In speaking to the press about her negative interactions with the police, ██████ stated, “I was raped and now I don’t want to be victimized by the Odisha police.”⁴⁸²

Five years after trial began, the court issued its final judgment on March 14, 2014.⁴⁸³ The court found three of the ten men initially listed on the charge sheet guilty of several offenses. Santosh Patnaik was convicted of gang rape and, in addition to Gajendra Digal and Saroj Badhei, was found guilty of assault or criminal force to a woman with intent to outrage her modesty; assault or criminal force with intent to dishonor a person, otherwise than on grave provocation; rioting, armed with a deadly weapon; criminal intimidation; and obscene acts and songs.⁴⁸⁴ Six defendants were fully acquitted due to lack of evidence, while another man fled before trial and was never arrested or prosecuted.⁴⁸⁵

Three of those convicted were sentenced to “rigorous imprisonment” for twenty-six months, while Santosh Patnaik received an additional sentence of eleven years and a fine of 10,000 Indian Rupees for gang rape to be paid directly to ██████.⁴⁸⁶ If he could not pay the fine, the court authorized that the fine be converted into an additional six-month jail sentence.⁴⁸⁷ Allegations of police complicity were not investigated.

DISCUSSION

Sexual violence is a form of gender discrimination that is prohibited by international law “at all times, in all places.”⁴⁸⁸ Under certain circumstances, rape may constitute torture, a crime against humanity, or a war crime.⁴⁸⁹ Under international law, states must use due diligence to prevent, investigate, punish, and provide redress for acts of sexual violence against women, regardless of whether the acts were committed by state or private actors.⁴⁹⁰ These cases highlight some of the key ways India has failed to provide justice to victim-survivors of sexual violence and examines the structural and institutional weaknesses in the domestic justice system revealed by this analysis. This enables the repetition of violence due to failures in the justice system.

A failure to analyze context, including systematic patterns surrounding a specific violation of human rights, can render any measure of prevention or redress ineffective.

The four cases under discussion occurred in a context of impunity. International human rights bodies have held that impunity “fosters chronic repetition of human rights violations and total defenselessness of victims and their relatives” (Inter-American Commission on Human Rights, 2004).⁴⁹¹ When viewed as a whole, the case examples described by this monograph reveal patterns and common shortcomings of India’s legal system that contribute to legal impunity.

Organized according to the different stages of India’s response to acts of sexual violence, this section discusses the following nine dimensions of the Indian legal system: criminalization, prevention, contextual analysis, reporting, registration of complaints and arrests, collection of evidence, timeliness, legal immunity, and redress. For each dimension, this section draws on the case examples to identify legal and institutional obstacles to effective criminal investigations, prosecutions, and reparations of gender-based crimes. The section also employs international human rights, humanitarian, and criminal standards to guide the analysis of access to redress for victim-survivors of sexual violence in two ways: (1) by diagnosing common and central weaknesses of India’s legal system and (2) by identifying reforms to respond to those deficiencies.

CRIMINALIZATION OF SEXUAL VIOLENCE

At the time of the incidents described in this monograph, the Indian Penal Code criminalized rape as penile-vaginal penetration defined by lack of consent.⁴⁹² Non-vaginal penetration or penetration with an object or finger did not constitute rape⁴⁹³ but instead an “unnatural offense” or an “assault or criminal force to woman with intent to outrage her modesty.”⁴⁹⁴

As a result of this narrow definition of rape, many of the acts of sexual violence

described in this text did not constitute a crime or constituted a crime against the victim-survivor's modesty under Indian law, rather than a serious crime of violence. For example, the stripping of ██████ in Odisha and the acts of sodomy and penetration with objects in Gujarat and Kashmir were charged as "unnatural offenses" or "criminal force with intent to outrage [the victim's] modesty" under Indian law.⁴⁹⁵

International law defines rape in terms of coercion rather than the absence of consent and defines sexual violence as a violation of bodily integrity rather than a violation of feminine modesty.⁴⁹⁶ Laws based on modesty or feminine chastity focus on the victim-survivor's status rather than prohibiting acts of violence against women.⁴⁹⁷ By institutionalizing "existing beliefs and practices linked to chastity" and morality, the Indian criminal justice system fails to provide adequate protection against sexual violence,⁴⁹⁸ to acknowledge "all forms of violence against women," or to address "the root and structural causes of violence against women"⁴⁹⁹

Broader definitions of rape and sexual violence ensure the criminalization of a range of unacceptable conduct.⁵⁰⁰ For example, the ICTR has defined rape as "a physical invasion of a sexual nature, committed on a person under circumstances which are coercive," and sexual violence more broadly, as "any act of a sexual nature which is committed on a person under circumstances which are coercive," including non-physical acts, such as forced nudity.⁵⁰¹ Coercion need not amount to physical force, but rather "[t]hreats, intimidation...[and] forms of duress

which prey on fear or desperation may constitut[e] coercion."⁵⁰² Indeed, the ICTR determined that "coercion may be inherent in armed conflict situations or when military personnel...are present."⁵⁰³ Standards using coercion rather than consent also provide evidentiary advantages to victim-survivors by shifting the focus of investigation from whether the victim-survivor provided consent to the perpetrator's use of force.⁵⁰⁴ Furthermore, recognition of inherent coercion in armed conflict situations may encourage victim-survivors to report rape by armed men or act as a deterrent.⁵⁰⁵

Human rights law provides a holistic, victim-centered approach to redress that encompasses restitution, compensation, rehabilitation, satisfaction, and guarantees of nonrecurrence. Effective compensatory measures are critical to accountability even as nothing may ever restore victim-survivors to their prior position. Rather, a broad range of effective remedies and guarantees are necessary to provide redress to harmed individuals and enable their right to heal.

PREVENTION

Despite warnings of impending attacks in Gujarat and Odisha, public officials and police did not act to protect minority communities. Instead, state actors

participated in or tolerated the acts of violence. In Gujarat, public officials and police officers reportedly seized control of police control rooms on the day of the massacre,⁵⁰⁶ facilitated the mob's access to the community, prevented Muslims from fleeing mob violence,⁵⁰⁷ and failed to respond to calls for assistance from Muslim victims.⁵⁰⁸ Prominent figures of the Hindu nationalist political party were convicted of "conspiracy" and "spreading enmity and communal hatred," although the role of police officials was not investigated or prosecuted.⁵⁰⁹ Similarly, in Odisha, the police did not prevent a mob from parading the injured, half-naked victim through the village by detaining and arresting individuals engaged in criminal conduct.

Rather than fulfilling the duty to prevent violence by protecting civilian populations, state forces employed their power to facilitate acts of sexual violence. The court found that the police in Punjab used their authority to detain and brutalize a woman in state custody. In Kashmir, the Indian government granted members of the military the legal authority to enter civilian homes without warrant and to use force "even to the causing of death," with legal immunity from prosecution.⁵¹⁰ The authorization to use lethal force and lack of accountability contribute to conditions that permit sexual violence and impunity. These legal conditions also pose challenges to domestic and international law.

Under the Constitution of India, the state must provide its citizens with equal protection under the law. State actors are prohibited from discriminating against persons on the grounds of religion, race, caste, ethnicity, indigeneity, or sex.⁵¹¹ The Constitution mandates that every person "renounce practices derogatory to the dignity of women."⁵¹² The failure to prevent the acts of sexual violence described by this monograph against marginalized, vulnerable, and protected classes also may constitute discrimination under international law.

International law obligates states to prevent gender-based crimes against women.⁵¹³ The UN Special Rapporteur on Violence against Women has explained that the scope of international responsibility of states extends to acts of omission as well as commission: "a [S]tate may be liable under international law not only for its officials' actions but also for its officials' inaction. It is unlawful for the [S]tate: to refrain from assistance where assistance is so clearly required; to fail to investigate and thereby guarantee women's rights; and, to discriminate in the manner in which it enforces human rights (even where such discrimination is not intentional)."⁵¹⁴ A state must provide legal protection of the rights of women equal to that of men, ensure that public authorities and institutions refrain from acts of discrimination against women, and adopt legislative and other measures that prohibit gender discrimination.⁵¹⁵ Relevant international law standards concerning gender-based violence also encompass the state's duty to prevent violence against women and children who are subject to "national, racial, or religious hatred."⁵¹⁶

International human rights bodies have recognized the heightened vulnerability of women during armed conflict and social upheaval. The CEDAW Committee has determined that situations of armed conflict lead to increased incidents of sexual assault of women and therefore require “specific protective...measures.”⁵¹⁷ According to the CAT, women are at particular risk of torture or ill treatment in situations of social upheaval, and state parties must therefore take measures to prevent rape or sexual violence and abuse in these circumstances.⁵¹⁸ International standards highlight that multiple factors may contribute to the victims’ vulnerability. In the case examples described in this text, the victims were women, members of religious minorities, and, in some cases, living in isolated rural communities located in regions impacted by armed conflict and therefore were at greater risk for sexual assault and rape. During peacetime and in time of conflict, international bodies have emphasized the importance of preventative measures, such as the naming and defining of gender-based crimes through the passage of legislation, public awareness-raising campaigns, educational activities, and police trainings to prevent communities from becoming targets of violence.⁵¹⁹

CONTEXTUAL ANALYSIS

International due diligence standards require states to take into account the context in which the acts occurred in adopting measures to respect and protect women’s rights. Attention to the complexity of the facts, the context in which they occurred, and patterns are critical to determining the criminal liability of complex criminal structures, *modi operandi*, and the nature and motive of certain types of criminal acts.⁵²⁰ A failure to analyze context, including systematic patterns surrounding a specific violation of human rights, can render any measure of prevention or redress ineffective.

One common weakness of the criminal investigations and prosecutions described by this monograph is the inattention to context. At every stage of the investigation, the case records suggest that Indian authorities disregarded the socioeconomic, political, cultural, and religious context in which the perpetrators committed the acts of violence. Investigators and court officials ignored that ██████’s detention occurred at a time when police routinely harassed, tortured, and/or detained Sikh women, including those suspected of having information about male relatives involved in Sikh separatist groups;⁵²¹ that Hindu nationalist leaders specifically targeted Muslim women during the Gujarat violence;⁵²² that Kashmir is “one of the world’s most militarized areas” and the military has broad legal authority to use lethal force; and that Hindu nationalists had attacked Christians in Odisha and injured tens of thousands at the time of the incident. The disregard for context undermined investigators’ efforts to identify perpetrators of sexual violence, prosecutors’ mandate to bring charges related to the incidents of sexual violence, and the courts’ authority to convict perpetrators of sexual violence.

Although investigators disregarded context in their efforts to identify motive and individualize perpetrators, the victim's gender, ethnicity, religion, and economic status appear to have heavily influenced the way the investigation and prosecution unfolded. In Odisha, police officials attempted to prevent the Christian victim-survivor from incorporating the details of her rape by a Hindu mob in her FIR. In Gujarat, investigators systematically refused to register complaints from Muslim women victims of gender-based violence perpetrated by members of a Hindu mob. In Punjab, the police officer who raped ██████, a Sikh woman alleged in his appeal that ██████ was a terrorist supporter of Sikh separatists and had fabricated the rape story whereas doctors testified that ██████ never sought medical care. And, in Kashmir, investigating authorities called the allegations of mass rape "a dirty trick to frame the Army."⁵²³ Instead of dispensing justice, in a partial application of context, the accountability process often re-victimized the women victims.

REPORTING

Incidents of sexualized violence in India are grossly underreported. Indeed, sexual violence is one of the most under-reported crimes in India (Pitre, 2005). According to one recent study, only one in ten rapes is reported (Srivastava, 2009), although some claim that the figure may be as low as one in one hundred (McVeigh, 2012). Many victims, including those who suffered sexual violence during the Naroda Patiya attacks and other Gujarat violence, were unable or unwilling to report the incidents. Other victims of the violence described in this section of the monograph were atypical in that they successfully overcame the obstacles to report the crimes of sexual violence. Both types of experiences reveal a variety of difficulties women face in reporting crimes of sexual violence, such as hostility from police (Fisher, 2013), the political and institutional influence of the perpetrators,⁵²⁴ and social stigma and discrimination.⁵²⁵

All the cases described in this text reveal instances where Indian authorities failed to take the victims seriously, disregarded their allegations, or were insensitive. Military officials in Kashmir disregarded the allegations of atrocities by villagers and took no further action. In Gujarat, investigators never visited the relief camps to which victims fled after the violence. Indeed, they refused to register FIRs by Muslim victims. The court found that police officers in Odisha who interviewed the victim-survivor were "very insensitive" and asked whether she knew the meaning of rape.

Another barrier to reporting lies in the authorities' participation in or complicity with incidents of sexual violence, as illustrated in Punjab, Gujarat, Odisha, and Kashmir. Rather than reporting to a neutral authority, victims and witnesses endangered their lives and safety by reporting the crimes to officials or institutions linked to the crimes. Villagers in Kashmir reported the crime to the same army officials who were implicated in the attack, and their allegations were disregarded.

Army officials refused to comply with a 2013 court order to conduct a line-up of suspects, asserting that “*every effort* will be made to stall [the investigations]” (Manecksha, 2014: n.a). In Gujarat, victims of the attack filed the FIR at the local police station despite alleged participation by local police. Allegations of police collusion have never been investigated. ██████ reported the rape to state officials in Punjab despite threats by the officers who raped her. As a consequence, local police officers allegedly burned her home and tortured several of her relatives and supporters in the village. Although the trial judge acknowledged these acts of intimidation and violence, there is no evidence that the authorities investigated the crimes or provided the victim-survivor with protection.

Victim-survivors who reported crimes also faced stigma, discrimination, and violence. The trial judge in Punjab who presided over ██████’s case, for example, recognized that a woman risked her reputation by reporting crimes against “her chastity.”⁵²⁶ Indeed, during the lengthy trial and appeal, the defendants derided ██████’s character and motives for reporting the rape. ██████ in Odisha requested that her case be moved to another city because she did not feel safe in ██████. The trial court questioned ██████’s credibility merely because she was supported by a Christian organization and attended a Christian conference after the attack. The Press Council of India, which investigated the rapes in Kashmir at the behest of the military, disregarded physical evidence to conclude that the allegations of sexual violence were rehearsed and marketed to “arouse anger and hatred.”⁵²⁷

The victim-survivors were mistrustful of the criminal justice process and skeptical of its effectiveness. For those who reported crimes of sexual violence, the experience generated feelings of fear, powerlessness, frustration, and insecurity. During the reporting process, it is crucial that investigators avoid re-victimization of the victim-survivor and lay the foundation to prosecute and punish the perpetrators.⁵²⁸ Problems at the early stage of the investigation undermine the process by hindering efforts to identify, prosecute, and punish those responsible for the crimes.

REGISTRATION OF COMPLAINTS AND ARREST OF SUSPECTS

The FIR is central to the Indian criminal justice process. FIRs often initiate the criminal investigations and form the basis for charges. Under Indian law, police officers that receive information related to a cognizable offense⁵²⁹ have the obligation to file a FIR⁵³⁰ and the authority to arrest suspects without a court order.⁵³¹ Sexual crimes, including rape, crimes against modesty, and “unnatural acts,” are cognizable.⁵³²

Investigating authorities refused to file FIRs or inadequately or incorrectly recorded information provided by witnesses and victims in the case studies. In Odisha, police officers ordered ██████ not to write the details of her rape in the FIR and advised her not to press charges. In Gujarat, police officers denied women survivors the right to file FIRs or omitted details about rape and murder victims

in recording the FIRs. Regarding the Gujarat violence, the NCW determined that “[t]he number of FIRs registered was much less than the incidents of violence against women reported to the NCW” (*Rediff*; 2002b). When officers did record FIRs, the FIRs often were “distorted or poorly recorded” according to the “will and whim” of the police officers.⁵³³

The failure to register FIRs or adequately register information of sexual violence had serious implications for the criminal investigations and prosecutions. First, state actors denied victims, including the victims of Punjab and Kashmir, the most accessible mechanism to initiate a criminal investigation by refusing to file FIRs. These victim-survivors were forced to report the crimes to local magistrates, a “cumbersome” process that consumes “time and money.”⁵³⁴ Second, authorities impeded the timely collection of critical physical and testimonial evidence by delaying the initiation of the criminal investigation. Despite timely complaints about the attack, for example, authorities filed the FIR in Kashmir after a two-week delay. Investigators used this delay to question the victims’ credibility. Finally, poorly recorded FIRs undermined efforts to identify perpetrators and prove offenses. After the Gujarat violence, some investigating officers refused to record the names of the accused in the FIR. It is reasonable to assume that this failure to register victim-survivor and witness statements explains in part why, out of the approximately five thousand to ten thousand armed individuals participating in the attack, only sixty-two were charged, and only one was convicted of a sexual crime.

Although police officers had the authority to arrest suspects of cognizable offenses without a court order, authorities refused to exercise that authority even in cases where they witnessed the crimes. In Odisha, for example, police did not detain members of the mob who had raped [REDACTED], paraded her half-naked through the streets, and left her at the police outpost.

The case examples reveal that victim-survivors who reported acts of sexual violence were stigmatized, harassed, and even attacked. The case files do not indicate that disciplinary actions were brought against officers who failed to file FIRs or properly investigate procedures. The lack of prosecution promotes impunity and hinders the ability to ensure full redress for the victims.

The duty to protect women’s human rights at all times and advance substantive gender equality is enshrined by international law.⁵³⁵ Under international law, state agents are obligated to investigate crimes of gender-based violence even if the victim-survivor or the victim-survivor’s relatives do not file a complaint.⁵³⁶ CEDAW (2013: 9) states that “conflicts exacerbate existing gender inequalities, placing women at heightened risk of various forms of sexual and gender-based violence by both state and non-state actors.”⁵³⁷ In times of conflict, women may be less likely to report violations themselves. If a victim-survivor does make a statement, investigating authorities should be sensitive to the trauma suffered by

victims.⁵³⁸ The failure to investigate and punish gender-based violence can foster further violence against women.⁵³⁹

COLLECTION AND PRESERVATION OF EVIDENCE

Under relevant international standards, state authorities that conduct an investigation must attempt to recover and preserve the physical evidence related to the crime, including samples of blood, hair, fibers, threads, and other clues, and identify possible witnesses to obtain their statements.⁵⁴⁰ Moreover, the scene of the crime must be protected and searched exhaustively, and competent professionals should undertake forensic examinations that use appropriate and effective procedures.⁵⁴¹

Physical and Testimonial Evidence

The record indicates that authorities investigating the examples discussed failed to adequately preserve the crime scene, collect physical evidence, or interview witnesses. In Gujarat, the first investigating officer did not recover weapons, or identify the source of the fuels used to burn victims, or preserve remains. The second investigating officer neglected to take statements from hospitalized victims and did not visit the relief camps where victims had fled. According to the court judgment, “the entire police record of statements [wa]s suspect and unreliable.”⁵⁴² According to Amnesty International, the Gujarat investigations “were marred by...the investigating agencies’ refusal to examine crucial evidence including official telephone records, and the destruction of evidence linking key political leaders to the violence.”⁵⁴³ In Kashmir, despite an entire village of eye-witnesses, torn and bloodied clothes, and discarded liquor bottles, the investigating officer closed the investigation “for want of evidence.”⁵⁴⁴ Finally, investigating officers in Odisha returned to the site of the rape a week after the incident, by which time they collected material of “no evidentiary value.”⁵⁴⁵

In 2013, the Special Rapporteur on Extrajudicial Killings “found that witnesses [in India] are often intimidated and threatened.”⁵⁴⁶ No witness protection existed in India at the time of the incidents discussed in this text and many witnesses were afraid to make statements to investigators, particularly in areas of armed conflict where state actors participated or were complicit in the incident. In the Gujarat case, “21 accused were acquitted due *inter alia* to the reported refusal of 37 witnesses for the prosecution to testify.”⁵⁴⁷ ██████ in Odisha indicated that she was hesitant to cooperate with the police investigation because she not did want to be “re-victimized by the Odisha police” (█████, 2008).

Court records and reports indicate that officials who diligently investigated the incidents were offered bribes, punished, or removed from the investigation to shield perpetrators from criminal prosecution. Following the attacks in Gujarat, five police officers from three different police branches were charged with the

investigation between 2002 and 2008. The NHRC determined that there was a “widespread lack of faith in the integrity of the investigating process, not[ing] that numerous allegations had been made...that ‘senior political personalities’ sought to ‘influence’ investigations by remaining present in police stations” during interviews and investigative work.⁵⁴⁸

Similarly, in Kashmir, when the first investigator concluded that the victims made a *prima facie* showing of rape, the director general of police reassigned the investigation to a second investigator. In total, three different officers in the course of five months were assigned to lead the investigation, each one starting “afresh.”⁵⁴⁹ After a judicial officer wrote detailed letters to the head of the Kashmir civil authority and to the superintendent of police in Kupwara urging immediate action, he was transferred. He later reported that he “was offered every kind of incentive in terms of political offers, promotion...[and] money,” in order to “alter the findings of the report.”⁵⁵⁰ After refusing to change the report, he was told by an army official, “You are on the hit list of the army.”⁵⁵¹

International law requires states to “[i]nvestigate violations effectively, promptly, thoroughly and impartially...”⁵⁵² Law enforcement officers are required “to carry out the investigation with utmost objectivity and impartiality. The whole process must be free from any discriminatory reasoning or bias.”⁵⁵³ The case studies indicate that in several instances, the Indian state did not meet this standard.

Forensic Evidence

Prior to 2000, Indian medical personnel performed forensic medical examinations of rape victims only upon request by the police or court. Women who went directly to a hospital after a rape were often “denied this crucial medico-legal examination.”⁵⁵⁴ In addition, according to Amnesty International, “[w]hile there are detailed standards for the gathering of medical evidence to support claims of...rape and sexual violence, the availability of competent medical examiners [in India] who can undertake such examinations in an appropriately sensitive and professional manner is often not available, especially in conflict situations.”⁵⁵⁵ Protection from retaliation for medical examiners does not exist.⁵⁵⁶

Authorities failed to gather forensic evidence, conducted exams in an untimely manner, or disregarded results. In Punjab, doctors refused to examine ██████, and in Gujarat and Kashmir, medical examiners failed to conduct forensic exams or excluded results from their testimony at trial. The judgment in the Odisha case criticized the medical officer for negligence in failing to provide results in a timely manner. Finally, an investigative report of the mass rapes in Kashmir disregarded the medical exam results of thirty-two women conducted three weeks after the incident that determined the women had been “repeatedly raped.”⁵⁵⁷ The report stated that “[s]uch a delayed medical examination proves nothing.”⁵⁵⁸

Medical examinations were also conducted in a manner that resulted in unreliable evidence. No standard for forensic medical exams existed at the time of the incidents discussed in this monograph.⁵⁵⁹ At the time, the “two-finger test,” often was used by medical examiners to assess whether a rape victim was “habituated to sexual intercourse” by testing the laxity of the vaginal canal although the test is unreliable. In Odisha, ██████ was subjected to the “two-finger test” during her medical examination, despite the Supreme Court of India’s decisions and government protocols that rejected the test’s validity.

International standards require thorough collection of forensic evidence by “competent law enforcement officials trained in forensics or supported by specialized personnel...”⁵⁶⁰ Specially trained staff must conduct forensic exams in a manner that avoids re-traumatization and humiliation of the victim.⁵⁶¹ Investigators “must take the victim’s particular situation into consideration and make every effort to respect and to protect his or her privacy and, as far as possible, to avoid any re-traumatization.”⁵⁶²

The failure to collect and preserve physical, testimonial, and forensic evidence in these cases materially damaged the investigations and hindered prosecutions. Without reliable evidence gathered in compliance with national and international standards, few perpetrators of crimes of sexual violence were identified, arrested, charged, and convicted. Lack of standardization, training, and access to competent forensic exams increased barriers to justice for victim-survivors and further traumatized them.

TIMELINESS OF COURT PROCEEDINGS

Indian law requires prompt filing of the FIR and the immediate investigation of cognizable offenses, such as rape, is mandatory. The investigation, prosecution, and punishment of perpetrators of the acts of sexual violence documented in this text were affected by serious and unjustified delays. The first victim-survivor statements, for example, were taken three weeks after the incident in Kashmir, and five months after the incident in Punjab. In Odisha, police did not visit the site where ██████ was raped until a week after the incident, at which point the crime scene had been altered and the Scientific Officer was unable to collect reliable physical evidence.

Prosecution was also substantially delayed, or the crimes were never prosecuted. In Punjab, ██████ filed her initial complaint in 1989 and, the court issued the convictions in 1997—eight years later. During those eight years, ██████ attended more than eighty court hearings and lived in hiding for fear of retribution while officers allegedly tortured her family members and burned her home. The convictions did not become final until 2013—twenty-four years after the rape. Similarly, in Gujarat, from 2002 to 2008, five different officers conducted “ineffective and unreliable” investigations. The Special Court judge delivered his judgment in 2012—ten

years after the initial attack. The criminal courts of Kashmir never prosecuted or punished any of the alleged perpetrators of the mass rapes and police filed an official closure report with the court in 2013—twenty-two years after the attacks.

India has an international obligation to conduct prompt and impartial investigations and to prosecute, and punish perpetrators of sexual violence.⁵⁶³ Delays result in frustration and exacerbate the vulnerability of victim-survivors to threats and intimidation.⁵⁶⁴ Prompt investigations and executions of final judgment are “indispensable” to a court’s successful functioning.⁵⁶⁵ The UN Human Rights Committee has not provided a standard definition of promptness but assessed the issue on case-by-case basis, finding, for example, that a delay of three months in opening an investigation violated the timeliness standard.⁵⁶⁶ Trial proceedings must also be completed without undue delay. Proceedings that required two and a half, six, or ten years to complete have been considered a violation of the ICCPR.⁵⁶⁷ A state’s failure to promptly investigate crimes “when women are disproportionately the victims amounts to unequal and discriminatory treatment and constitutes a violation of the state’s obligation to guarantee women equal protection of the law” (HRW, 2006).⁵⁶⁸

STATE AGENTS AND LEGAL IMMUNITY

Impunity has been defined as “the impossibility, de jure or de facto, of bringing the perpetrators of human rights violations to account.”⁵⁶⁹ In India, impunity for members of state forces exists as the result of practice and law. The CrPC requires the national government or a state government (when pertaining to local state officials or police personnel) to authorize the arrest of any member of the armed forces or the prosecution of public officials, including police officers and members of the armed forces. According to the Special Rapporteur on Extrajudicial Killings, this provision “has led to a context where public officers evade liability as a matter of course, which encourages a culture of impunity and further recurrence of violations.”⁵⁷⁰ HRW reports that “[e]ven in the exceptional case in which action is taken, the punishment most often consists of temporary suspension or transfer of the offending officer to another police station.”⁵⁷¹

Police officers also enjoy “de facto impunity” based on “a code of silence” and fear of police retaliation.⁵⁷² UN experts have found that victim-survivors or their family members who attempt to file FIRs with police may be subjected to “threatening treatment...which dissuade[s] them from complaining and impede[s] the accountability of state agents.”⁵⁷³ In Punjab, for example, the trial court stated police officers had “harassed and tortured” potential witnesses “so as to prevent them” from testifying in ██████████’s support.⁵⁷⁴ ██████████ also alleged that police officers burned her home and tortured her relatives in order to compel her to withdraw her complaint. The use of fear and terror not only impacts the victims but also may influence investigating authorities, prosecutors, and judges. In

Kashmir, the district magistrate discovered that he was “on the hit list of the army” after refusing to change his report about the mass rapes.⁵⁷⁵ Doctors in Punjab refused to examine the victim-survivor and in Gujarat did not document or testify to evidence of rape at trial.

Residents of Kashmir and other “disturbed” regions of India are doubly affected under the controversial AFSPA. The AFSPA provides military officials with broad powers to arrest, enter, search, and seize, without warrant, and to use lethal force.⁵⁷⁶ Section 7 of the AFSPA states, “No prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the Central Government, against any person in respect of anything done or purported to be done in exercise of the powers conferred by this act.”⁵⁷⁷

The AFSPA, passed in 1958 and expanded in 1972, grants the national government and state governors the power to declare areas “disturbed”⁵⁷⁸ and therefore subject to the AFSPA. The national government rarely permits prosecutions in disturbed areas.⁵⁷⁹ In 2004, a special committee established by the national government concluded that the act had “become a symbol of oppression, an object of hate and an instrument of discrimination.”⁵⁸⁰ The CEDAW committee has repeatedly urged India “to abolish or reform the AFSPA and to ensure that investigation and prosecution of acts of violence against women by the military in disturbed areas and during detention or arrest is not impeded.”⁵⁸¹ Despite years of domestic and international protest and criticism, India continues to defend the act.⁵⁸²

The incidents of sexual violence described by this monograph are *prima facie* violations of IHRL. Some of these acts of violence potentially also constitute international crimes. A state’s duty to prosecute perpetrators of international crimes and human rights violations extends to all persons irrespective of their political position or military authority. Human rights bodies have established that

“All amnesty provisions, provisions on prescription and the establishment of measures designed to eliminate responsibility are inadmissible, because they are intended to prevent the investigation and punishment of those responsible for serious human rights violations such as torture, extrajudicial, summary or arbitrary execution and forced disappearance, all of them prohibited because they violate non-derogable rights...recognized by international human rights law” (*Barrios Altos v. Peru*, 2001: 41).⁵⁸³

EFFECTIVE REMEDY

The case examples illustrate the inattentiveness of Indian institutions and authorities to the psychological, medical, moral, and material consequences suffered by the victims of sexual violence, their families, and their communities. At every stage of

the criminal process, from the filing of FIR to the collection of physical and forensic evidence, and the bringing of criminal charges, victims encountered impediments and delays to access to justice. Rather than generating a reparatory or rehabilitative effect, the criminal justice process subjected victims to “secondary victimization.”⁵⁸⁴

Victims of serious violations of international law have a right to an effective remedy (Shelton, 1999). “Victims are entitled to equal and effective access to justice; adequate, effective, and prompt reparation for harm suffered; and access to relevant information concerning violations and reparation mechanisms.” (Amnesty International, n.d)⁵⁸⁵ Full and effective reparation includes restitution, compensation, rehabilitation, satisfaction, and guarantee of non-recurrence (Manjoo, 2013; van Boven, 2010). Victims of human rights violations are entitled to prompt redress for the harm they have suffered through restitution and compensation.⁵⁸⁶ Monetary damages are “adequate” when they are “proportionate to the gravity of the human rights violation...and to the suffering of the victim and the family.”⁵⁸⁷ Monetary damages should account for physical or mental harm, lost opportunities, material damages, loss of earnings, and costs required for legal assistance.⁵⁸⁸

Under Indian law, a court may impose criminal sanctions in the form of payment of a fine by the perpetrator or compensation to the victim-survivor by the government.⁵⁸⁹ The vast majority of victims and their families discussed in this section of the monograph did not receive monetary compensation for the harm suffered. Authorities in Kashmir, for example, have not implemented the High Court recommendation to “explore the possibility” of compensation to the villagers (*Hindustan Times*, 2015). In Punjab, ██████████ was never compensated for damages incurred. The government compensated one victim-survivor of the Gujarat massacre after numerous inquiries from the victim’s lawyers and months of delay.

Other avenues of judicial redress have also proven ineffective. Victims of violations of fundamental rights may seek redress through India’s system of PIL.⁵⁹⁰ Through the PIL, for example, the Supreme Court of India can review a legal matter suo motu that implicates a large number of “economically disadvantaged” people.⁵⁹¹ The PIL system has no formal pleading requirements or standing requirements and the Court may initiate a PIL suo motu. The Court has significant remedial authority to order compensation and rehabilitation.⁵⁹² Procedural

In a context of active and ongoing conflict or in its aftermath, and following episodes of social upheaval, the transition from a conflicted democracy to a state of nonconflict requires providing redress to victim-survivors through the institutionalization of mechanisms that adhere to transitional and transformative justice.

flexibility has not ensured the effectiveness of PIL as an avenue of redress. The PIL petition filed in April 2013, twenty-two years after the incident in Kashmir, for example, was deemed “premature” by the High Court.⁵⁹³

In some cases involving violations of fundamental rights, the Supreme Court of India has ordered states to suspend public officials or impose other disciplinary actions.⁵⁹⁴ In the past, army and paramilitary personnel have been dismissed, demoted, or reprimanded for “unexplained abuses,” including rape.⁵⁹⁵ The NHRC and the NCM may recommend disciplinary proceedings against officials upon determining that a human rights violation has occurred.⁵⁹⁶ Following the Gujarat violence, for example, the NHRC recommended that: “action[s] should be initiated to identify and proceed against [public servants] who have failed to act appropriately to control the violence in its incipient stages, or to prevent its escalation thereafter.”⁵⁹⁷ Additionally, the NCM requested that the Government of Gujarat punish officers who did not perform their duties during the violence.⁵⁹⁸ However, the government has failed to initiate disciplinary actions against police officers or military personnel in any of the case examples.

Indian law does not provide rehabilitation for the victim-survivor in the form of long-term physical or psychological care following an act of sexual violence. None of the victim-survivors had access to psychological care or medical care provided by the state. Indeed, ██████████ was turned away when she sought medical attention in Punjab. Yet experts attest that physical and psychological rehabilitation is integral to facilitating the reintegration and readaptation of victim-survivors of sexual violence to society.⁵⁹⁹ Rehabilitation attempts to restore the individual’s health and reputation after the traumatic experience, and without it, the victim-survivor risks experiencing long-term negative consequences, such as isolation and economic hardship. It must be noted that rehabilitation models and processes are often laden with various problematics.⁶⁰⁰

Although Indian forces and public officials participated in or tolerated the attacks in Kashmir, Punjab, Odisha, and Gujarat, the Government of India has neither recognized responsibility nor officially apologized to the victim-survivors. Indeed, in Punjab, at least one of ██████████’s attackers, the head of the station house, remained on police payroll during his incarceration. In Gujarat, women have been unable to return home and continue to live in Muslim enclaves even eight years after the massacre.⁶⁰¹ Indian authorities have failed to implement a 2010 recommendation by the CEDAW Committee to promote reconciliation by creating a truth and reconciliation commission to investigate the Gujarat massacre.⁶⁰² The lack of measures of satisfaction, including official recognition of wrongdoing, can have long-term negative consequences as “not infrequently, the social reaction [to victims] is indifference or avoidance leading to a silence that is detrimental to the victims, producing isolation and mistrust.”⁶⁰³

Section III

Part Two: Memory Fragments

“WHERE IS MY STORY?”

*Mera dil kardaa main likh diyaan [My heart desires that I write it]. “Write it all, the lies and deception that has been told about us. About what happened during those years.”*⁶⁰⁴

— [REDACTED], Punjab (ACRes)

*We must remember. That is the only way we can live. Otherwise life is overwhelming. In talking about it, we are sad. The sadness is deep within us. It will die with us.*⁶⁰⁵

— [REDACTED], of Gujarat (ACRes)

What is it to inhabit a world? How does one make the world one’s own? How does one account for the appearance of the subject? What is it to lose one’s world?

— Veena Das (2007: 2)

What does it mean to be woman, minority, Other, and marginalized in India? Are these states of being inevitably consonant with structural and pervasive subjugation? How do affected communities, especially victim-survivors among them, negotiate life after events of acute violence and dispossession and navigate seemingly inscrutable processes to secure justice? How do they submit to and heal from an inheritance of suffering?

No comprehensive records archive the immensity of violence against women in conflict and social upheaval in India. The living memory of women victim-survivors inhabits the margins of dominant history. There, they are frequently rendered incidental and peripheral. The following excerpts are from oral history interviews with minority women victim-survivors and some of their allies as undertaken by ACRes in Punjab and in and outside Gujarat.

To include oral history as a part of the monograph was a much-deliberated decision. For several months leading up to the interviews, the ACRes research team, women victim-survivors, and local civil society leaders from Punjab and Gujarat discussed the act of listening/re-listening to the meanings and memories of conflict and upheaval as they live among survivors in the community. Prior to the onset of the interviews, and through the process, we discussed the possible effect the conversations may have on the lives of women interlocutors and the living histories of the past. Prior to the interviews, over a period of two years (and multiple meetings), women survivors and their allies co-participated in defining the method and scope of the conversations.

Memory work enables a fuller understanding of the recesses of violence from which to define structures of accountability (Das, 2007). Invoking collective and individual memory that is gendered animates details, happenings, and new

meanings that remain lost (Dossa, 2014: 21-22). In recognizing its value, critical, engaged anthropology interjects a cautionary note into such endeavors, calling attention to a “second moment of violence” (Dossa, 2014: 21). The necessary process of remembering traumatic events may render re-traumatization as inevitable. Subaltern agency through speech-acts intercede on political silence and silencing, and their reification (Feldman, 1991; Ross, 2003). Fiona Ross writes that, “the absence of an empathetic listener, or more radically, the absence of an *addressable other*, another who can hear the anguish of one’s memories and thus affirm and recognize their realness, annihilates the story” (2003: 3, original emphasis). The production of new memory is contingent upon “a re-creation that is dependent for its meaning on the remembering individual or community’s contemporary social context, beliefs, and aspirations” (Argenti and Schramm: 2012: 2).

The fragment-narratives below are chronologically placed, beginning with the Punjab conflict of the 1980s and 1990s and followed by the social upheaval in Gujarat in 2002. The articulation of life worlds (Das and Kleinman, 2000), and events offered below are in fragments. Through listening to the intimate memories of social suffering our understandings of the event of violence are differently politicized. They attest to the weight of incidents and conditions that are in and of themselves incomprehensible. The impact of violence and the isolation endured by victim-survivors are, for them, ever present. The women narrators speak to the simultaneous grip of trauma and the practice of agency that renders the act of speech both precise and partially inaccessible, to themselves and to others. Speech, many women said, disrupts isolation even as it reinforces loss. Speech, many women said, is a political act. The distance of time, and impact or paucity of social intervention delimits speech. Women spoke of *living in* the words they were articulating, each day, everyday while awake and in sleep. Memory, some said, is constructed in lucid yet constricted tongue. Fragments of their narration are explicit and disturbing, reflective of the events to which they refer.

The myriad shadows of the past, for so many Muslim, Parsi, Sikh, Adivasi, Dalit... women victim-survivors, are daunting and immovable. Women victim-survivors spoke of being there for each other, of things that help them endure. They mentioned the difficulties in speaking of their traumatic life experiences outside their communities. Yet, when voiced in the midst of family or community, or in the seclusion of their minds, the memories are engulfing, overwhelming. Speaking to outsiders, allies, is a way to feel heard and interject counter-memory, many women reiterated, to reach past the deep silence (in the world relating to their lives) and connect with others. The resolve, agency, and articulation of these women interlocutors in speaking to the past, and the continued injustices they experience in the present, disrupt the too often diminished and “taken-for-granted location” of minority women’s memory narratives (Metta, 2010: 29).

The disjunction between the ostensible normalcies of the world around us in which we met and the fear–caution–apprehension–resolve–courage palpable in the bodies and stories of women narrators was disorienting even to the observer-listener. That which was destroyed was real and tangible (bodies, lives, possessions) as it was allegorical, spiritual, and vulnerable (spirit, togetherness, conviction, relationality). For these women, the events of violence led to a fundamental questioning of the relations of power between minority and majority, gender and society, nation and Other that held together and led to the breakage of the past.

Women survivors and their allies spoke of restoration, healing, and *making whole* as impossible and unattainable, yet imperative to attempt in order to live with the past. Woman after woman spoke of her need and work for acknowledgment and justice as a way to connect to loss and to heal. They spoke to the risks of attempting such work.

In Punjab, the conversations were held with individuals who had lived with memories of the conflict for nearly/longer than twenty years. Some of the persons whose voices appear in the following pages are community leaders who have taken legal action to secure justice. Many among them had not spoken about their experiences previously with others outside their local communities. In Gujarat, the conversations were held with individuals who had survived the upheaval more than thirteen years ago. Most had spoken about the events previously with others outside their local community. Many of the persons whose voices appear below are community leaders who have taken legal action to secure justice and have received or are under the protection of the state.

The reflections are fragments of memory as recounted by women victim-survivors and some of their allies. Taken together, these broken parts interconnect myriad events and realities in shaping a narrative that is partial, subjective, and critical. Together, their words mourn the actualities and histories of pain. These survivor narratives of pain and loss, and differing experiences constitute entry points to understanding forms of social suffering (Das, 2007). The voices address events of violence in the conflict in Punjab and the upheaval in Gujarat that sought to impact body, identity, sociality, and polity at the intersections of the individual, the local, and the state and extra-state. As we listen, we are reminded of the ethical and practical responsibilities that inhere as scholars, practitioners, and readers.

FRAGMENTS FROM PUNJAB

*The one unforgettable thing about the conflict is that I spend that one night in jail. I will never forget that. I never wish that on any other women, anywhere.*⁶⁰⁶

— [REDACTED], Punjab (ACRes)

What happened to us [through the conflict] is in our hearts, it is never forgotten.

— [REDACTED], Punjab (ACRes)

Children are like the fingers on our hands.... if one is ripped off, you never forget about it, never stop feeling it.

— [REDACTED], Punjab (ACRes)

Earlier, we [knew] our fields and homes. After [the events of the conflict]... we have no sense of routine, no sense of normalcy. Life became unspeakable.

— [REDACTED], Punjab (ACRes)

AMRITSAR, CHANDIGARH, HOSHIARPUR, AND TARN TARAN

Following are select fragments from conversations with women victim-survivors and leaders, and their allies, from four sites across Amritsar, Chandigarh, Hoshiarpur, and Tarn Taran held by the ACRes research team.

The fragments render visible a range of social, political, and personal events that were witnessed and experienced by Sikh women (and their allies). The interlocutors, by their own articulation, have been directly or indirectly impacted by the conflict in Punjab. Some of the women who suffered sexual violence elected to speak of their experiences, whereas others spoke of different issues. Most of the women interviewees were ordinary civilians who were caught in the crossfire of the conflict. Some were falsely implicated, and all suffered physical or psychosocial victimization. Their narratives illuminate the extraordinary agency and leadership exhibited by women, their attempts at seeking justice, and their lives today. A couple of women interviewees had participated in the militancy as combatants. State forces apprehended them, and they served prison sentences, and are meaningfully engaged in the present. One such story is reproduced in what follows.

The interlocutors speak to the performative aspects of gendered and sexualized violence—state violence, group violence, family and social violence, and collateral violence. They note various details that explicate the textures of violence and aspects of loss and isolation. The reflections elaborate on the entanglements of the political, social, personal, and familial that organized gendered and sexualized retribution in rural and urban Punjab during the years of the conflict. These

entanglements intersect and reinforce each other over time, leaving their imprint on the physical and psychosocial bodies of survivor women and the communities.

The fragments illuminate mechanisms of survival, and attest to the grip of memory through the passage of time. The recollections refute linearity in speaking to prodigious realities in recent history that remain highly proximate to everyday living. They elaborate on individual and collective acts of courage for justice and dignity that signify the endurances of person and community. They reflect the impact of the conflict as it extends to the present.

The following narratives emerged through the research interviews, rendered here as individual fragments or as a composite of recollections. The monograph limits specifying any areas referenced to broad district classifications. Respecting issues of confidentiality and security, the text identifies Sikh women interlocutors from Punjab as “She” and/or blocks out their names. She spoke to the ACRes research team together with other members of her community.

Conversations: One

History

She recalled the prevailing atmosphere surrounding June 1984. Her spouse, ██████████, the ██████████ of a local school, their older son, ██████████ (██████), and her father, ██████████, were killed. The police had cordoned off their neighborhood while looking for her son. He had armed himself, She said, but was not part of a combatant organization. For many months, they lived in fear of the police. For her, daily life entailed running from house to home, looking for a blanket for her young children, a place to stay. Many turned her away. People were afraid to have her in their home or to shelter her young daughters.

Once, during a cordon-and-search operation when the police were about to enter into the compound of her home, She recalls her elder son saying to his younger brother: “You are scared, but you cannot run. Otherwise they get to shoot you in the back and call you a militant. The generals got their books. The lies they wrote about alcohol and drugs in Darbar Sahib...”

She says, “Mera dil kardaa main likh diyaan [My heart desires that I write it].” “Write it all, the lies and deception that has been told about us. About what happened during those years.”

She migrated to India from Pakistan Punjab in 1947. She remembers holding on to a cloth tied around her father’s waist. On the day she was born, her father was imprisoned during a rally held by farmers, protesting colonial rule. She lost her mother when young, and was raised by her father. On ██████████, 1992, the police took her father and husband away. She heard that her father was killed at ██████████, a village in Tarn Taran, after he witnessed her husband being tortured and

killed. Tarn Taran was a part of Amritsar District then and was constituted as a separate district in 2006.

Concerns of safety and security, and social norms compelled that She organize for her three daughters to be married soon after. To do so required that She arrange for substantial dowries. She recalled that during her sons's first marriage, his wife's mother labeled his as a "terrorist" family. He could not sustain his first marriage. Reflecting on the dynamics in and between "martyr," "revolutionary," and "terrorist," She said, "Shaheed kinoo akhiye? Jinne aapne aap liye laaraayi naahin keeti [Who should we call a martyr? One who has not fought for his or her own self]."

Impunity

Her spouse was in Class ■ when his brother was killed. Her husband's brother was on the run many times. At one time, her husband's neighbor's son was taken in and beaten severely [by state security personnel], who had mistaken the neighbor to be her husband's brother. They insisted that the neighbor's son admit that, "■ [the brother] gave you a pistol." The surveillance on her family continued until they filed a court case. An officer from an intelligence agency collected their testimony in 2009. She does not know what happened to the investigation. Details are rarely available to local people, She said. Investigations begin by officials arriving to record names and family details, and most often lead nowhere.

She talked about the culture of impunity and what sustained its practices. Two things, She said, gave the police "rights" to commit violence and murder—promotions within the rank and monetary rewards. She stated that the sum of the reward could approximately be as much as one million Indian Rupees. She spoke of one instance where two police parties reportedly both accepted separate awards for killing the same individual.

She said, "We don't even talk to our neighbors or anyone anymore, because who knows what they think about this now." A whole generation of young men and children, She continued, was eviscerated through this violence for which, for ordinary people, there are few accessible records, very little redress, and no public acknowledgment or memorials.

Conversations: Two

Quest

"As night fell, every night...we worried about where they might raid, which man may be picked up, which woman might be picked up... and whether the morning would come or not. They raided somewhere or the other each night."

"It was [during the day] when our house was raided. They didn't ask for my husband, they didn't ask for the guest visiting, they didn't ask for anyone else, not my

sons, and I had one daughter in the house... they said, 'Where is [REDACTED]? Where is [REDACTED]?' They pushed me into the police car and took me [away]. As daylight grew, the family... was not sure if it was the police who had taken me away. We never had police come into our house before. We had no dispute with anyone. I was doing a [training] course, becoming trained to [be employable]. The local [REDACTED] developed a [personal] dislike to me, thinking I would take over her clientele. She got her [REDACTED], the tout, to get me out of the way. He gave the police my name."

...

Police held Sikh separatists responsible for the murder of a local leader and abducted [REDACTED], alleging that She had harbored his killers. "There was no terrorism connection at all here...just mutual jealousies," says [REDACTED] [REDACTED] a lawyer. He explains that in "those days" eliminating a rival through "murder done was very easy." Since 1978, [REDACTED]'s relative, [REDACTED] a member of the Akali Dal, had been arrested previously for political activism. The police allegedly implicated him in the murder.

[REDACTED] [REDACTED] continued, stating that, "for two to four days at a time, he was picked up, beaten, and then released. The local [REDACTED] [a respected non-Sikh leader] would help get him and other Sikh youth released from the police. Then, the leader was killed."

She says, "It was a war between the Congress and the Sikhs following 1984. Sikhs [felt they could not] live in peace anywhere, much less raise their voice. The police got medals. They were in a race, it felt, to kill Sikhs."

...

During the raid following the leader's murder, police entered [REDACTED]'s home and asked her about the location of her relative (allegedly implicated in the murder). She was unable to provide information. The police took [REDACTED] and another woman into custody. At the station, police asked [REDACTED] to sign a blank document. She refused. They assaulted her, and proceeded to rape her.

...

She talked about the women who had been detained in [REDACTED] Police Station for weeks. "If in the one night [that She was there], they didn't spare me [from rape], imagine what went on for a month. A young mother was held with her infant child for weeks, since her husband was accused of being a militant. In another family, the mother of a militant was kept for a long time and then the unmarried sisters' were grabbed from their relatives' homes, and disgraced in the police stations."

[REDACTED] was released the next day upon the intervention of local leaders who congregated at the police station. That day itself, She wrote to the state governor, chief minister, and prime minister. She resolved to pursue the matter and file complaints against the officers who had acted against her.

...

Shortly after, police personnel from ██████████ arrived at see her. They asked that She meet with them. ██████████ refused. "We were all scared," She remembers, "the [police] said, 'bring another woman relative with you, just come meet us here.' But no one was ready to go with me either."

██████████ says, "I had so much internal bleeding [following the rape]. I was all sickly all the time, but I could not lie on the bed. Each way I would turn, there was the police. Nothing felt tolerable..."

She says that she thought, "I will let [the complaint against] you go. Just remember that you did this to a woman and she too can give you an answer. I thought to myself that at least I had written the letters. But then, the ██████████ himself came to our house. 'Bibi [honorific address for Sikh women], tell us the truth,' the officer said." However, She felt she no longer wanted to proceed to secure justice. She did not share her constraints with the ██████████ regarding her state of poverty and isolation. When the ██████████ himself came to their home, the family had felt that they had some support from the authorities.

Yet the next day, other police personnel picked up several of her male relatives, ██████████ of whom were severely tortured. The police would pull out the strands of long hair from the scalp of Sikh men, ██████████ stated, and often times, they would bind the men up by their hair. In custody, ██████████ of her male relatives were repeatedly beaten and verbally threatened by police personnel who stated, "Now, dare file a petition for that woman."

Following the above, in one incident, a tout informed the police that ██████████ was alone and asleep on the roof of her home. In the midst of the night, two police cars pulled up. "I had no patience for them," She explained. When they asked about her relative, She said, "go ask his wife and kids." They asked ██████████ to open the only locked area in her home, a small storage unit, saying, "otherwise you will say that we picked up your jewelry." "Forget jewelry," She recalls, "I did not even have grain in the house." Angered, She recalls insisting that the police personnel leave her home, and eventually they did so. She recalls feeling overwhelmed with fear as they left, realizing that they could have killed her that night.

During the course of her case, ██████████'s house was burnt and razed to the ground, and a number of her household items were destroyed.

...

██████████s determined to continue her search for justice. With such resolve came tremendous uncertainty. ██████████ stated that, "we [She and family members] could not cook in our own homes, as we would be scattered and fleeing [from the] police. They would interrogate me [about her relative, ██████████]. The police would intimidate the extended family, so that we would not have any support. I had to go 'underground.' I travelled all of Punjab and have seen so many villages.

I wish I had kept a diary those days...and you would see all the details about the environment...but who had that presence of mind then?" When ██████ was in hiding, the police and police informants circulated malicious rumors that ██████ and had eloped with her relative, ██████. "But wherever I stayed, I would send a message to villagers... where I was, and they could come see for themselves." ██████ was forced to remain on the run through much of the process, and often without resources. "I remember walking through paths barefoot," She says, "I did not even have a bag...I just took the [case] files in a pillow case."

...

Nearly a decade passed. ██████ won the legal case. She, witnesses, and her ██████ worked together. They were present for all court dates, and would travel there together, often days in advance. Many women in ██████ village have supported and surrounded ██████ since, drawing on her leadership and counsel through the years. They stated, "No one would come or go to ██████'s village, because the threat continued. When children got married in those days, none of the men in the family really could attend, because they were on the run." The women stated, "Marrying ██████'s daughter's became a challenge as people worried her family may have 'terrorism-connections.'

The torture of her relative and other members of her family remains unaddressed.

██████ says, "In our fight for justice, some Gujjar families really saved us. They told us, 'Look, if you survive, we'll all fight. If ██████ dies, there is no fight. Stay away from the village, run, and save yourselves. We wont give you up. We are with you.' We are still like blood relations with these families. The ones who got us killed those days were [Hindu] Gujjars, the ones who also tried to save our lives, were also Gujjars [of Hindu descent]."

A male witness to ██████'s condition in custody, the morning following her rape, was tortured. ██████ says, "His legs were limp, he could not use them... even now... how little facility he has [in them]." He says, "██████ was alone [during the event]. There were no women police nearby. ██████ was in a horrible condition following the rape and did not wish to keep living."

...

Following the incident and ██████'s release from police custody, people from twenty-two villages had gathered together. There, supported by other women, ██████'s had spoken of her ordeal. "I even told the color of the bed on which it happened," She says. "I spoke of it all openly... Nothing was hidden." Since then, She could not recall women sitting together, "even like this" [as during the conversation with ACRes]. Decades ago, just after the Partition [of 1947], some of them remembered, women would often gather together.

One of the women who had supported ██████ then, spoke of hearing

about happenings in neighboring villages in her capacity as a panchayat member at that time. ██████'s case registered for her the enormity of the events taking place around them and their impact on women. She adds that so many suffered torture and sexualized violence during the conflict years. "They did not have social support, and they could not speak out," the women tell us. There were few resources with which to address the psychosocial impact of sexualized violence, and no counselors or therapists have ever visited these villages. "Even today, women from ██████ they say, 'why jab at those wounds?'"

"The one unforgettable thing about the conflict is that I spend that one night in jail. I will never forget that. I never wish that on any other women, anywhere," ██████ reflects. There are Sikh families, She recalls, from whom everything was taken, "families where the police left not even a single member, they are ours too." She states, "I remain content in my life and our family's small earnings. Circumstances today are such that I am back to being a householder [running a household], baking cow dung cakes, and such. Our tenth Guru gave up four children for justice...I remember that and walk the path undeterred. This, what happened to us [through the conflict], is in our hearts, it is never forgotten."

Conversations: Three

Combat

She trained as a combatant, and was later apprehended and imprisoned, serving a prison sentence. In the present, she works with humanitarian issues.

"My family was deeply influenced by the attack on unarmed Sikhs in 1978 [in Amritsar by members of an armed sect]," She states. Politically outspoken as a young woman, the police came looking for her while she was in college in the 1980s. Her family forbade her from leaving the house. "I took amrit in 1981, She said, and "in June 1984, I was in Darbar Sahib."

She stated that her family had assumed that she had been killed. On learning that she was alive, they sent a message asking that she not return to the village, as the situation was dangerous.

At that time, She stated, "The men were all wanted." She had hidden her spouse-to-be in a house near Darbar Sahib. Someone notified the police that a man was sheltered there and they proceeded to arrest him. "They were, going after anyone with a turban, and, especially, the men who wore cholas [formal dress worn by some Amritdharis—initiated, practicing Sikhs] were just not spared at all." "We heard that they took out non-combatants and dishonored them in Darbar Sahib. The way the complex is built, you do not have full visibility from any one building. But we heard the screams right from the sarai's [pilgrim shelter], as people were set on fire."

"What one saw in June 1984 was unimaginable. This was hard to imagine

from a foreign army, much less our own.” The attacks on non-combatants in the street, She said, were an example. She added, “even if there was some issue in Darbar Sahib, why were the other gurdwaras attacked?” Mental torture accompanied physical torture, She added, and included anti-Sikh epithets to taunt and degrade the history, faith, and culture of Sikhs. “The individual perpetrators hardly cared what an individual’s involvement was [in the militancy movement]. The bigger plan involved destroying a community.”

Happenings

In the weeks following 1984, she crossed over to Pakistan as the only woman among many men to train to use arms. “They [Pakistan] didn’t help us on our terms, or for our movement,” She recalled, “They had their own policies and plans. They didn’t let us return for a long time once we went there.”

Following her return to Punjab several years later, she was apprehended and imprisoned in an undisclosed location in Tarn Taran. At first she was detained in isolation, and subsequently she was placed in a cell with two other women. One was the wife of a former member of the state forces who was accused of sheltering militants. “She knew nothing, but was taken in and faced torture. Later, the two women were removed from the cell. They were alive then, but they never returned home.”

She reportedly witnessed more than forty other women from various villages across Punjab be held captive in the same complex during the time that she was there. She recalled that one of the women who had escaped from police custody earlier was given up by own her family in fear of reprisal.

She spoke of being tortured, given electric shocks, and receiving injuries to the mouth.

■■■■ months later, with legal intervention, She was transferred to a jail. She said, “I had to get an abortion since starting to miscarry due to torture.” She recalled hearing screams within the prison walls. People received “shocks to the privates,” she said, “and they would get drunk senseless and just work to dehumanize us. Hardly anyone there was withholding information. If you had information and were going to give it up, it was going to come out right in the beginning during the interrogation... It’s not like the perpetrators knew how much current to use while electrocuting or how much not too...they were inhumane and killed so many in unspeakable ways.”

She recalled police personnel asking the other women inmates regarding property owned by their families, reportedly to inquire about belongings that could be commandeered.

“You could hear everything,” She continued, and reported hearing the police personnel talk, “‘The fish in ■■■■ have not eaten anything today...it’s your turn.’ They would then [reportedly] take a person who had been tortured, tie them to a rock, and throw them in ■■■■ [water body].”

Reflections

“The border areas of Punjab, like Amritsar, Gurdaspur, were really influenced by the attack on Darbar Sahib [June 1984]. The people around there, if they even fed the militants, they were considered as much at fault as anyone who murdered someone. Those people were stuck. The police ate in those homes. The militants ate in those homes. People felt trapped.”

Young boys and young men were primarily the ones that joined the movement, She added, “The movement was of unorganized men mostly. Young boys just rose... As long as police didn’t infiltrate, things went well. People supported the movement... then the infiltration began in 1990.”

...

She continues, “Many young boys who ran away [from fear], just hearing about others being tortured.” She continued, “in one village, some boys were so badly tortured, that the other teenagers in the village who believed the police would come back, put their hands to electric wires and committed suicide.”

“There are incidents where young women married militants, just to join the war. They wanted to play a role in the war that was raging.” Following the death of numerous young men, She continued, Some of the young women who “gave up all to marry them” were accepted by their spouses families while others continued to live in their natal homes.

She said that all historic sites that were damaged should have been preserved and that “Darbar Sahib should have been maintained as is...then no one would need to say anything, it would be evident to all.” She continues, “Of course we should still talk about all this in Punjab, no matter how painful, because we want to keep our ethics and our history alive. Its not even about us individually, we care about what is said about us collectively. So we talk, even if its painful for us individually, because we need to explain what our Punjab was like...and what happened. How is a child to preserve history when they are just not educated? The privatization of education has really hurt us. The state can intervene to turn things around. But does it?”

“I remember all this so vividly still because we never received justice. Even today, those screams interrupt me. What I heard in that torture house long ago. Then, the body was young. I dealt with the torture. Now, my back, my teeth, my everything increasingly gives trouble.” She continues, “Even today, the children of the dead face hardship, because they refuse them death certificates for the parents. The country that should have provided protection, has left us insecure still.”

“We [as Sikhs] are taught,” She says, “that for as long as there is breath in our body we need to fight against injustice. That is how one carries on.”

“Few families were promised the 250,000 [Indian Rupees]. This even came down [was lowered] to 175,000 [Indian Rupees]. What is that amount anyway?”

No free of charge education, no relief for widows. Just 250 [Indian Rupees] pension for some widows. How is that justice? Still, no one takes up the issue of violence against women in Punjab. In other states, it feels the chief minister cares for their state. Here, we feel the opposite.”

“About other states, people talk about it [when things happen]. We see the terrible things that happened in Gujarat, for example, and we say they are terrible. Why don't people working on other states, also work on Punjab?”

Conversations: Four

Inflictions

“We are all mothers of those [who were] killed from Village ██████,” She says, “They would pick up [our children] from one house and kill them in another house. During the time the boys were underground, the police wouldn't let us do anything. They [would] pick us up when they wanted. We had no peace.”

They add, “The truth is that the other people from the non-directly victimized families, don't even come to our homes.” She continues, “In those days, many had started closing their doors, even as we were getting beat up outside. The reality is that when Bhindranwale gave his call, there were Sikhs who stood with him. Who stood up for Sikhs? They bore the brunt. Others cowered even more. It hasn't been a unified response ever.”⁶⁰⁷

“Over the years, so much happened. The police themselves infiltrated the Babbars [Babbar Khalsa, armed non-state group]. A lot of people were caught in the middle.” During 1987-89, She adds, “They took our beds, took our dishes, the police didn't leave a house for us to live in really. They took all the tiles and they took bricks. Everything was ripped apart. Everything was taken... The entire thanaa [police station] is made of bricks from... [our] homes. I don't have fear of the bullet now. I would say it to their face.”

She recalls one morning in ██████ 1987, when her neighbors came running to her home, to tell her that they had read about an “encounter” between the police and her son, a militant. She remembers saying to them, “I already know.” The night before, she recalls that she had “tossed and turned and felt the pain...on her arm, on her body.” Her husband had said, “You are just superstitious.” Previously, her son had been picked up and tortured by the police two or three times before. That morning they went to the police station and asked for their sons' turban, trousers, for any proof. One of the police guards recognized her and asked another police personnel, and confirmed that her son had been killed. She recalls feeling fear for her younger son. The police before had picked him up. They had tied his arms behind his back. He said to the police personnel surrounding him, “Sir, where am I going to go?” He survived and has been in her life, She says, through all this.

She reflects, “They would just pick them up in one house and kill them in another.”

She recalls the death of a schoolteacher. His [REDACTED], [REDACTED], was a militant. She says, “They took the teacher, tied him to a tree, put a gun in his mouth and shot him. Pieces of his scalp were all over. His mother and the villagers, they collected those pieces. A large crowd of people from nearby had gathered there. Women led the protests then.... We didn’t let them pick up the body, his disfigured face, everything turned inside out. We yelled then, ‘Khaki kutte murdabaad [Khaki, dogs, die].’”⁶⁰⁸

She recalled that the perpetrators would reportedly hide in the police station. “When the mother gave a sheet to cover his remains, even that they wouldn’t accept. They suggested to the mother that the boy was killed due to some personal rivalry. I couldn’t believe this. I just lost it on them [police officers] then.”

The women recalled that many young men who were witness to this violence went underground to escape being tortured.

She said, “They tied him [her son, a young man] up and took him to the roof of our home and yelled, ‘Now jump.’ He [son] asked, ‘How? Why?’ They said, ‘jump like your brother used to jump around before.’ Then they started to take him away. She ran behind, saying, ‘Please kill this son in front of my eyes. The other one [son] was disappeared. Kill this one [son] here.’ The police personnel threatened to shoot her in the head. They took her son to [REDACTED] torture center. “Those days, She says, I can never forget...”

“They [police personnel] would pull on all their limbs repeatedly in different directions, tie them up, and almost kill them.”

“For the [REDACTED] years when he was underground so much happened to us. Took our young daughter, she was married. Her in-laws had to come and pay them off to get her out.”

“[During] the years that he was underground, they would arrest and keep us—mother-in-law and daughter-in-law—there, make us sleep on the floor. They would beat us. My daughter-in-law was a simple and good girl. They called her to identify the body. She was about to take cyanide in the police station. They stopped her from taking the capsule. The policeman held her hand and said, ‘What are you doing here? You’ll get us killed. If you want to die, go do it at home.’ Later, this policeman came to the morgue where my daughter and granddaughter’s bodies were brought. My son had given her the cyanide pill, saying ‘Duniya ton badnami na khaayin [don’t be shamed by society]. My mother can go wherever and survive. But where can she take you or my daughter?’ So my daughter-in-law gave the cyanide first to her little girl and then took it herself.”

They add, “They beat the women too. Women police would never come close to the militancy-affected areas. The male police would themselves, put all their

force into beating us.” Others add, “Even the jewelry in our ears was taken out. We were totally at their mercy. The [REDACTED]’s would beat us. Pulling our legs apart, they would ask, ‘Where is he?’ I said ‘I released him from my womb, and now I can’t say where he is.’ They threatened us all the time, in [so many] ways. ‘We are going to throw you in the waters of [River] Beas,’ they would say.”

The women dismiss that only 3-4 conflict-related rape cases are well-known in Punjab, “How is that even possible to believe?” She continues, “They would hang women upside down. The torture on women wasn’t lesser. They destroyed women’s lives. We are just surviving. We have just survived.”

She says, “We women, we just lament now. There have been conversations about a memorial here. There are [REDACTED] affected families here. No real system [for remedy—compensation, pensions, rehabilitation] was created, in an organized way, even from the private donations that came from outside. For more than twenty-one hundred families, the information was given from the cremation ground registers, through the CBI case. If the name wasn’t in that register, then the family got nothing. Our list [of the disappeared and the dead] did not matter. Some of the families here too, got nothing. If their name were not in the register, they got nothing.” They say, “Write those names now.”

“We have spoken our story, so many times,” She says, “So many times people have come and asked us to talk, and our minds have emptied out. But nothing ever came of all this. Some came with headphones, others with cameras. So many departments and organizations come. But what have we received?”

She adds, “Our community now...many [Sikh men] have cut their hair. Many are drug addicts. For example, [REDACTED] is a gambler. After all the time of being underground and running from the police. He has a wife and a child. But sometimes he stays in the village, sometimes strays off ...” The women say that they live with health conditions. They feel insecure, and live in constant fear, even today, and with palpitations in the body. She adds, “There is tension on my mind. I eat some medicines for that. I get monthly injections too.”

She says, “The peace of mind of having a son, a caretaker, has been taken away from so many of us. We remember that the only real protector is Waheguru [Almighty]. He protected me then, and he protects me now.” “No one has led,” they add, “so we have not had anyone to follow. We do not have strong leaders. People barely have looked at us or thought to help us.” The women added that they have continued in their search for justice, and attempted to bring legal cases with the help of some human rights lawyers. People are afraid, they said, to come forward in a context where there is no acknowledgment of what transpired and no call for atonement.

They say, “The parents of the dead are dying and hungry [today]. They should be given something... Our grand children are sitting at home, without marriage

prospects, without economic [opportunities]... The truth is that people from even the non-directly victimized families do not come to our homes.”

The women spoke of caste inequities in larger society in Punjab and of their resolve to not let caste distinctions among survivors impact their relation to each other. “No...we stick together,” She said, “because if we begin thinking of each other as different [unequal], then we will become different.”

They reflect, “Who won in this conflict? Morning and night, whose name is remembered? Our men. In ardaas [prayer] every day, they are remembered. The police [state forces] only won in the sense their bullets only physically killed these people.”

She says, “Where are our stories? We will keep telling these stories, and one day, just telling these stories, we too will die. Make a memorial. Without [remembrance], these things will just continue. Perhaps our history will keep moving...and the time will come again when those who died, their lives will matter. Confronted with a yaadgaar [memorial]... they [state, country, and world] will register that we are still alive.”

Conversations: Five

“Unspeakable”

“After the attack in June 1984,” She says, “you could feel the change. There was this fear in people’s minds that the CRPF might come and pick up Sikh girls. My parents married me off in 1985. The environment in this village [where She came to live following marriage] was not that bad [violent], otherwise my parents wouldn’t have married me to a militant.”

“The day I married him is the day I had learned he was involved in the movement,” She says and adds that her family realized that her intended spouse was a militant from his speech and attire. She continued. “Then the times changed. My husband died ten months into our marriage. My son was born after his father’s death. My in-laws said, ‘Go where you want to, but leave your son here.’ They wanted to send me back [to her natal home]. I said no, I will stay where the child stays. My son and I will support each other. He [her spouse], and all our male relatives, were killed during that time. There was no real support left for us. We had to leave home [and be on the run] for six months. [My] son was six months old. After his [spouse’s] death, even [her] brothers and sisters wouldn’t let us into their homes.”

She states that she too was married to a militant. She did not know this in 1984, when they were betrothed. Facing opposition from her family, they waited for six years before marrying. She says, “The Sikh militant revolution... began when basic decency had escaped people... girls were not safe. The sense of community was broken.”

She says, “Those are the stories of the revolution that still need to be written.”

Other women add, “Listen to our stories; someone who was married less than a year, someone who was married a few years, then we were all widowed and stayed with the in-laws and raised our children. If it were men in our place, likely they would have remarried, they would have moved on. Women’s situation is different. We cannot move on. Only women can understand.”

“They [police and paramilitary] would come and threaten to take us away unless we produced the boys who were underground. We did not know where they were...if they were. How could we produce them?” The police reportedly functioned with complete authority, the women said, and arrested or disappeared whomever they wanted.

Structural inequities further afflicted women, She says, as “brothers-in-law, fathers-in-law, they seemed to be ever ready to find an excuse to take it out on us... to beat us, banish us.”

“I was even turned out of our home. Now, it is only now, with our children more grown up, that we are spared of peoples’ shoes hitting us” [symbolic usage, refers to degradation]. She was forced to return to her natal home, and “only when one of my relatives, my uncle’s son, a known militant... sent a message to my in-laws, and out of fear of him, my in-laws came to my parents’ and accepted me back. Otherwise they had no plan to keep me. They had turned me out of the house.”

She says, “My father-in-law was different. He received a government pension. That source of income made things better in our house, and my father-in-law protected us and took care of us always. I had it easier.”

Women from impacted families faced abandonment, living in increasing isolation during the conflict, they said. She adds, “Yes, they [state forces personnel] picked up and tortured women very badly too.”

“In 1978,” She recalled, “my husband and I were on our way to Darbar Sahib, when the killings happened. There was no justice and there was outrage. Then the involvement with the movement began. After 1984, for the next eight to ten years, so many could not stay in one place and work in peace. Extended families were taken away also. [Too many] spent time in and out of the police stations.”

The women say, “In those days, the village panchayat would get together and say to us, ‘We will make your case.’ They would then go to the police station and sell out, and say ‘they [villagers whose sons were underground due to fear of police] know the truth, their sons come home at night [indicating involvement in the militancy], and say, Interrogate them.’”

She recalls, “The CRPF told my husband to report to them once each day about the situation in the village. If he did not go, they [CRPF] would pick him up, and if he did, then the others [militants] were going to shoot him.

“There used to be cordons all the time. We could hear the firing. Six of our

men were killed together. They had left for the fields that morning, and by 1:30 PM we heard that they were dead. I rushed out looking for my young son. I took with me a photo of my brother who was serving in the Indian Army. The army men surrounding the village said, "Mata [mother, honorific for women], this doesn't matter at all now."

...

She says, "Children are like the fingers on our hands...if one is ripped off, you never forget about it, never stop feeling it." She says that their homes are lined with photos of those they honor and remember. She says, "Our surviving children have never seen anything stable. They need to be settled down. We never want that time to return. We want our children to have some sort of stability now."

They say, "Any fight in any of our homes, is at the end of the day, a fight of hunger. If our kids were settled more, we would see less strife."

"What real support [have we received]?" She adds, "Some of us had surviving children, and their children. We got busy and... [in order to cope], a little distracted. Washing someone's dishes, sewing someone else's clothes, that is how we have raised our children."

They say, "We have received nothing [in recompense], but if we ever have any sort of resources people will quickly say, they have militant money."

She adds, "Some of our children are often distant. They themselves have serious issues, this [has been] all too much for them. We keep thinking of those we have lost, and what such loss has done to our... [family, community]."

"My grand children ask me now, 'what happened?'" The women say that they fear passing on the weight of past events to the next generation. This makes them hesitant to speak of what they have witnessed and experienced. "All I can say," She says, "is, 'what can we tell you... he never returned.' What else can we tell them?"

She says that the fear of the past is not unwarranted, and says that, "even today, the police come asking, 'Where is your man?' Every time a police officer changes and a new one is posted, they come asking, 'what do your children do?' And they conduct their full inquiry again. Today, we want to speak about all this. You, as women [in ACRES team], will listen to us and forget?"

They add, "It is painful to think of all the innocent people killed in Darbar Sahib. There, a memorial is being made. There should be something memorializing ours [loss]."

Some villages hold memorials while others keep silent, they say. She adds, "Here, we all gather and mark one barsi together [death anniversary]. We read from the Akhand Paath [continuous recital of the Guru Granth Sahib] and hold a langar [food served in a shared areas at the gurdwara to all visitors without distinction]. Civil society leaders have helped us with the money and resources for this and we pool our resources [each year]."

She says, “People come and see that these are the families, that those memories are alive...such things, remembrances, re-awaken memories. If we stop, the memories will fade.”

She spoke of the need for change, then and now. “At that time wedding parties would be huge, and demands for alcohol and meat would be shamelessly made,” She said, “How was a poor person to marry a daughter? The revolutionaries put an end to this. And, now, look at the situation again.”

The women spoke of the various trauma-related ailments that they have become accustomed to, including difficulty while breathing and walking, and bodily pain that has been debilitating since a young age. They said that they have never spoken with a mental health professional during or after the conflict.

They spoke of their desire for a museum, a memorial that chronicles those times, the honorable and dishonorable, something that the next generation, and those after them, can learn from.

They speak to futility, to indifference. They add, “There are such folks also, amongst us, who will say, what should we do with a memorial? It won’t make a lick of difference. There are such people too.”

She says, “Earlier, we [knew] our fields and homes, our worlds. After [the events of the conflict]... we have no sense of routine, no sense of normalcy. Life became unspeakable.”

FRAGMENTS FROM GUJARAT

*We trusted those who betrayed us... We dismissed it [the possibility of the event] as impossible... After 2002, there is always fear at every turn, in everything, for what else that can happen. After the night, the day does not pass. After the day, the night does not end.*⁶⁰⁹

— ██████ of Gujarat (ACRes)

She [Muslim women] says, "So much bad happened to the Hindus then also. So many Hindus lost their homes, lost their belongings, were displaced and hungry, lost people."

— ██████ of Gujarat (ACRes)

We remember the suddenness of it and the eternity of it... I try to remember ██████ .. I try to remember ██████ .. I try to remember ██████ .. as I saw her, him, them, for the last time.

— ██████, of Gujarat (ACRes)

AHMEDABAD AND ANAND

Following are select fragments from conversations with women victim-survivors and leaders, and their allies, from three sites across Ahmedabad and Anand. The interlocutors, by their own expression, have been directly or indirectly impacted by the events of February-March 2002 in Gujarat. The events referenced in the narratives took place between February 28, 2002 (in Ahmedabad), and March 1, 2002 (in Anand).

Muslim survivor-women and their allies speak to graphic, majoritarian, and public sexualization of violence in urban and rural Gujarat during the upheaval. The interlocutors locate the violence within the political, communal, sectarian, and local and as a signature of minoritization. They piece together extensive details to narrate the configuration of the events of violence. The interlocutors themselves suffered individual or collective physical or psychosocial abuse.

The interlocutors speak to the unspeakable. The women evidence the intractability of loss and the logics of othering on the bodies of victim-survivors and the community. Victim-survivors expand on pain, suffering, *seeing*, and individual and collective acts for survival and justice. These acts denote the realities and courage of persons and collectives within the targeted community. Their precise articulations signal a compulsory and everyday rootedness in the events of 2002 and the shadows of such immersion on their lives. The fragments evince the hold of the colossal events of more than thirteen years ago on the lives of the interlocutors today, as double victims of violence and the onerous process of accountability.

The following narratives emerged through the research interviews, and are rendered as individual fragments or as a composite of numerous accounts. The monograph limits specifying the areas referred to below to broad district classifications. Respecting issues of confidentiality and security, the text identifies all Muslim, Parsi, and other women interlocutors and their allies from Gujarat as “She” and/or blocks out their name. She spoke to the ACRes research team together with other members of her community.

Site One

The Event

She says, “Everything of ours was broken.” She, and the other women, said, “We had to leave our home. In our minds, we do not desire to go back. The ruins are there. My [redacted] my [redacted] her [redacted] my [redacted] [redacted]... were killed [and] are gone [passed on]. The most important was the sense of betrayal. We knew them [perpetrators] from years ago. They were resident there. Our family has been living there for a long time. My wedding happened there, [redacted] before [the event]. We knew each other well. We had relations with each other. We never thought this could happen. Our trust is broken.”

She says, “It was the day of Jumma [Friday], the first [of the month]. It was 1.30 PM, the time for Namaz [prayer]. They started it then near the Masjid. We kept to our mohalla [neighborhood]. We kept very quiet. The time was about 3.30-3.45 PM. We heard people in a mob come from there to near our place. We saw they had rods, kerosene, gunpowder, and grenades. My husband was in the field. My mother-in-law was downstairs. They destroyed the neighboring homes. They set fire to goats and buffalo. We asked, we pleaded: ‘What of yours did we damage? Ask us to go and we will leave everything and go.’ They set fire in the surrounding area to our home, to the home in front of ours. The mob was made up of locals, of people we knew, we had seen around, of Hindus who lived in front of us. We became fearful then. We broke the mud wall to our neighbor’s home and went in. The fire brigade came, they were pelted with stones, and the fire brigade left. From my neighbors, I came back home. Several other families came to our home. The mob set fire to our home. Smoke was filling the downstairs. We ran through the house with the children, from here to there, from there to here. All around us was aflame. They bolted the door from the outside. He [spouse\husband] came back at about 7 PM. We fled, through the fields, to the camp in [redacted]. Three months we lived in the camp. Then we went to [redacted] our ancestral home. I came to our home [which was destroyed] at eighteen, when I was married. We do not go there now. We could not return.”

They add, “We had seen on TV about the 27th [of February] but did not

think it would happen here. We thought it was happening in [redacted] Not to us. In our [redacted] there lived [redacted] Hindu and [redacted] Muslim families. [What happened to us is] damaal [incident], kaumvaad [communal violence]. We feel [redacted] made them do it. First we did not think that, but did when we heard of all the other incidents [during the 2002 violence]. “

“No one was raped here. My [redacted] was a strong figure in the area. If he had left the house that day, then they would have attacked women. He gave his life to protect the girls and women.”

“‘Kill them.’ ‘Kill the Muslims.’ These were their slogans as they came with the kerosene bombs. We did not have enmity with them. God alone knows. The reason was one. ‘Hamare Hinduon ko Musalmaano ne Godhra me jala diya’ [‘Our Hindus were killed by Muslims in Godhra’]. They took revenge on us. To become the enemies we have [come to be] the only conclusion we can come to is that the difference between their community and our community [is too much]. We had had better relations with them then, sometimes, better than with our own. With those who lived in front of us, we shared food, whether it was mutton or fish.”

She says, “If we had had word before then we would not have let all these people, our people, burn. If we had word, if we had any indication that they would turn against us, we would have left the house, left everything, taken our children and gone from there. We would not have let it come to this. We would have saved our children. What is taken or looted, we can remake. Only if people lived, we could have remade. When someone from one’s family dies, how terrible we feel. Then, to die this way. Here, all such young lives, dead. Eight months of age, twelve months of age, twenty years of age, nineteen years of age. Young boys. So many such people.”

“It was Gujarat bandh that day. What I saw with my eye, what I remember in my head, I cannot ever forget. Who was there. Who was killed. What was torched. Who I saw do it. We were put in the middle, between those they wanted to kill. We became the ones they wanted to kill.

They add, “We cannot forget. We left with what we were wearing. My daughter put on two pairs of clothes before we ran from home. We would have been killed. We lived. But they died. [redacted] [redacted] people inside one home. They were torched alive. When we ran from the home, I saw my brother-in-law’s dead body outside. If I close my eyes, even now, that is what I see in front of me. How do we forgive them? The corpses we saw as we ran later disappeared. Timber logs ripped from our homes were used by the killers to burn the people they killed. They used a chemical powder that burned the bodies completely. They torched all our belongings. Bodies heaped together on a massive funeral pyre. Life is burdened since. Grieving. What state we are in now. No one has said sorry to us for what happened. There was happiness before. Now, we remember that happiness and it is

sad. How it used to be, the relationships we [Hindu-Muslim] had with each other and how it has become. We used to be in each other's daily life. We participated in each other's festivals and family celebrations. We feel deceived. Did we really understand each other? How do we look at each other now?"

Accountability

She says, "We people had to take the first initiative to bring the cases and seek justice, and to try to put our lives back together against great odds. Teesta Setalvad helped us and has been there for us. No women's organizations in our area. The National Communal Harmony Fund gave money to 780 children in Gujarat. Why talk about Hindus, even my community has not come to help. A few people have supported us. Many did not. We have been otherwise on our own."

Economic Loss and Reparation

She says, "The [totality] of our loss was never calculated. We were not awarded compensation for [the totality of] our loss. [We, for the entire family] got a check for 3.3 lakh [1 lakh=100,000 Indian Rupees]. It was received relatively quickly and with no bribes required. We received two checks of 1,200 Indian Rupees each for damages in the house. The damage suffered by the entire family was for about 20 lakhs [Indian Rupees]. Parents had things in the house, gold and other things, worth about 5 lakhs [Indian Rupees]."

Education, Psychosocial Health

She says, "But after 2002, many Muslim boys in our area too dropped out of school. The fear of watching people die and of being burned alive has damaged our health. We live with fear. Can we return home? For a long time, we would be sick, heartsick, body-sick, and would have nightmares. Still the nightmares go on. What I saw does not go away from right in front on my eyes. We have taken medicine for physical ailments like pain once or twice from a doctor in the city. We have not taken counseling. No one has brought it up."

Legal Justice

She says, "They [perpetrators] received punishment. ██████████ extradited back from ██████████ and their case will start. Those who plotted the entire events from behind were not affected by justice. Even the justice we received was later belittled. The perpetrators who received punishment have been out on parole. They come and threaten. The parolees terrorize the [Muslim] community. They [perpetrators] have a hold on the Administration. Our people [Muslims] who compromised have also been co-opted by them. Where is the justice? All the perpetrators should be punished. Those serving sentences should not be let out on

parole. Why do they receive such leniency? Is this the law? How did the Courts then punish all the guilty? Why didn't they punish them?"

The Present

She says, "It is still going on. They [Hindu majoritarianists] still come and go. Before, journalists would write about it. Today, they are not writing. The Shakha's [branch, chapter, unit] of [Hindu nationalist] organizations, the Vishwa Hindu Parishad, are more today. In our area, there was one shakha then, now there is both the Bajrang Dal and Vishwa Hindu Parishad. We see their posters. We feel nervous that it might happen again. On small matters, they pick fights. We feel afraid to talk about it."

They say, "In our ancestral home to which we had to flee, we cannot farm. They [Hindus-nationalists] do not give us water from their deep-bore wells. We work as timber cutters and on the plantations. Some Muslim boys are rickshaw drivers. Police often catch and threaten them, give them notices and take them in. Detain them for a day or two. We have to earn enough for our grown-up children. They do not get work as laborers. This is the situation even today. In our new place, we also have Hindu neighbors who keep good relations with us. But, relations are often limited. Once the case started, some people spoke to us nicely. They [Hindu nationalists] say Muslims are dirty. 'We will get rid of them,' they say."

She adds, "We cannot return to our home. We can get [assistance through the] Jawahar Yojna [scheme] for housing. But if we fill out the forms for assistance from schemes, the panchayat denies it. Bribes also are a must for anybody to get things to happen. They [Hindu nationalists] are trying to get us to distress-sell our home. It is only because of the case we brought that our homes have not been taken over. They [the state] ask us to pay taxes on the home in which we cannot live. This is the state of things under the [Hindu] Sarkar [rule]."

Remembrance

She says, "Every year for the anniversary, we make a missing wall with pictures of those lost. They [Hindu nationalist activists] throw dirt on our homes and on the memorial. We desire to make the memorial permanent."

Site Two

The Event

"When we think of the event, I first remember my parents," She said, "I remember the Eid celebrations we had. I feel so many things." The other women add, "How could this have happened with us? We had not harmed anyone. We lived with them. We trusted those who betrayed us. I do not understand. Because of them

we are homeless. I still remember vividly. At about 8:00 AM it started. The perpetrators were from the neighborhood but hoards of people came from outside too. Possibly ten thousand. The locals led the mob and were the ones who raped and the outsiders were the ones who killed. I remember them saying, ‘Call your God now. Call Allah. You are going to die today.’”

She says, “Before 2002, we lived in [redacted] [redacted] [Some] lived in [redacted] [redacted] Life before 2002... work was good. Life at home, in the community, was good. Relations were good. We had a life. We had happiness. Some of us were tailors. We used to work at a factory. Some of us were scooter drivers. Our daughters were married from there before 2002. We [some of our families] had lived there for thirty-five to forty years. Before the damaal, we were happy. We lived among Hindus, among Muslims. We were some rich, some poor. Relations were pleasant, amicable, even good. We enjoyed each other. There was love, we thought, and trust.”

She says, “In [redacted] [redacted], [redacted], a brother-neighbor lived there, a Muslim from Firozabad in the Uttar Pradesh area. At his job, at an [redacted] [redacted] making tools, they had discussions there. Since six months [before the event] he had talked to us about Hindus meeting and organizing a program or an incident. We did not think about it seriously. The [redacted] [redacted] at his job told his workers that they should get out of there [the locality] as a big incident was going to happen. His [redacted] was close to me, she talked to me about it. We dismissed it as impossible.”

They say, “About three months before, they came to our homes, all Muslim homes in our neighborhood, to take details, like a count for a census or election—how many persons in our home, how many children, how many boys, girls, about what employment we had and how many were employed, how much money we make per month, whether we had a TV, fridge, other valuables, goats, vehicles, how many rooms in our home, all details about our lives. There were four persons who came and two [of them] asked questions. We asked who they were. They did not show any identification. They said they were from the gram [village] panchayat. Then, about two weeks before [February 27], we stopped being able to buy gas cylinders [for cooking stoves]. Three days before, my bother and sister were in school. The teacher also said to me—go from here, go away for three to four days, something is going to happen. I asked, ‘What was going to happen?’ They did not explain. They knew me well. They said the atmosphere was heated and something was going to happen. We had heard this before and did not pay attention to it.”

“On the night of the 27th, at [redacted] Hotel, a BJP worker we knew said to me to go with him to save my family. That day [of the event], some of our neighbors, Muslims, locked up and left their homes with their families early in the morning, at about 7.30 AM, dressed like Hindus, in sarees [long cloth garment traditionally

worn by drapping by women from various cultures in South Asia], wearing tikas [mark on the forehead]. When it started that morning, we heard a car was set on fire but did not think it would lead to what followed. At about 8:00 AM on the 28th [of February], we started to hear.”

“A Hindu-Muslim danga [riot, disturbance] is sudden. This was a humla [assault]—this was thought through and planned. They targeted and attacked human beings. A hullad [tumult] happened. From it, it continues today in a different form, the attack. There is fear now. I saw the hullad in 1969, when I was a child, then in 1985. And, now. This time, there was so much blood, so much killing.”

She says, “Thinking about that day, I remember the girls and women. I remember how they were made naked, beaten. How the bodies of girls and women were violated. How they were torched and killed.” “On the 27th [of February], ██████████, who died, asked me to put mehndi [henna paste] for her [decorative patterns on her hands] the next day and left the [applicator] cone in my house. She was going to visit her cousin in ██████████. The day after the 28th [of February], I heard about her death.” “I remember how my mother and father were set on fire. My sister-in-law was torched. My brother was decapitated at the neck with a talwar [sword]. I saw my beautiful niece, a two-month baby, set aflame to die. She would have been a young woman now. My elder brother’s two children survived. My mother screamed for water and I could not give her water to drink as she died.” “My young daughter went away in front of my eyes. I, the mother, survived the death of my daughter.” “I lost two of my sons.” “I witnessed my daughter’s rape. She was raped by three or four men. She was fifteen years old then. My mother was burned. My maternal aunt too. I received burns. My husband was out-of-town. He learned of this two weeks later.”

She says, “They grabbed ██████████. She was a young woman. She was pregnant. ██████████ and ██████████ and ██████████ caught her. They brought a can of kerosene. They stabbed her in the stomach with a sword. Her screams were so loud. She pleaded with them to save her unborn child. They killed her. They cut out her baby from her womb. They doused her with kerosene and torched her.” “I remember ██████████’s brother. He would help us all the time. As we ran from our homes, people stepped over his corpse. I saw the dead body roll over. From an angle, I realized that it was his body. We left him behind. I could do nothing. He was torched to death, my ██████████ saw it as it happened, and heard his screams. His body looked completely burned, as we ran. I remember that scene and I remember him as a child, playing on my lap.”

They say, “So much bad happened to the Hindus then also. So many Hindus lost their homes, lost their belongings, were displaced and hungry, lost people.”

Context

She says, “Muslim women were the focus of aggression and tension. They raped to break the dignity of Muslim women and tear the [fabric of the] community. They [those who perpetrated or supported the perpetrators] saw Muslims as different. They felt [Muslim] women were unattainable. Our women do not go out in public many times and keep to themselves. We heard they [some Hindus] would talk that, ‘Muslim women are in purdah [veil] and they are beautiful, and we [some Hindus] cannot see them. Our Hindu women are free.’ There was tension for fifteen to twenty years. A lot of the local [fracas] was about women, it was not economic—they and we had work and enough to eat.”

She says, “They [some local Hindus] kept eyes on [Muslim] girls and women before. They would tease girls. Whistle at them as they walked by. Say they would marry us. We would tell our brothers and husbands and they would berate them [Hindu teasers]. One person [Hindu] in the neighborhood, his sister was the mother of four children. About eleven years before [2002], she had an affair with a Muslim man. She left her husband, he was not good to her, and was living with the Musalmaan. He [husband] and his father tried to stop her. She did not listen. She committed suicide. He had sworn that since that day he would not call any of us sisters and would see Muslim women with a different eye. He would yell at us, say he would take our life, and once he had even stood on the road naked. He swore he would marry a Muslim girl.”

Alliance

She says, “We had trusting relations with many Hindu neighbors. Some [of the] neighbors who supported us were nice to us, became distant in the months leading up to what happened. They were made to turn, women and men, or to be quiet. Their hearts changed or they were afraid. Some [Hindu] neighbors saved [Muslim] lives that day. One Hindu man, our neighbor, took my grandmother and helped her escape during the event. A Hindu doctor and a Hindu lawyer, we remember them. The lawyer helped save people from fifteen to twenty homes in an adjacent area. People in homes had more chances of being saved or surviving for longer than those who lived in flats [apartments]. The lawyer still maintains good relations with us and we with him.”

“Some neighbors continue to maintain relations, remain friends. A Hindu man said sorry to us for what happened. He is a vegetable vendor. He stayed for three days in the camp with us. He continues to show solidarity. He comes to meet us for Eid. He apologizes still for Hindus who betrayed us. Another man, [REDACTED], we call him [REDACTED], came to us after to tell us he was sorry. I still maintain relations with them. I go to meet with them.”

“So many people, Hindus, whom we had relations with. [REDACTED] [Hindu

neighbor], in her home, they had a statue of a Goddess. I remember, she would come and take me to their home. I had seen [redacted] [redacted] [Hindu Goddess] in my dreams. She [Hindu neighbor] said that she had so much devotion and yet she had not seen the goddess in her dreams. We had lived with each other for so long. So many quarrels and disagreements, we had resolved them among ourselves. We would listen to each other. We still cannot leave them. We keep in touch.”

Accountability

She says, “My brother was admitted to [redacted] Hospital. He received [severe] burns. He was killed by injection in the hospital. A post mortem was conducted but the reports were not given. A man who was released from the [same] hospital told us that they gave an injection [to my brother] in front of him and my brother died. They wanted to give him [the other man] an injection too but his family was there with him and so he lived.”

She adds, “When I was there, [redacted] was there, too, and she gave testimony to the police that she had been raped. They police left without recording her testimony. She was given an injection too [while she was at the hospital] and she died, after which the police returned, but there is no record of the rape. In front of me four people died there. [We heard that these bodies] were buried together in one grave. I discharged myself. I was frightened.”

They say, “Women had to find strength to continue after the event. We had never seen a police station or a court, or spoken with a media person [before 2002]. We did not know what an ‘eyewitness’ was. After 2002, our families gave us so much support that made it possible, gave us strength, to speak about that had happened and what we had seen. We became eyewitnesses. We try to give the same support to others who are struggling to speak and tell them not to be afraid. We have made a group for us sisters [who spoke out, to support each other]. We will live or die; there is no third option. We help each other to speak with strength.”

“Justice requires courage. I did not have courage at first. Others gave me the strength to fight for justice and to go to the court. We thought if the perpetrators are punished we could live in our home. If they walk free, we cannot live there. If people are with us, then we can live there. [She] had identified [redacted] as the man who slit open [redacted]’s stomach and became identified as the person who identified [redacted] [redacted]. When [She] was a witness for the court, the daughter of one of the accused consistently berated [her]... woman-to-woman, always threatening.”

“There should be strong laws, the same laws and same justice for both Hindus and Muslims. Wrongs should be punished. Whoever commits wrongs, Hindu or Muslim, should be punished. The law should be above religion, above all else. The convicted should not be getting parole for [trivial] reasons.”

“I think they deserve the death penalty. They have to understand what they did. [Hindu nationalist] workers have put [redacted]’s photo among the Hindu gods. He is evil. He started it all [2002 events].”

Economic Loss and Reparation

She says, “We lost our homes. We lost all our belongings. Those of us who received compensation for family members who died, it has been very hard to spend that money. We have used some of the money, and kept some of the money for our children or in the memory of those who died.”

Psychosocial Health

She says, “I feel rage. I feel crazy. I feel empty. Our life has become defined by what happened. When I think about it, if I am alone, I lie there by myself and cry. I remember the people I have lost.”

“Sometimes small disagreements with me and my husband feel too much, as I feel alone. I see my mother in my dreams, during events, when things are hard. She puts her hand on my head. My eyes open. I cannot then sleep through the night.”

“Sometimes I remember things about my brother, my mother or sister-in-law, things we did together, things that make me laugh. Then I remember that they are gone.”

“I saw a doctor once about mental health. He said that I think about those [2002-related] things a lot. At times, I stop in the middle of something and forget what I am doing. I get sick easily. I got angry a few times. The doctor asked me to get treatment and to pay attention to myself. My head hurts often. I saw a therapist who said that I suffer from hypertension. Once I took a kerosene can in my hands [thinking about suicide]. I thought about my children and put the can down.”

“The events—I remember them less now after I took medicine.”

“When I hear of something like a damaal elsewhere, I remember [redacted] [redacted] all over again. Then it stays in my head, and I go over and over it, all night long. Sometimes I dream that a damaal has happened again. When I awake, my hands and legs are shivering. I realize that it is a dream. I cannot stop my hands and legs from shivering. I am not strong like before. My strength is gone.”

The Present

She says, “We [women] joined the workforce. We are daily wage earners.” “I started working as a tailor in [redacted] [redacted] I could not work outside as I was harassed. In our community, many of the women supported me and said I should tailor for them, and that would keep me busy and give me an income.” “I sell packaged food.” “We are trying to live our lives. We are regularly denied wage labor here because we are Muslims. We still live here but the heart cannot reconcile to being here.”

“The basti [colony, neighborhood] has changed. The atmosphere [mahaul] shifted. People’s hearts changed. Our faith [in life] was broken. Now Hindus and Muslims have separate areas and lives. Their relations are broken. Jo raunak hamare bachpan main thi, woh nehi rahe [the lightness, ease we had in our childhood, that is no more]. Lives are segregated. We still live there in weird circumstances. We want to leave from there yet sometimes in our hearts we do not want to leave. Our daily bread is there. Where will we go?”

She says, “During every Eid, I remember all that I have lost. It all fills my consciousness. Through the night, when I lie down, I remember. It is all in my mind. I remember the screams of the girls and women who were raped. A human being cannot listen to such cries. I remember this in my dreams. In 2002, if we too had died, if we had gone with those whom we lost, that would have been better. I feel this when we feel alone and there is no one to help us. I wish my brother had survived. I wish my mother had lived. My mind is sad. We see other families with mothers, fathers, husbands, wives, brothers and sisters, daughters and sons, and our hearts break. We have no family that calls us on days of celebration, days of mourning, when the weather changes. No one to ask after our well-being.”

“We are afraid to come across many people in our area who we know betrayed us. We call the people whom we have come to know if there are signs of unrest now. They tell us to not worry. We call the police and tell them if there are signs of unrest. But we do not have faith in the local police. We are afraid of the police who did not help us. The police who are there for our protection, we feel a little better with them. They are both Hindus and Muslims, but from Central [the Center]. The local police oversee the protection, and when they come to our homes [to take records for overseeing work], they say, ‘It is ██████’s raj [rule]. What will you do when the protection goes away?’ We feel it is an indirect threat.”

Remembrance

She says, “We hold special prayers for those who are gone. We give food and water to the poor in their memory. We held a yadgar [remembrance, memorial] in ██████ ██████. We felt at peace then, to be able to remember. I felt happy in my heart. We should be able to have a [permanent] memorial that does not let us forget. That tells the story of what happened, of how it was wrong. That tells the story of how our daughters were raped and how that can never happen in our society. If we forget, then everyone will forget. What happened will live in our stories—among us. It should also live through memorials. If we forget then we will not have the courage to stand up to wrong. Then it can happen to someone else’s daughter.”

“After 2002, there is always fear at every turn, in everything, for what else can happen. After the night, the day does not pass. After the day, the night does not end. We have one story. It makes us sad to remember. We fear. We must remember.

If we forget then it can happen again. We need an atmosphere [in society] that tells [the world] that this should never happen to anyone. We need to have courage to say, this is what we want. You must help us. We cannot forget. That is the only way we can live. Otherwise life is overwhelming. If we tell you, you will know, you will remember. When we talk to others, those who are not us, we are not alone. Yes, in talking about it, we are sad. The sadness is deep within us. It will die with us.”

Site Three

Context

“We do not live there [redacted] now,” She says. She and the other women added that, “the violence was a conspiracy. It was a well-thought-out plan to target a community and bring difficulty and destruction. They wanted that Hindubadis [Hindutvadis] should live in Gujarat. There was one target, Muslims (they say Muslims as Other), and to create Hindu-Muslim enmity. Muslims, and then Christians, were targets, and some Parsis were secondary targets. The RSS [Rashtriya Swayamsevak Sangh] had pre-planned this. The way they utilized the Shastras [treatise] and supplies, including bottle bombs, to mobilize. This could not have happened overnight. [They planned] to burn and dispose of dead bodies. In the name of Jatibad [to racialize], they talked about protecting Hindus, and bringing their rule to Gujarat.”

She continues, “From two-years to three-years ago [prior to 2002], I have seen when coming back home at night from [redacted] to [redacted] [where [redacted] is located], for example, that RSS and VHP workers would distribute trishuls. They would wear T-shirts and headbands, like uniforms. I have seen them elsewhere in Hindu areas [in [redacted]], too, distributing trishuls, and have heard speeches, with statements about ‘apna rajya’ [our state], ‘apna dharma’ [our religion], and uniting the Hindu community, ‘Hindu samaj ek karo’ [unify Hindu society].”

She adds, “They have had programs in Mandirs [Hindu temples] where the VHP, Bajrang Dal, and RSS would gather. There were few bhajans or kirtans [devotional songs] to propagate and recite their ideas. Each organization had its karyakarta [personnel] in mohallas. The VHP was the most prominent and they distributed the most trishuls, and we have seen their pracharaks [propagators], who were very active.”

They say, “There was [redacted] [redacted], a Hindu man from the Congress [Party], and another person with him, came that morning and told us to leave the complex. But did not say anything before that day. There were [redacted] and other flats where Muslims lived. [redacted] [redacted], a Muslim, who had retired from the police force, owned one of the homes. He had knowledge of the events that were about

to take place, as he had himself left the complex with his family three days before the attacks and went to [REDACTED]. He did not tell anyone else about what he may have known about things to come. His [REDACTED], who worked in a school and lived in one of the flats and did not leave until the 27th, had said two days before the event that the exam had been postponed and that a something big was going to happen. We did not take her seriously.”

“We had known each other for years, ages. The wound of betrayal does not heal...”

The Event

“After the torching of the Godhra train, the RSS was behind the events that happened. The Gujarat Chief Minister held a meeting on the 27th [of February] with senior officers, including IPS [Indian Police Service] officials, who were given instructions that if anything happened, they were not to take action. This has been testified to in the courts. On the 28th [of February], the BJP, VHP, and other organizations, with the main organization, the RSS, had pre-planned to have riots in the name of Hindutva. Our relations with Hindu neighbors and theirs with us were nice. During Diwali, other festivals, we would mix together. They would often come to [REDACTED] [REDACTED]’s home. We saw the same people [who had participated during the assault], those who attacked and others who instigated. We saw a [REDACTED] leader that day [on the 28th], who was an instigator, who had shifted [politically] from [REDACTED] to [REDACTED] to [REDACTED] who used to come to [REDACTED] [REDACTED]’s home. We saw a policeman throwing stones.”

They say, [REDACTED] [REDACTED] [REDACTED], a woman survivor, spent the night of the 28th in the police station by herself. While there, she asked why the police were on leave when the violence was taking place?

She says, “The mob carried swords. When we saw trishuls in their hands, we knew. The women were stripped. [REDACTED] were raped. We remember the suddenness of it and the eternity of it. I see before me each day, the screams, the blood, the confusion, and so much naked fear. I can hear the sound of the trishuls. They were long. I can see the flashes of fire as the bottle bombs burst. I still hear the sounds of the mob. I see the burns on my body today. My [REDACTED] and [REDACTED] were taken away. And, each day, I feel the disappearance of our [REDACTED], whose body was never found, in the midst of the violence and the rioting. I think about how old he would be now, what he would be doing.”

They add, “[REDACTED] Bhai was injured.” “My son was injured.” “[REDACTED] [REDACTED]’s pain. He was [REDACTED], his [REDACTED] were severed. And, then they...” “They cut into him, and they ...” “My son asked about his [REDACTED] he ran out... I remember [REDACTED] [REDACTED]’s screams. ‘Allah ho Akbar’,⁶¹⁰ he said... A young boy, blood was pouring from his head. I saw the dead body of [REDACTED], and

Education, Psychosocial Health

They say, “After 2002, I have been living with heavy depression... I take medicine to sleep. I cannot sleep. I have anxiety. I cannot put my mind to work. My mental health is sad. I went to see a psychiatrist. I remember everything. Then I forget. My joints are painful. I have high blood pressure. I cannot swallow food. My body trembles. I do not like the night. I see the images vividly in my sleep. I feel the world is lost.”

The Present

She says, “Even in our own community, those who were not affected, those who did not lose from it [the violence], they do not get entangled in all this, and they keep their distance. We want to bring people together. We want to stand up against wrong.”

“Where we live now, the RSS and VHP are all around. We hear, ‘Let them remember 2002.’ ‘Don’t let Muslims into your neighborhood.’ Muslims are still the targets. It feels like this [targeting of Muslims] is ongoing, [2002] was not the end. There is no remorse. It is more communal than before [2002]. The shakhas and centers have increased. There is saffron everywhere... No one reached out to us after the events. Some said to the courts that they had helped us [during the events].”

“[Following 2002], during Hindu festivals, Muslim boys give water to the people in the processions. ██████ went to Godhra [to the Sabarmati Express Coach] to offer our respect... They [Hindus] did not even light a candle with us. We think the one who makes the earth and the sky should not let this happen to anyone else.”

“Is reconciliation possible? It does not feel like it. I feel today that they [Hindu nationalists] do not believe that Hindus and Muslims are equals.”

“The event left a permanent mark on Muslim children and youth who are growing up today. They feel that they are targets. Not just in Gujarat but in their country. We try to shield them, so we turn off the TV so they do not hear the news. Muslim youth are ostracized. They see what happened to their parents. They see the present where there is no justice and the feelings toward Muslims continue. They cannot forget. They are sad, they are angry.”

“There should be awareness initiatives. There should be education. There should be efforts to see how we can all together, as human beings. This should not be about [our difference] as Hindus and Muslims... [others]... People [from outside] have come sometimes to stand with us.”

“Now if we go to a shop near where we lived [prior to the events of 2002], the shopkeepers pick up their mobiles and make calls, and the police come right away. If I go to my old home [in ██████, to visit] and open the lock, the people

living around and the police ask, 'Who are you?' They treat us like we are strangers, untouchables."

Remembrance

She says, "To talk is hard. To talk is a relief. We have just one story. It is in our heads all the time. To talk is a connection. We cry when we talk. But it feels lighter, a little less alone. I think, 'I have spoken [of my grief].' The stories connect us to each other."

"We dream of a yaaddash, a memorial in remembrance all of Gujarat 2002 in its entirety. I would give my house for the memorial. In it, there should be my child's bike. He loved his bike. I have his burned bike. In the memorial, there should be the entire history of the violence [of 2002]. And, the stories of the people we lost, to remember them, celebrate them. Today, our stories are our message to people to know and to remember."

They say, "I try to remember [REDACTED].. I try to remember [REDACTED].. I try to remember [REDACTED]... I try to remember [REDACTED]... as I saw her, him, them for the last time."

Section III

Part Three: The Right to Heal

STATES OF VIOLENCE

STATES OF EMERGENCY, STATES OF EXCEPTION

Located at the “ambiguous and uncertain... intersection of the legal and the political” (Agamben, 2002: n.a.), states of exception are elemental to conflicted democracies. Distressed locales within numerous broadly democratic and liberal states are periodically governed through exception. These areas are impacted by deep cultural and social fragmentation, including movements for majoritarian assertion, minoritization, and self-determination, and civil war and internal conflict.

Carl Schmitt elaborated upon the notion of “states of exception” (1922), as distinguished from states of emergency, wherein the law authorizes sovereign power to exceed the limits of the rule of law *in the interest of the common good*. The common good is equated with state actions necessary to protect and secure the state as an institution organized by rule of law.

The state of emergency is a temporary situation of urgency that both induces and requires a periodic suspension of the rule of law alongside routine social functioning. The habitual use of law and violence continues even as the disarray is expanded through suspension.⁶¹²

In a state of emergency, the law is allowed to exceed itself (via the actions of state) for the greater good. In a state of exception, the conditions of emergency are expanded and routinized. Regularized emergency delimits *states of violence* during periods of exception in what is politically “not a dictatorship, but a space devoid of law” (Agamben, 2002: n.a.; Benjamin, 1921).

Enacted between/by the state and/on non-state groups, “the twentieth century has produced a paradoxical phenomenon defined as ‘legal civil war’” (Agamben, 2002: n.a.). This state of exception may remain *undeclared*, allowing for the subjugation⁶¹³ “not only of political adversaries, but whole categories of the population that resist being integrated into the political system... The intentional creation of a permanent state of exception has become one of the most important measures of contemporary states, democracies included” (Agamben, 2002: n.a.).⁶¹⁴

Giorgio Agamben addresses the “continuity between the state of exception and sovereignty,” noting, “there is still no theory of the state of exception in public law, and jurists and theorists of public law seem to regard the problem more as a *quaestio facti* [question of fact]⁶¹⁵ than as a genuine juridical problem” (Agamben, 2005: 1, 3).

*Genealogies of violence in
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evidence the normative
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sustain states of emergency
and exception.*

There are requirements under international human rights law to limit the duration and extent of a state of exception, to not violate fundamental rights during such a state, and to make public the existence of such a state and that rights that are being curtailed. Yet such requirements are routinely dishonored, and especially during an infraction.⁶¹⁶

States of exception and states of emergency employ differing and intersecting forms of biopolitical governance. Biopolitics is the management of populations, and individuals within them, for political purposes, through biopower (Foucault, 1978: 139-45, 2008). Biopower as a strategy of governance seeks to augment economic utility and political docility through normalizing individuals and groups. Furthermore, biopower identifies some groups as assimilable and others as inassimilable and therefore dangerous.⁶¹⁷

The form, function, and architecture of gendered and sexualized aggression as pronouncements of power in conflict and upheaval illuminate genealogies of violence (Foucault, 1972, 1977, 1979; Zipfel, 2013). Genealogies of violence in conflict and upheaval evidence the normative relations between gender and violence that foster and sustain states of emergency and exception.

EXEMPLIFICATION

The Indian Constitution allows for the declaration of emergency in times of crisis, recurrent in sites of conflict and social upheaval. These crises are frequently accompanied by spectacular gendered and sexualized violence. The effects of such seemingly temporary conditions (states of violence and of emergency) are, however, sustained. When unaddressed through effective structural shifts, these temporary emergencies are facilitative of protracted legal battles, shifts in subjectivity, social alienation and diminished participation in the political economy for the affected. They result in cycles of violence. The history of upheaval in both Gujarat and Odisha, as underscored in previous sections of the text, attest to such turbulence and its resultant effect on minorities and processes of minoritization.

The (Indian) states of emergency and exception are not so exceptional. For nearly seventy years now, the response of the postcolonial Indian state has been inconsistent with respect to the imposition of emergency through the presidential decree. In areas of internal conflict, central governments have, in contradiction of individual states' rights, declared emergency for successive periods, legally contravening of myriad fundamental rights and freedoms.⁶¹⁸ In instances of

As the imagined and actual threat of the next event of oncoming violence looms, public silence regarding what occurred and what is lurking beneath the surface grows, exacerbating the possibility of the next violence.

social upheaval and majoritarian violence in non-minority prevalent states, central governments have dissolved state-imposed emergency even as the conditions of upheaval and the needs of victim-survivors remained unaddressed. Such non-imposition of emergency through the presidential decree has, in fact, permitted states of emergency to suppurate during and following social upheaval. Such governance is *unseeing* of the majoritarian relations of the state to its Others.

The central (federal) government did not exercise its prerogative to declare a state of emergency during and following Gujarat in 2002 or in Odisha during 2007 or 2008 (*India Abroad*, 2008; British Broadcasting Corporation, 2002). In Odisha 2008, in September, almost a month into the still-ongoing violence, the Central Government simply alerted the (Biju Janata Dal and BJP-coalition) Government of Orissa to halt communal violence, per the provisions of Article 355 of the Constitution of India (Chatterji, 2009: 325-326; Mathew, 2008; *The Tribune*, 2008). Among affected communities in Gujarat and Odisha, this resulted in a profound misplacement of trust in the democratic will and working of the state.

Adjacently, prolonged curtailment of the rule of law and the materiality of biopolitical regulation are evidenced in minority-prevalent conflict areas. In these sites, where the state and local communities (who are also usually national minorities) are in conflict, faced with profound dissension, a response of the state is to expand and extend the condition of emergency into states of exception.

States of exception in conflicted democracies may be operationalized as an official strategy in governing the Other. Such governance has a strong and adversarial relation to people's right to resist and revolt (Agamben, 2002). In states of declared and undeclared exception, various aspects of civilian life and rights are subsumed and suspended without reciprocal processes of accountability.

The law participates in authorizing rights abuses and legitimating majoritarian governance. Ordinary laws are discontinued for unspecified periods of time (though not repudiated) while extraordinary legal provisions are adjudicated upon. The appearance and function of law and securitization controls and masks the experience and representation of antagonism and dysfunction (Ní Aoláin and Campbell, 2005: 188-189).

States of exception were exemplified in the Punjab conflict and in the absence of redress thereafter. Manipur has witnessed such curtailment since 1958. The indefinite suspension of regular law and governance is rendered habitual in Jammu and Kashmir through militarization and the implementation of impunity laws. Furthermore, such exception is in evidence in Chhattisgarh, where long-standing conditions of emergency are being regularized into states of exception.

In prior sections, the monograph substantiated the distinct ways in which governance endows differing states of violence. This aggravates and cements conflicted relations between majority and minority, and community and state, expanding

minoritization, and consequently, the scope of gendered and sexualized targeting.

For the affected, such deviation from normalcy constitutes an unceasing state of violence. Enduring states of exception engender an atmosphere of isolation, alienation, and collective internment. They impact protagonists and victims. They induce recurrent aggression, rage, dejection, social trauma, and conservatism. They interject additional levels of crime and unscrupulous behavior into the social milieu, generative of a conflict-dependent political economy. In a heteronormative society, as men are absent, disappeared, killed, or afraid, women's responsibilities in the household and outside, and the burdens and restrictions on them, increase. Children and youth suffer from these social conditions and their education and development are impacted. These conditions expand the sphere of everyday, structural, and spectacular gendered and sexualized violence, and the targeting of vulnerable groups. Accounts of the conflicts in Jammu and Kashmir and Punjab, as elaborated upon in preceding sections of the monograph, confirm this. Hence, by entrenching states of exception, the state intensifies biopolitical governance through the protracted rendering of subaltern Others as a threat to the nation.

Amid conditions of exception there continue to be spaces of routine social functioning aided and supported by state forces. This is repeatedly visible in Kashmir, with respect to tourism or the celebration of national commemorative occasions. The exceptional nature of governance is normalized through such dynamics. The want of a formal "end" to conflict and the extension of emergency and exception, and concomitant securitization in India render absent protocols for acknowledgment and impact the formulation of accountability measures.

APPARATUSES OF EXCEPTION

In India, states of emergency and states of exception are defined and decreed through distinct and overlapping apparatuses. The law allows for the discretionary imposition of emergency, at the national or state levels (Constitution of India, Part XVIII).⁶¹⁹ We distinguish here between states of emergency (Agamben, 2002; Schmitt, 1922) and the presidential decree (known as "emergency" or president's rule). While the declaration of emergency/president's rule may lead to the curtailment and violation of civil liberties as witnessed during the national emergency in India between 1975 and 1977 for twenty-one months, the non-declaration of emergency/president's rule may also enable continued violence and violation as in Gujarat 2002 or Odisha 2008.

National emergency has not been declared since 1977, the culminating year of Indira Gandhi's dictum, during which the writ of habeas corpus was held suspended by the Supreme Court of India (D'Souza, 2001). The president may declare emergency in any state in the union on the conviction that the governance of the state is not possible under the constitutional machinery (Article 356). Whereby,

that state comes under the purview of central governance, with the governor administering the state in the name of the president and maintaining the suspension of some or all of the powers of the state government. Indian law allows for a state of emergency to last for six months to three years, with parliamentary re-approval required at regular intervals (Article 356).

In areas of social upheaval, there are records of national delays and failures to declare emergency despite reported and rising crises in a state, including in Gujarat in 2002 and in Odisha in 2008, as noted above. The central government's inaction marks certain exceptional events as non-exceptional and signals the victimization of certain groups as acceptable. The impact of such inaction endures and enables new marginalizations even if emergency is declared thereafter, since the state government's actions and prior omissions are not investigated. For example, while a perpetrator himself noted "co-operation" by groups of state police officers in Naroda Patiya, Gujarat (section III), systemic failures, the lapses of the state government, and the lack of action by the central government remain unexamined.

In areas of internal conflict, as emergencies are routinized, they reinforce the suspension and/or abdication of the rule of law. After prolonged periods of such suspension or abdication, when emergency is formally lifted, the state apparatus retains its exceptional character even as it is partially reconstituted (while the conflict continues or thereafter). The lack of an adequate transition to rule of law curtails new and continuing efforts to secure justice. As such, the intent and content of the law is frequently at radical disjuncture with the needs of victim-survivors (see also Zubaan, 2015).

As discussed (section II, "Special Laws"), measures such as AFSPA and the PSA⁶²⁰ remain in place (for example, in Kashmir). Impunity laws, together with undeclared curfews and the notification of segments of Jammu and Kashmir as "disturbed areas," reinforce continued exception, unpredictability, and arbitrary rule. Furthermore, following the expiration of Governor's Rule after a period of six months, President's Rule has been imposed in Kashmir in the past to extend the provisions of emergency (as recorded in section II).

In Punjab, after the decade of almost continuous emergency (read: exception) (section II, "Four Areas Under Study"), the police force, constituted to operate in the absence of regular legal recourse (Jaijee, 2002: 133-135), was never investigated or restructured. Perpetrators of violence thus remain in visible and prominent positions of power,⁶²¹ while victims continue to live in a liminal status imposed upon them during the multi-year state of exception.

Sexualized violence, culturally or structurally embedded in notions of shame and honor, remains particularly unrepaired. Silence and tacit acceptance around violence on women's bodies becomes normalized. Even where survivors refuse silence and demand justice, as in Konan Poshpura, the "special" context of the

conflict is reiterated, implicitly and explicitly, as justification for the continuum of impunity/exception.

Where survivors have succeeded in securing some justice in individual cases, collective victimization, even of their immediate families in the same case, remains unrecognized (section III, Part One and Two). This signifies the exceptional nature of the survivor's success in securing some justice. In areas of conflict, a large segment of the population is thus continuously prompted to see itself outside the protection of the government, thus fueling disparate responses of fatality, rage, desolation, and pain.

GENDERING IMPERATIVES

“Recent histories and contemporary political developments in the various countries in South Asia have shown an exponential increase in sexual violence, particularly mass violence. Even as the incidence of sexual violence – whether during the partition of India in 1947, the liberation war of Bangladesh in 1971, or more recently in the internal and cross-border conflicts in all South Asian countries, or indeed in insurgent movements across the region—has increased, so has the ever-deepening and deafening silence around it... Crucial to maintaining the silence is the active collusion of the state in providing impunity to perpetrators, sometimes under the guise of protective laws, sometimes under the guise of nationalism.”
(Zubaan, 2015)

Gendering conflict and upheaval-related remedy and reparative processes in South Asia states requires rethinking and complexifying notions of justice itself. Gendering justice requires prioritizing gender-specific relations and processes. Gendering transformation presumes a commitment to structural change through addressing gender-particular injustices.

The gendered dimensions of redress and reconstruction are overwhelmingly deprioritized (Wilding, 2012). Nationally mandated and multisector provisions for psychosocial restitution and economic redress, and formal attempts at historical dialogue toward social accountability and reconciliation are often depoliticized and rarely or inadequately institutionalized. The lack of accessible institutional infrastructure undermines survivor healing and reengagement in meaningful social and livelihood activity and survivors’ capacity to pursue justice.

With respect to perpetrators, punishment is prioritized without steps that seek to rehabilitate offenders. During incarceration and in social contexts at-large, the avoidance of addressing discourse and practice around political and cultural issues that lead to hate and violence, and the social acceptability of violation, maintain cultures of silence around violence and dominant social relations among genders.

Conversations with grassroots leaders and affected communities highlight the lapse of time since the event of violence altered their lives and the limited nature of resources available to address its impacts. Communities speak to the limitations of a “moral economy” of reparations (Barkan, 2000) while still holding reparations as necessary. Reparations incontrovertibly require addressing losses and experiences that cannot be quantified. A

“Sexual violence during and in the wake of conflict continues to be dramatically underreported because of the risks, threats, and trauma faced by those who come forward...” (Ban Ki-moon, Report of the UN Secretary-General, 2015: 2)

profusion of cultural and legal mores and institutions persistently demand that the explication, disaggregation, and remediation of suffering be individualized. Individualization, admittedly important to making reparations, is isolating and disempowering of victim-survivors when undertaken aggressively. Not all victims understand or allow themselves to look beyond individual claims in imagining reparations. What leads to this deficit is often the lack of opportunity to create communitarian spaces for grieving, addressing suffering, and healing, and possibilities of collective action through, for example, class action suits. The individualization, and thereby privatization, of the experience of suffering and loss lead to emotional and cultural isolation and diminished capacity to rebuild community and worlds to address the loss of worlds. Collectivization as an approach and method to addressing social suffering affords strength to the impacted community and energizes opportunities for concretizing political and social spaces for healing.

Leadership and Civil Society

Engaged participation of civil society, social movements, and the public sector is crucial to gendering and transforming justice. The influence of the “national” must be imbued with the local. This requires repositioning inherent hierarchies between the local and national, core and periphery, and margin and center. The spheres of influence between the Global South and Global North, too, must be reimaged and reoriented, and dialogue and cooperation in and between the local and the Global South strengthened. The correlation between gendered and sexualized violence in conflict and social upheaval, survivor women’s leadership in response to their new roles, the nature of their engagement with justice mechanisms, and the capacity of existing mechanisms to deliver justice urgently await further analytical attention.

While knowledge in and of itself does not ensure a resolution to social violence, “without knowledge there can be little reasonable expectation for the amelioration of perennial problems” of protracted conflict and social upheaval. (John A. Vasquez, 2000: ix)

Those in the feminist/women’s movement (and their allies) across India have made abiding contributions in confronting sexual violence in conflict and social upheaval in India. Urvashi Butalia (2015) notes that women’s advocacy, scholarship, and organizing has led to:

“First, the recognition that rape/sexual violence is and can be used as a weapon of war, as it has been particularly in Gujarat. Then, bringing to light the complicated nature of questions of how ‘evidence’ is understood

in cases of sexual violence—how central the body is to the so-called collection of evidence, how little it matters what the victim may say (some change has come about in this recently). How flawed the methods of dealing with forensic evidence are (no training, no proper collection or storage of evidence, no chain of secure delivery, hardly any DNA labs, and no checks on the delivery of DNA findings back to referring hospitals, and the ease of tampering with DNA and other forensic evidence.) Third, the nature of impunity—social, state, army, and the impunity built into law, into medical practice and into the protection the state affords to the armed forces. Fourth, the complicated ways in which women are implicated in the intersections of nationalism, masculinity, and sexual violence, with the latter being seen as somehow a lesser act in the face of the assertion of nationalism and national identity. Fifth, the recognition and indeed the assertion that victims of sexual violence are not ‘zinda laash’ [living corpse], and that they are, in fact, living, breathing human beings who have a fierce desire to fight back, to fight for justice.⁶²² This is why in recent times, speaking about sexual violence, speaking as a victim of sexual violence, has become (more) possible. Sixth, the complex problem of dealing with sexual violence on marginalized communities, when sexual violence is used as a way of ‘teaching communities a lesson,’ this pertains greatly to sexual violence against Adivasis, Dalits, and minorities. Seventh, the need for recording, documenting, building up a history, for remembering, as a way of finding the weapons and the courage to deal with sexual violence.⁶²³ Despite the fact that women’s movements [across South Asia] have made important contributions toward bringing the issue of sexual violence and impunity to public attention, at the very outset, we are confronted with significant knowledge gaps...relating to the histories of such violence, their impact on society, their economic and social costs, as well as to the difficulty of gathering evidence (for example medical and forensic), of implementing legislation where it exists, or providing justice, and indeed of finding ways and means to acknowledge the suffering caused by violence” (ACRes).

Civil society organizations have routinely offered leadership in advocating for and initiating processes to engender and secure justice. Below are sketches of two emblematic organizations that also participated in the work of this monograph. We note here the work of another distinguished civil society body, Citizens for Justice and Peace, and its work in Gujarat following 2002 as referred to in section II, Part I.

The Association of Parents of Disappeared Persons (APDP) is a leading organization in the movement against enforced disappearances in Kashmir. Co-founded

by Parveena Ahangar and Parvez Imroz in 1994 (Zia, 2010), the group consists of families of disappeared persons, lawyers, and other activists. Guided by the understanding that enforced disappearances function to “cripple and paralyze dissent and resistance” and to “[create] terror and insecurity in the society as a whole,” the group has filed legal petitions, holds protests and monthly sit-ins (Bhat, 2009), has organized events, documented violations, and has collaborated with local and international allies and UN bodies, including the Working Group on Enforced or Involuntary Disappearances (APDP, 2015). APDP has highlighted the difficulties faced by the families, such as those of “half-widows”—wives of the disappeared who remain in a liminal legal state—whose trauma and vulnerability are exacerbated as they often cannot transfer property, access bank accounts, or re-marry without a death certificate (APDP, 2010; Essa, 2011). APDP bifurcated into two organizations in 2006. Ahangar currently chairs one APDP, and the other APDP, chaired by Imroz, is an active member organization of JKCCS. The membership of APDP-JKCCS draws from over 150 families and is majority-female (APDP, 2010). APDP-JKCCS collaborated with the IPTK in documenting 2,700 unknown and unmarked graves that contained over 2,943 bodies in Kashmir between 2006 and 2009. APDP is a member of the Asian Federation Against Involuntary Disappearances.

“The task of the educator [policy maker, scholar, ally...] is to learn from below, the lines of conflict resolution undoubtedly available, however dormant, within the disenfranchised cultural calculus; giving up convictions of triumphalist superiority.” (Gayatri Chakravorty Spivak, 2004: 43)

In Punjab, Khalra Mission Organization (KMO) is a prominent organization working to seek justice for the victims of enforced disappearances and crimes committed by state forces personnel. The organization is named after Jaswant Singh Khalra, the former general secretary of the human rights wing of the Akali Dal political party, who, with others, uncovered documentation on thousands of bodies cremated illegally in Punjab and sought investigation into them as possible victims of police or security forces (Kumar et al., 2003). Khalra was abducted by Punjab police in September 1995, tortured in custody, and killed in late October 1995. The group formed shortly after his abduction was Khalra Action Committee. Its name changed to Khalra Mission Committee in 1998, and in 2005, KMO emerged from this group (Immigration and Refugee Board of Canada, 2011).⁶²⁴ KMO is led by Paramjit Kaur Khalra and Harmandeep Singh and works on investigating killings by Punjab police, pressuring the state to identify the dead and prosecute the accused, assisting victim-survivors and supporting human rights defenders.

TRANSITION AND TRANSFORMATION

Transition signals a shift (Ní Aoláin and Campbell, 2005: 173). *Transformation* indicates a dramatic realignment in structure and functioning. (For definitions, see section I, “Transitional and Transformative Justice”). Far more deep-seated than reform and refinement of existing structures, transition and transformation respond to the need for transfiguration of the arrangements of power. They call to halt the conditions of violence. Transition and transformation seek to invoke acknowledgment, foster accountability, address social alienation, restore legitimacy in institutions, and co-define meaningful, effective outcomes with those impacted by states of violence.

The monograph aims to build dialogue for transitional and transformative justice in the context of conflict and upheaval with a focus on gendered and sexualized violence in conflicted democracies. As noted earlier, while most transitional and transformative justice mechanisms focus on areas of regime change, for example, from military rule to democracy, they are equally relevant to conflicted democracies. Conflict and upheaval in conflicted democracies require unique and specialized mechanisms that go beyond the ordinary law and order apparatuses or transitional justice frameworks developed for paradigmatic transitions (Ní Aoláin and Campbell, 2005).

A well-enhanced approach to transitional and transformative justice mechanisms requires a localized approach and a particularized template. While engaging with a global context, a commitment to the needs of the local context and thoughtful engagement with the lives and concerns of affected peoples are paramount. Activating holistic mechanisms for transitional and transformative justice would address the structural conditions that induce conflict and upheaval in conflicted political democracies today.⁶²⁵

Developing transitional and transformative justice mechanisms to address conflict and upheaval in conflicted

democracies evidences an affirmative commitment on the part of the state. It demonstrates the resolve of the state to recognize such conditions as indicative

A transitional and transformative justice approach thus requires iteratively contending with legal and policy frameworks and institutions as much as it does with the everyday lives and concerns of local people and victim-survivors.

The realities of disarray and dispossession pertinent to authoritarian regimes are differently but equally at play for subjugated populations during transitions from internal conflict and social upheaval within conflicted democracies.

of historical and structural wrongs rather than law and order problems that may be remedied through increasing securitization.

The failure to correct structural inequities and respond to political and ethnic rumblings that indicate impending upheaval, together with the impunity received by previous perpetrators, signals the political acceptability of chronic, everyday, and spectacular violence in India. Impacted populations are expected to reconcile to the drastic losses they have experienced and amicably integrate into new political realities, and even harmonize with perpetrator-enabling individuals and groups.

Assessing and addressing the aggravating and mitigating factors in conflict and social upheaval is critical for India. Existing policies designed for non-conflict conditions in India

are inadequate to address the cultures of violence and human rights violations in conflict areas. International and internal disputations in conflicts such as Jammu and Kashmir and India's northeast, and overarching national and regional security concerns necessitate that conflicts be addressed and resolved, and the conditions they impose be mitigated.

For justice and accountability, listening to victim-survivors and acting on their need for the justice process is critical to social healing. This requires realigning the established parameters for truth, justice, and reparation that are meant to support the needs of victim-survivors and transform the everyday and structural conditions of injustice.

Accountability for political violence and commitment to political resolution require mutual agreement between all parties to the conflict. In conflict areas where political resolution remains pending, all remedy, interim reparation, and and reparation efforts must remain parallel to, and inform, political negotiations.

It is incumbent on all parties to the conflict to cease violence and foster accountability. However, it is the *primary* ethical and legal responsibility of the state to take preventive action, stop conflict and human rights violations, maintain stability, and take steps to secure sustainable peace. As Navanethem Pillay noted, "Human rights [are] central to conflict prevention, and patterns of violence... warn of future escalation" (UN Security Council, 2014). Engaging all parties to the dispute, supporting civil society leaders, and empowered "participation of women [and other marginalized constituencies] in decision-making and dialogue, and

"Unlike human rights, there is no codified set of norms that govern the field of conflict resolution and bind practitioners together." (Ellen L. Lutz, Eileen F. Babbitt, and Hurst Hannum, 2003: 176)

"International law does not ban war. Consequently, human rights groups typically take no position on the legitimacy of a conflict." (Ellen L. Lutz, Eileen F. Babbitt, and Hurst Hannum, 2003: 179)

addressing institutional and individual accountability for past violations [are] particularly important” (UN Security Council, 2014).

In-depth, culturally mediated, comparative and situated knowhow from within India would enable knowledge valuable to interpreting the perplexing interactions of gendered and sexualized violence, minority women’s agency, and justice in regions that witness tectonic upheavals in culture and polity.

In a world increasingly impacted by retaliatory violence and violent reassertions, such knowhow would offer interpretive frameworks for understanding causal factors underpinning ethnic and religious conflict, institutionalize states of exception (Agamben, 2005), and assist in determining effective interventions. Defining causation, and understanding the factors responsible, is critical to building a narrative that can impact the situation, and set in motion processes to address such issues. The absence of reparative mechanisms for transformative justice in internal conflict poses numerous judicial and social challenges in India today (Kapur, 2006; Grover, 2002; Mashru, 2013; NHRC, 2002).

In a context of active and ongoing conflict or in its aftermath, and following episodes of social upheaval, the transition from a conflicted state to a state of non-conflict hinges on providing redress to victim-survivors. Transformative justice foregrounds reparations for victims and addresses the need to define and implement long-term structural change. The state must build capacity to admit to the existence of complex issues and demonstrate a commitment to investigate crimes and develop accurate records of past abuses. It necessitates acknowledgment, accountability, prosecutions, and the disbursement of justice. It requires contending with existing legal and policy frameworks and institutions, structural

“Whereas nondemocratic societies may be faced with demands for institutional transformation, in democratic societies the imperative is typically to reform rather than to transform. Whether this typology is correct depends significantly on whether the democratic state has been marginally or substantively compromised from the events giving rise to the transitional process, and specifically on the extent to which the state has engaged, colluded, or acknowledged its involvement in the fraught issue of human rights abuses.”
(Fionnuala Ní Aoláin and Colm Campbell, 2005: 187, emphasis in original)

It is the primary ethical and legal responsibility of the state to ensue preventive action, stop conflict and human rights violations, maintain stability, and take steps to secure sustainable peace.

shifts, and the everyday and extraordinary concerns of impacted and local groups.

Toward these aims, tools employed in the past few decades in other contexts provide valuable insight for defining transitional and transformative justice mechanisms to armed conflict and mass social violence in India (section I).

The Indian context is highly particular while it shares various commonalities with other areas of conflict and upheaval. The lack of infrastructure for justice endangers the capacity of those affected and local civil society to actively and effectively participate in informing and shaping effective mechanisms for the cessation of hostilities (Shaw, Waldorf, and Hazan, 2010).⁶²⁶ The absence of a clearly delineated mechanism for structural, legislative, and judicial changes to address everyday and extraordinary conditions makes for confusing, conflictual, and costly processes in response to episodic violence and conflict (continuing or ended). This impedes closure and perpetuates cycles of dispossession.

Developing a strong mechanism will allow for the participation of different and oppositional stakeholders in decision-making on processes and protocols rather than requiring their involvement after-the-fact. In so doing, India will provide a blueprint for transitional and transformative justice regionally and for conflicted democracies internationally.

How may people's rights to remedy and reparation be exercised in the Indian context? The right to a remedy must incorporate the right to justice, the right to truth, the right to reparations, and guarantee of non-recurrence. Together, these principles would affirm India's obligations to prevent violations as well as to respond to violations when they do occur. Human rights law provides a holistic, victim-centered approach to redress that encompasses restitution, compensation, rehabilitation, satisfaction, and guarantees of non-recurrence. Effective compensatory measures are critical to accountability even as nothing may ever restore victim-survivors to their prior position. Rather, a broad range of effective remedies and guarantees are necessary to provide redress to the harmed individual (Shelton, 2009). They can assist in creating viable conditions of life in areas marked by conflict and social upheaval.

The transition and transformation of current and historical conflicts will prevent further cycles of violence that interfere with development. The burden of conflict on development is well recognized, including by the Geneva Declaration

"There has to be a recognition on the part of the state, and a willingness, to understand the seriousness of sexual violence, and a willingness to deal with it. This will not happen piecemeal, but has to be part of overall policy. And, if the willingness is there, then civil society too will have to take this seriously and act."
(Urvashi Butalia, ACRes)

on Armed Violence and Development (Geneva Declaration, 2015). The economic basis of conflict and upheaval, and the economic disenfranchisement ensuing from such aggression, merit due consideration. This allows for a multisector approach to social change that brings more marginalized stakeholders meaningfully into the political economy.

FRAMEWORKS IN ACCOUNTABILITY

To impede the very networks of brutality that shape gender, place, politics, and community requires the *right to heal* from conflict and social upheaval. The right to heal is not a formalized concept and there are no norms that delimit its parameters. Here, we elaborate on the right to heal from a social and political perspective and in engagement with the law. We draw on victim-survivors who spoke powerfully of the right to heal, as a need to interdict violence against women and redress its psychosocial, legal, and economic impacts. The right to heal, it may be surmised, cannot be meaningfully exercised in political contexts that deny acknowledgment (of the totality of the event) and name the continuing or past fatalities of conflict and upheaval as a series of individual incidents for which individualized recompense may suffice.

In the subsection on four seminal cases, the monograph identifies common obstacles faced by marginalized women in India in seeking effective redress for crimes of sexual violence committed in the context of social upheaval and armed conflict. Although some of the victims of the violent acts described by this text were provided a measure of justice, none fully realized their rights as enshrined by international law. It is imperative that India reduces high rates of impunity by enacting institutional and legal reforms. The vulnerability and suffering of victims, their families, and their communities and the recurrence of sexual violence is a certainty as long as impunity is the rule and not the exception in these kinds of cases.

India has taken an important step to address the pervasiveness of sexual violence by enacting the 2013 Anti-Rape Act. However, continued incidents of gendered violence as well as the calls for reform from feminist and women's groups in India highlight why the state should take further action to prevent sexual violence and protect the victims. India must seize on existing political will and international attention to the issue of sexual violence against women to strengthen its laws and institutions so that they serve all peoples resident within its borders, including religious, ethnic, and sexual minorities.

It is imperative that India reduces high rates of impunity by enacting institutional and legal reforms. The vulnerability and suffering of victims, their families, and their communities and the recurrence of sexual violence is a certainty as long as impunity is the rule and not the exception in these kinds of cases.

"The question is: what is most beneficial to the people whose lives have been disrupted or even destroyed by the perpetrators of violence?" (Laurel E. Fletcher, Harvey M. Weinstein, and Jamie Rowen, 2009: 165)

Here, the monograph preliminarily explores certain approaches and delineates specific mechanisms for transitional and transformative justice for gendered violence within a conflicted democracy. Focusing upon India as an example, we underscore issues in honoring and enabling the realization of women's rights and their access to justice in conflict and upheaval.

These prerequisites may be rendered meaningful through their context-specific discussion and definition by affirming the empowered participation of women victim-survivors, their families, communities, and allies, and a broad spectrum of stakeholders drawn from among civil society, the fourth estate, and the legislative, judicial, and executive branches of the state, with relevant academic, advocacy, and international input.

The prefatory notations below are premised upon conversations and actions imagined by victim-survivors and their allies, perhaps in silence or articulated in the isolation of their homes or amid allies, and to strengthen the work undertaken by victim-survivors, civil society, and non-state and state institutions.

Transition and transformation are predicated on the premise that states can act to provide justice. In a conflicted democracy, a fundamental task in identifying principles, strategies, and mechanisms for transitional and transformative justice is determining how to impactfully address historical, continuing, and recurring conflict. Equally crucial is the task of inclusively and effectively defining comprehensive policy and blueprints that are specific to the injustices fomented by internal and cross-border conflict and social upheaval. The challenge lies in identifying and differentiating the shared and distinct aspects of how and why gendered and sexualized violence is perpetrated in the different conflicts and upheavals, what effect such violence seeks to manifest, and the differing timeframes and histories that characterize conflicts from (even recurring) upheavals.

Access to justice requires capacitating political will. Political will is required to reform the arbitrary legal and political recourse that currently exists to address conflict and upheaval. To gender justice, it is incumbent upon state and non-state

In Sri Lanka, since 2000, a monument to the disappeared has displayed passport size photographs of those who remain lost, and has since become a convening space for families on Sri Lanka's National Day for the Commemoration of the Disappeared (International Center for Transitional Justice, 2015).

There can be no working through the event amid hostile political contexts. Healing the past requires deconstructive engagement with the troubled histories of loss, hatred, despair, and violence to approach the uneasy task of truth, justice, and reconciliation.

actors to acknowledge the gendered context in which violent acts occur. Attendant to this is the acknowledgment that gendered violence is perpetrated through of sexual crimes on women as well as others on the basis of their sexuality or non-conforming gender expression. Such targeting continues in a non-gender-attentive state through the legal and social process of securing acknowledgment and justice. Addressing the state's entrenchment in male dominated, heteronormative discourses and practices is necessary to foster a gender-attentive state.

This remains a shared concern in all South Asian states struggling with similar predicaments. Afghanistan, Nepal, and Sri Lanka provide both complex and reflexive examples (Davis, 2014; USIP, 2008).

A thematic commitment in seeking to address past and present abuses, and prevent future violence lies in acknowledging the counter-memory of subjects proximate to gendered suffering and the role of their knowledge in shifting and deconstructing dominant narratives. Engendering justice begets the identification of the apparatuses of state and non-state impunity, acknowledging the life cycles of violence, and the comprehensive nexus of perpetrators that include administrators, politicians, police, paramilitary, combatants, doctors, analysts, and others. The challenge lies in determining how to hold perpetrators accountable, especially as entire communities and locales may be implicated, some active, others dormant yet complicit through passive acquiescence, in partnering to induce/permitting states of violence.

A collaborative delineation of goals and objectives include the cessation of violence, demilitarization of state, disarming of combatants, curtailment of the loss of life, and intervening on ongoing suffering with a focus on justice and addressing human rights violations (Ellen L. Lutz, Eileen F. Babbitt, and Hurst Hannum, 2003). Concurrent with defining the accountability apparatus is fostering attentiveness to its capacity to buttress human rights, transparency, responsibility, and democracy (Davis, 2014). This is fundamental to dislocating the anatomy of corruption inherent in structures of law and politics, indeed throughout the body politic in every state in South Asia.

Breaking individual and familial isolation through alliance building that facilitates collective, community-based social healing is another prerequisite to dislodging the silence around gendered violence in conflict and upheaval.

In framing a political mandate to transition and transform, states must collaboratively (with principal and wide-ranging stakeholders) determine the traditions, norms, priorities, and the archives and experiences to draw upon, in generating structural and social change. Precedence, practices, and lessons from international, regional, national, and local mechanisms may provide valuable guidance. Hybridized formulations from the above provide a rich and substantive knowledge base for institutional reform, reparative strategies, and implementation plans. Marshaling plans

to address violence that is intimate to gender oppression requires awareness of new forms of governance and othering related to combatting terrorism. Gendered and sexualized violence currently operates in the context of majoritarianism, minoritization, related to the post-9/11 and post-Mumbai 2011 terror attacks.

This context warrants hyper-attentiveness to varied forms of securitization, Islamophobia, xenophobia, and ethnocentrism that are being mobilized to redefine polity and rights by nations and institutions. The construction of new enemies of nation draws on the criminalization of sexuality across social and political spaces in South Asia. Transforming these dynamics requires vigilance regarding the terms on which gender equity is conceptualized and constituted.

The challenges in the Indian context relate to the differing types of situations vis-à-vis conflict and upheaval, and the distinct set of issues in each of the places described in this text even with shared threads.

A necessary task is to comprehensively identify local dynamics and patterns, then assess the comparative similarities and dissimilarities at play in state policy and practice in formulating a national reality that proactively addresses crimes against women.⁶²⁷ Such analysis facilitates transformational processes that reform institutions organizing security and justice.

Is transitional and transformative justice relevant following political resolution or in its design? In India, there are both shared and divergent needs of justice mechanisms for social upheaval and long-term conflict. The impact of conflict extends over long period of time and effect multiple generations. In Jammu and Kashmir, the conflict has been ongoing since the 1990s. In Punjab, the time of the heightened conflict was during 1984-1995, but the impact has endured in the absence of justice and reparation.

Intergenerational issues, therefore, require attention. Especially, reparations must include women, children, and the aged through concrete strategies that assist with well-being, livelihood, shelter, scholarships, and psychosocial needs of the family unit. The Brazilian Truth Commission and Amnesty Commission incorporated regional and local Truth Commissions and hearings regarding individual compensation for political prisoners and those who lost their employment due to political reasons. These regional and local efforts were then woven together into a national report.

"Reparations... are a tool for you to atone, for the wrongs that have been done," said Shashi Tharoor (2015), Member of Parliament from India, speaking at Oxford, making a case for British reparations to India. Prime Minister Modi celebrated the statement, "What he spoke there reflected the sentiments of the citizens of India." (Pradeep Kaushal, 2015)

MECHANISMS

Effective transitional and transformative justice tools employed in the past few decades have often demonstrated greater viability when utilized in tandem with each other, rather than in isolation, and with adequate social and political commitment and resources. Various limitations, noted in the below-mentioned transitional and transformative justice tools in various contexts provide valuable cautionary notes.⁶²⁸

In addressing history, a tendency must be avoided to fixate on the past to erase difference or make memory monolithic. The emphasis must remain on building futures that address past injustices mindful of the acknowledgment and irreconcilability of loss. While redressing civil and political rights violations, there must be requisite attention to cultural, social, and economic issues. While facilitating healing, the prioritizing and privileging of the concerns, trauma, and truths of some victims over others must not occur. There must be attentiveness to the ways in which re-traumatization transpires both outside and within the context of justice processes. There must be resources available to address re-traumatization.

A transitional justice policy that defines the mechanisms for truth, justice, and reparation should be rooted in deep engagement with local and impacted communities and civil society, and inclusive of culturally mediated approaches identified and defined by them (Davis, 2014). A transformative approach should foreground holistic and interlinking mechanisms and practices that are mutually supportive and strengthening. Fundamental to this is the creation of a vibrant political and social space through which local ownership may be affected. Such a space is inclusive of all impacted communities, and differing and oppositional points of view and ideas regarding what resolution entails (Davis, 2014). Without such honest and critical commitment to the latter, “resolution” to conflict is rendered impossible and “peace” is overrun with violence and further conflict.

Historical dialogue and justice must precede reconciliation. Exercises in atonement must not subvert the precedence of justice. Ellen L. Lutz, Eileen F. Babbitt, and Hurst Hannum point out that, “Justice vs. Reconciliation--The greatest tension in the two fields lies between human rights advocates’ post-conflict focus on justice for past crimes and conflict resolvers’ post-conflict desire to promote reconciliation, or at least peaceful coexistence, among previously warring parties. Sometimes the tension

*“To move forward as one nation
 ... I stand before you today
 on my own behalf, on behalf
 of my government and all past
 governments, to offer the sincere
 apology of the Government of
 the Republic of Kenya to all our
 compatriots for all past wrongs.”
 (Uhuru Muigai Kenyatta, President
 of Kenya, State of the Nation
 Address, International Justice
 Monitor, 2015)*

is so pointed that it is manipulated by the parties to the conflict in a way that undermines the post-settlement aims of both fields.” (2003: 191).

Justice mechanisms utilized by various transitioning states include the following:

Amnesties, or pardons, are increasingly understood as antiquated and unproductive in transitioning a society since they bolster impunity through condoning historical injustices. However, they continue to serve as a component of many peace-making negotiations and may be employed creatively to avoid bolstering impunity. For example, the yet-to-be secured 2015 peace agreement in Colombia includes a non-blanket amnesty provision for political crimes (McCoy and Subotic, 2015).

Trials, used to account for violations during conflicts, include in-country trials, such as, the trial of former president Fujimori in Peru; international trials, such as at the ICTR and the ICC; and out-of-state trials that employ principles such as “universal jurisdiction” in another country, such as the arrest of Chile’s Pinochet in London (Roht-Arriaza, 2005). International legal obligations of the state to effectively investigate, prosecute, and punish are rooted in combating impunity through an effective judicial system.

Truth commissions have become a widely utilized mechanism of transitional justice since the 1970s (Brahm, 2004; see also section I, “Comparative Contexts”). The 1983 Commission in Argentina is an example, together with the well-known TRC in South Africa, and a more recent effort in Brazil. While contending with the challenge of whether truth can be uncovered without reinforcing impunity for injustice, truth commissions have been critiqued for shielding perpetrators as well as promoting a singular truth, inattentive to difference.

Reparations, including several interim and complete provisions that seek to remedy a past wrong against the individual and community, include restitution (restoring to the pre-harm state), compensation (for a financial damage), rehabilitation (physical, social, mental), satisfaction (for a moral or legal damage; for example, an apology) and guarantee of non-recurrence (preventative steps for the future).

Compensation has been paid even when the state did not cause the harm but responded inadequately, by the state (Peru), and by the perpetrators (Colombia). Peru issued reparations aimed to address the effects of the conflict on communities, going beyond acknowledging individual violations (Hayner 2010). Compensation may be paired with other non-monetary forms of reparation to provide symbolic and equitable relief to survivors of violence.

“On June 24, 2015, Bosiljko Markovic and Ostoja Markovic were each ordered to pay roughly \$15,000 to the woman they raped during the war. The [Bosnian War Crimes Court] court also sentenced each man to ten years in prison.”
(Ashley Binetti, 2015)

Acknowledgment of a conflict is a prerequisite to repairing past and present wrongs and bearing responsibility for accountability and reparations. *Compensation* includes reimbursement of any financially assessable damages to compensate for past wrongs (Shelton, 2009).

Memorialization efforts aim to acknowledge the past, present, and future in generating counter-memory to offset official history of the conflict. Memorialization initiatives include diverse efforts including the construction of memorials and monuments both physical and electronic, and permanent and transitory; official apologies; days of recognition, individual collections and the constitution of archive repositories, and physical and electronic exhibits (section I, "Comparative Contexts"). Examples of the kinds of materials to be collected in assembling the archives that inform memorialization include oral histories, testimonies, and narratives in counter-memory; personal papers and correspondence, legal documents, political and social ephemera, photographs, song, film and sound recordings, and belongings of persons that are no more and from places of exile. The context of persons of varied ethnicities, genders, ages, and multiple linguistic, religious, and non-religious backgrounds, and persons with formal education and semi-literate and non-literate persons with non-formal education offer vibrancy in imagining memorialization.

Reconciliation in conflicted societies assists in confronting the culture of denial, while seeking to bridge a trust deficit and enabling a grassroots-based restoration of society. Powerful attempts at such reconciliation via the post-apartheid TRC in South Africa were hindered by the inadequacy of structural shifts such as land reforms to address the disparity between post/colonial ruling classes and the general population (Lodge, 2002). Emphasis on reconciliation as means to return to or generate perceived normalcy and social unison must not preclude essential

"In the context of the debate about damaging and defacing statues in South Africa in 2015, in January 2011 the statue of Ms Simelane [Nokuthula Orela Simelane, victim of enforced disappearance], that had been erected in the Bethal cultural precinct, by the Mpumalanga Provincial Government, in November 2009, was attacked and damaged. In October 2011 the Bethal Magistrate Court convicted a 25-year old white man, Cornelius van Tonder, for the crime. He was ordered to pay a fine of R15,000 or face three years imprisonment. He also had to pay for the extensive damage that had been caused to the statue. The damage had been caused when he had tied a rope around the statute and had attempted to drive off with the statue dragging behind the vehicle. Her statue was again defaced by having paint thrown over it on April 16, 2015." (Jeremy Sarkin, 2015, forthcoming)

conversations on difference and agency, and seek to confront and address, rather than silence, political grievances. Marginalized groups, such as women or minorities, for example, may have gained voice and empowerment through the course of the conflict and period of unrest itself.

Legal measures: The continued lack of specialized mechanisms for addressing conflict and social upheaval often results in the de facto failure of remedy systems. Simultaneously, the imposition of “special” laws in areas of internal conflict as well as the specialized imposition of certain laws (emergency provisions) result in de jure impunity. Even where the national human rights system may be responsive to the affected community, it may still relegate gender-based violence to the background, impairing the healing of victim-survivors.

Each mechanism or process in transitional justice must define and integrate a gender dimension. For example, who is the recipient of compensation payments and are these payments recurring or a single lump sum? One-off payments in many places have been taken over by male relatives or community members, leaving women even more vulnerable. Is fiscal reparation accompanied by financial training that supports women with attendant responsibilities? How are education, physical and mental health, and other services specialized to identify, understand, and respond to women’s needs? How are needs relating to ability and disability met?

In truth-seeking, a focus on women’s agency and leadership is critical to not render women as victims without agency. How is the work of narrativizing memory approached? How does it encompass the violations and grief experience by women? How does truth-seeking account for community resources in forms of memory, agency, traditions, knowledge, and cultural heritage in defining wrongs and organizing reparations?

APPROACHES

Various and valuable approaches utilized in the work of transition and transformation include *historical dialogue* and *psychosocial restitution*. In elaborating on the conversation below, we refer to section I, subsection on “Engaging History in the Present”, and the segment entitled, “A Notation on “Truth.”

Historical Dialogue

Elazar Barkan speaks of the need for “historical methodology to create shared narratives across political divides” (n.d).⁶²⁹ The Institute for the Study of Human Rights (ISHR) at Columbia University notes that:

“Historical dialogue and accountability is a growing field of advocacy and scholarship that encompasses the efforts of conflict, post-conflict, and post-dictatorial societies to come to terms with their pasts. Historical

dialogue seeks to analyze past violence; to acknowledge the victims of human rights abuses; to challenge and deconstruct national, religious, or ethnic memories of heroism and victimhood; the field also attempts to foster shared work between two or more sides of a conflict; to identify and monitor how history is misused to divide societies; to enhance public discussion about the past” (2015).

An interdisciplinary and diverse field, historical dialogue can act as a conscience building mechanism through prioritizing “reaching new generations and considering how the meaning of the past changes with the passage of time; it seeks to give individuals the tools to deconstruct historical narratives for themselves, to challenge past myths, and to consider the evolution of specific narratives about the past and how they continue to influence political, social and cultural structures” (ISHR,

2015). Historical dialogue does not seek to reconcile differences or seek out origin narratives in story and memory. Rather, it seeks meaningful engagement with difference and contestation, in reframing narratives that render unstable dominant and monolithic accounts of histories and events (Barkan, ACRes; ISHR, 2015).

As a method that also seeks to explicate the nuances, messiness, and omissions of history, historical dialogue is useful in fostering “understanding and empathy between stakeholders of multiple and/or conflicting narratives...It seeks to make visible the causes and consequences of disputed histories; to acknowledge victims; and to involve experts from a wide-range of areas, from academics to officials, from activists to victims and affected communities in an effort to achieve new avenues for moving a society away from conflict” (ISHR, 2015). Historical dialogue, as method, is facilitative of critical examinations of history and its relations of power. Accompanied by genuine political commitment, meticulous engagement with complex pasts helps foster equity and dignity, and build capacity to contend with discomfiting truths. Without such preparatory work, “reconciliation” exercises (especially when initiated by dominant groups, genders, and persons) further privilege existing and unequal relations between dominant and marginalized, and may compel atonement (on the part of the subjugated) in lieu of justice.

Reconciliation can only follow from justice. Reconciliation is effective when there is mutual political agreement between parties to a conflict or upheaval on central issues of structural re-arrangements, self-determination, and resource sharing. Reconciliation is empowering for the conflict impacted when accompanied by a commitment to the right to truth, justice, and reparations. Reconciliation efforts must lead to, and emerge out of, discursive and practical commitments for structural

Speech, many women said, disrupts isolation even as it reinforces loss. Speech, many women said, is a political act.

equitability. Reconciliation efforts must necessarily highlight (and seek to resolve) differences in relations of power between state and non-state, majority and minority, and dominant and subjugated to enable honest engagement on history and the present. Without a political commitment to *resolution*, reconciliation efforts render taboo examinations of the very inequities that precondition conflicts and upheavals.

In the Indian context, various state and non-state, and local, national, and international institutions pursue formal and informal reconciliation efforts in areas of conflict and in the aftermath of social upheaval. Some are well funded while others are small and homegrown exercises.

In Gujarat, certain civil society organizations (largely of Hindu descent and/or secular identified) have undertaken small but relevant efforts at addressing the gaping divide between Hindus and Muslims. Harsh Mander's articulations in *Fear and Forgiveness* (2009) explicate some the issues therein. The institutions of state have refrained from accepting responsibility and making amends. In section II, Part Two, we heard victim-survivors of 2002 say, "is reconciliation possible? It does not feel like it. I feel today that they [Hindu nationalists] do not believe that Hindus and Muslims are equals" (██████████, of Gujarat, ACRes). The story above repeated itself in Odisha following 2008.

"At stake is the affirmation of justice, our pluralist heritage, indeed our very survival as a people who care, and a polity that is genuinely democratic and humane."
(Harsh Mander, 2004: 13)

In Punjab, the landscape of reconciliation has been exceedingly sparse. Nationalist discourse on the Punjab conflict remains unforgiving of the Sikh act of seeking self-determination, and has been therefore unable to examine the brutality of state (and non-state) violence on civilians or address the need for reparative measures.

Without structural commitments to addressing issues at the core of upheavals and conflicts, the term "reconciliation" is often met with apprehension in places of continuing conflict such as Jammu and Kashmir. The complexities at play in creating a shared mandate for justice and reconciliation are manifold, especially given the context of fear, rage, suspicion, and deep internal fragmentation. Adjacently, some attempts at dialogue and engagement in Kashmir have fostered meaningful relations between local and non-local peoples and groups that would not otherwise necessarily engage each other. Predominantly, however, reconciliation efforts in Jammu and Kashmir have come under strong and local (Kashmiri) criticism for seeking to depoliticize or silence Muslim Kashmiri grievances. In implementing transformative justice without the resolution of political conflict, such as in Jammu and Kashmir, the priorities must focus upon acknowledgment, ongoing reparations, and psychosocial interventions for past wrongs. The decade of lessons from Colombia, both hopeful and problematic, illuminate various strategies for consideration.

Mona Bhan and Deepti Misri (2015) offer context and insight.⁶³⁰

“In Kashmir today several parties have broached the question of reconciliation, with presumably vastly different goals and parties to reconciliation in mind. For instance, the former Jammu and Kashmir Chief Minister Omar Abdullah has frequently proposed the need for a truth and reconciliation commission.

We recognize how reconciliation as it is envisioned by the state can defer or silence questions of justice and responsibility for crimes of torture, enforced disappearances, custodial killings, and sexual violence.⁶³¹ At the same time, there are several civil society organizations, and grassroots people-to-people reconciliation efforts that attempt to reestablish social ties between deeply divided communities, particularly Kashmiri Muslims and Kashmiri Pandits.⁶³² Many of these efforts include organizing communal meals, visiting old friends and neighbors, organizing visits between Kashmiri Pandits and Muslims in and outside Kashmir, and creating a joint presence on social media through Twitter and Facebook.

We pose a series of questions on the discourse of reconciliation as it is presently circulating in Kashmir: What does reconciliation mean, what should be its goals, which parties are invited to the table of reconciliation, and which ones left out? What might reconciliation mean for individual survivors of sexual violence and other forms of torture, and how might it risk re-traumatizing such subjects, or put pressure on them to forgive the unforgivable? What might be the risks of pursuing reconciliation, especially in the context of power differentials among interested parties? Could reconciliation include recourse to law and the justice system? Is reconciliation even possible in the context of what Kashmiris have termed as an active state occupation?⁶³³ What might the Pandit reluctance or refusal to view Indian rule in Kashmir as an occupation mean for any meaningful reconciliation? Must reconciliation rest on a shared political ideology or agreement between divided communities? On what terms and to what end must the past be revisited? What forms can reconciliation take in a context where Pandits have historically been the beneficiaries of state benefits with access to sources of social and political mobility such as land and education? What forms of reconciliation are possible or desirable in the absence of political cohesion and/or solidarity? To what extent might nostalgia for an idyllic past in which Kashmiris lived in social harmony provide a foundational tool for reestablishing ties of community, and,

alternately, how might nostalgia obscure the messiness of history and politics, an acknowledgment of which is critical for the process of reconciliation to move forward?

Among other issues, the rhetoric of sexual violence has played a key role in sharpening divides between Pandits and Muslims.⁶³⁴ Ananya Jahanara Kabir reminds us of the ways in which the raped bodies of Kashmiri Muslim and Pandit women are ‘embroiled in nationalist polemics and rhetoric’ to serve divergent political agendas. While for the Muslim body-politic in Kashmir systematic rape by the Indian military symbolizes the violation of Kashmiri honor and dignity, as well as India’s illegitimate and violent rule, for many Pandits the narratives of raped Pandit women or the perceived threat of rape by Kashmiri Muslim militants is used to explain why they fled from the Valley (Kabir, 2009: 150).

Indeed, one of the challenges to accounting for the legacy of sexual violence in Kashmir is the perception of singular vulnerability on the part of many Pandits—a fear that is rooted as much in legitimate cases of Pandit women’s rape as it is shaped by specific caste and labor hierarchies between Kashmiri Pandits and Muslims.⁶³⁵ By pitting Muslim terrorism against Hindu patriotism, accounts like these reflect but also shape a wider perception among many Kashmiri Pandits—that of Kashmiri Muslim men and women merely as ‘enemies of the state,’ and never as victims of state violence. Such a perception amounts to a normalization if not downright erasure of sexual violence against Kashmiri Muslim women and men by the state. In other accounts, such as one provided by the Kashmiri Pandit Network for instance, where rape and sexual violence against Muslim women is indeed acknowledged, the count of such crimes against Muslim women never includes those perpetrated by soldiers of the Indian military but always by Muslim terrorists who exist outside ‘law’ and defy all forms of civilized human behavior.⁶³⁶

While cases of systematic rape and torture by the Indian military are well-documented, and Kashmiri Muslim women have openly pressed charges or protested against military brutality or impunity, the details and scale of sexual violence experienced by Kashmiri Pandit women remain to be extensively researched, even as claims about the rapes of large numbers of Pandit women circulate freely. In the meantime, Pandit organizations such as Panun Kashmir have used exaggerated narratives of genocide and gang rape to frame Muslim sexuality as predatory. For instance, a graphic

description of the rape of a young Kashmiri Pandit woman by alleged ‘terrorists’ is striking in its voyeurism, even as it casts armed militants fighting against Indian rule in Kashmir as sexual perverts.

In such a charged context, then, how do we even begin to reimagine the process of dialogue or reconciliation among communities pertaining to sexual violence?

Detailed processes of documentation and gathering of testimony are already underway by human rights groups in Kashmir. The collaborative efforts between scholars, activists, and civil society groups have produced several exhaustive reports on unmarked and mass graves, enforced disappearances, and sexual violence, while bringing together voices from different religious and ethnic backgrounds in Kashmir, from Hindu political activists to former militants to other displaced minorities in Kashmir, such as the Gujjars (Chatterji 2012: 187-188). There is a need to create more such venues in which scholars and activists can build on existing alliances, and collaborate to produce an archive of counter memory of sexual violence in Kashmir.

First and foremost, we need an archive of sexual violence in Kashmir, one that helps us 1) fully understand the prevalence and scale of particular forms of sexual violence, its victims and perpetrators; and 2) understand how the history of sexual violence has come to shape contemporary political subjectivities in Kashmir. The collection of testimonial accounts, by offering a glimpse of similar experiences of bodily and mental traumas in opposed constituencies, may well pave the way for reconciliation, although a recounting of such injuries by victims could also forestall such reconciliation or render it pointless. Indeed, we are not persuaded that reconciliation is in every instance a social good, particularly insofar as reconciliation may entail a suppression of negative affects such as anger and place a burden on victims of violence to forgive even if not forget.

Secondly, the creative renaissance we have recently witnessed in Kashmir and its diaspora—now beginning to be anthologized in a number of edited collections—suggests that fiction, poetry, and rap music have arguably come to serve as modes of remembering sexual violence and ‘working through’ trauma in Kashmir. Academic attention to literary and cultural production in Kashmir may help elucidate the ways in which the decades of conflict and violence have transformed the cultural and political consciousness of Kashmiris⁶³⁷ (ACRes).

Psychosocial Restitution

The definitions and concepts outlined below draw upon the draft report of the World Consensus on the Minimum Principles and Standards for Psychosocial Work in Cases of Enforced Disappearance, Arbitrary and Extrajudicial Executions, and Forensic Investigations on Serious Human Rights Violations, Draft Working Document for the International Validation Committee. The report is premised upon established IHL doctrines and norms and developments by intergovernmental bodies and experts, and was adopted at the Second World Congress on Psychosocial Work in Exhumation Processes, Forced Disappearance, Justice, and Truth in 2010 (SWCPW, II Congreso Mundial de Trabajo Psicosocial en Procesos de Exhumación, Desaparición Forzada, Justicia y Verdad, a realizarse del 21 al 23 de Abril de 200 en Bogotá).⁶³⁸

Psychosocial restitution as a reparative approach involves the individual, family, community, and civil society with the objective of addressing the consequences brought about by gendered and sexualized violence during armed conflict and social upheaval (as elaborated upon in section I). Ameliorative and preventive, psychosocial restitution seeks to re-assert the integrity of the victim-survivor as an individual with dignity and rights, and as a member of a family, community, and society. Psychosocial restitution adopts a holistic approach to promote the emotional, cultural, psychological, social, and economic needs and well-being of the victim-survivor of gendered and sexualized violence. Psychosocial restitution aims to provide the victim-survivor with social and emotional support to ensure their dignity, privacy, and wishes, and promote actions that enable their right to truth, justice, and comprehensive reparations for gendered and sexualized violence.

Psychosocial restitution focuses upon individual, familial, social, and structural dimensions of issues pertaining to the victim-survivor. Furthermore, in the reconstructive process, psychosocial restitution recognizes the implicit value of social networks that may have been destroyed during conflict or upheaval. The work of psychosocial restitution involves multisector professionals and teams, including physicians, mental health agents, cultural anthropologists, human rights defenders, lawyers, state agents, and representatives from development and entrepreneurial institutions.

“Victim,”⁶³⁹ here, refers to persons who have suffered direct and indirect individual and/or collective harm pertaining to gendered and sexualized violence during conflict and upheaval, including physical or mental injury, emotional injury, economic loss, or serious impairment of their fundamental rights through acts or omissions that are in violation of operational criminal laws of the state in which they reside and international laws and treaties that are binding upon them, including laws that proscribe criminal abuse of power.

A person may be considered a “victim” irrespective of whether the perpetrator is identified, apprehended, prosecuted, or convicted and regardless of any existing

personal or social relationship between the perpetrator and the victim. A “victim” may include, as appropriate, immediate family members, relatives, and those otherwise associated with persons that have suffered harm “in intervening to assist victims in distress or to prevent victimization” (SWCPW, 2010: 5). Furthermore, “the terms ‘family’ and ‘relative’ shall be understood in the broadest sense and encompass both [affinal and consanguinal] relatives as well [as allies, close friends, and extended community]...taking into account the cultural context [and sexual and gender identity]” (SWCPW, 2010: 5).⁶⁴⁰ Institutions, teams, and professionals involved in implementing actions to enable psychosocial restitution should be cognizant that such actions should encompass individual, family, community, and social settings, as appropriate, in order to meaningfully impact direct and indirect victims and society as a whole (SWCPW, 2010: 5).

Furthermore, in certain social contexts, as in South Asia, where victims of sexual violence are often institutionally and socially stigmatized, in turn prompting their dislocation and abandonment, restitution efforts should address the structural as well as social impediments presented to women who attempt to secure justice. Fearing reprisal, families can ostracize women who take steps to secure justice. Access to legal or rehabilitation services for women often prove difficult. Counseling is often culturally alien and at times stigmatized.

The emergent framework on psychosocial restitution provides an important space for elaborating on physical, mental, social, psychological, political, and spiritual forms of trauma, and their individual, collective, and intersecting impact. These forms of trauma in states of conflict and upheaval are gendered, and conditioned by bodily experiences of exclusion, mistreatment, abuse, and unbelonging, and the social boundaries of “outsiderness.”

In 2010, CEDAW expressed “regret” that a three-member Women’s Cell had been constituted in relation to the Gujarat 2002 violence with “no expertise whatsoever in trauma counseling and management.” (UN Committee on the Elimination of Discrimination against Women, 2010: 3)

Truth:

Discovery, Difference, Reconciliation

Justice:

Investigation, Witness protection, Impartial trial and Prosecution

Reparation:

Cessation, Restitution, Compensation, Satisfaction, Rehabilitation, Nonrepetition

Guarantee of Nonrepetition:

Disarmament, Demobilization and Reintegration, Institutional reform, Perpetrator identification, Prosecution, Reform, Alliance building & inclusivity, Nonsecuritization

For both victim-survivors and allies, drawing on psychological-social and spiritual approaches to engaging, living with, and healing from trauma dislodges the stigmatization that preconditions silence around pain and traumatic suffering. Trauma stewardship is an approach in addressing one's own engagement with the healing process. Laura van Dernoot Lipsky with Connie Burk state, "as people working for justice," with "pain and traumatic responses that we hold collectively in our communities and society...By talking about trauma in terms of stewardship, we remember that we are being entrusted with peoples' stories and their very lives. We understand that this is an incredible honor as well as a tremendous responsibility" (2009; n.d). Crucial to this is the development of non-punitive, non-criminalizing, and rehabilitative approaches to engage state personnel and non-state combatants who are perpetrators of violence and mistreatment.

Frameworks in psychosocial restitution can be facilitative, indeed instrumental, following social upheaval, where intensive and episodic violence remains unaddressed and erodes the possibility of enduring stability. The upheavals in Gujarat in 2002 and in Odisha in 2008 (in India) are representative of this.

In instances where active conflict involving state and non-state parties has ostensibly ended (even decades ago) without comprehensive efforts at accountability, psychosocial restitution, even though delayed, can empower affected communities to heal, and address continuing and intergenerational impacts of the conflict. The conflict in Punjab of the 1980s and 1990s is illustrative of this point. In situations of continuing and currently low-intensity conflict such as in Jammu and Kashmir, implementing pending remedy and (interim) reparation for victim-survivors, and enabling local and impacted communities to express pain, frustration, rage, loss, and fear are critical to developing a serious and attainable commitment for political resolution that is not coercive of the subjugated. Crucial to this is the development of non-punitive, non-criminalizing, and rehabilitative approaches to engage state personnel and non-state combatants who are perpetrators of violence and mistreatment.

THEMATIC ISSUES

Across various social upheavals and violent conflicts in India since 1947, myriad responses such as ad hoc commissions, human rights courts, inquiries, national commissions, state bodies, and Supreme Court interventions have been attempted. In entirety, the effects of such interventions have been inconsistent without noticeable resultant amelioration in states of violence during and following conflict and upheaval.

Political Responsibility:

Acknowledgment
Apology
Addressing impunity
Acceptance
Reframing laws
Institutional reform

The text has highlighted aspects of both what has been, what is, and what should be considered appropriate responses to states of violence and states or exception in the conflicted postcolony. The objective has been to underscore the harm to victim-survivors in the absence of national responsibility and attendant mechanisms, and relatedly, the need for a justice and accountability mechanism that intercedes on violence and upholds India's ethical and legal commitments and obligations.

State's Responsibility

The state must inhere that its continued legitimacy is contingent upon its continual pursuit of justice for all its inhabitants. The state should:

Ask questions of itself and its people. Be reflexive. Be accountable through continual listening to those affected in conflict and upheaval. Honor the right to truth. Accept the uncomfotability of truth. Acknowledge that the complexities and contestations in the "local" must be carefully analyzed, and not romanticized or exoticized, to avoid bolstering discriminatory practices against traditionally marginalized groups, particularly women.

Acknowledge the unknown and honor the dead. How many have died in each event of violence and were disposed of clandestinely? What led to the Punjab cremations, how did so many human beings end up as ashes? Where are their families now? How have the women survived?

Apologize for past and present wrongs and bear responsibility. The process and outcome of such acknowledgment should not result in the stigmatization of the victim. The state should create conducive and responsible contexts for engagement with victim-survivors, and, further, with perpetrators.

The state should enable archival preservation and release and provide access to governmental and military records. Where are the official records of the illegal cremations of Punjab? Who is buried in the unknown graves of Kashmir? The SHRC of the Government of Jammu and Kashmir authenticated the findings of the unknown graves in July 2011 that were undertaken by IPTK (2009). This led to the first formal acknowledgment of the existence of unknown and unidentified graves. Following the SHRC's acknowledgment, what would it mean to release official records of the bodies that were buried to the mothers, sisters, spouses, children, and community of the dead? What would it take to place the photographs, and

"Either Satguru [Almighty] knows what happened, or these Bibis know." (Village Granthi, Gurduwara Worker, Punjab, ACRes)

In Kashmir, despite an entire village of eye-witnesses, torn and bloodied clothes, and discarded liquor bottles, the investigating officer closed the investigation "for want of evidence."

all other available identifying information reportedly kept at police stations, in the public domain? This might act as a step in enabling their identification by family and community, as well as address concerns regarding the viability of exhuming the bodies in a prevalently Islamic society.

Recognize that in situations of continuing and currently low-intensity conflict, addressing the impunity of state forces and rights violations perpetrated by non-state parties is crucial. Equally necessary is to implement remedy and reparation for victim-survivors and assess and revoke impunity laws. Local and impacted communities must be supported as they seek to express pain, frustration, rage, loss, and fear, all critical to developing a serious, honest, and attainable commitment for enduring political resolutions.

Ask why victim-survivors of Gujarat 2002 are unable to return to their homes after thirteen years. In reflecting on the brutality and remorseless violence on Muslim women during those three days in February-March of 2002, the state should ask questions of its own becoming. The state should ask why many Adivasis and Dalits in Kandhamal who converted to Christianity remain fearful of their Hindu neighbors, even relatives. The state should ask why

Identifying survivor women's agency, autonomy, and leadership is crucial to curtailing sexual violence in conflict, and capacitating historical dialogue and sustainable peace.

economic embargoes against the Christian community by Hindu majoritarianists still continue, and with the knowledge of administrators and bureaucrats.

Acknowledge the fragilities of the judicial system. Take steps to enable the process of justice. The courts should disburse justice in all outstanding legal cases. Legal cases, such as Konan Poshpura, have become emblematic of impunity in their respective communities and must be resolved expeditiously and with acknowledgment of the political interference that has thwarted their closure. This adherence to the rule of law and remedy for the individual victim-survivors would also strongly represent acknowledgment and serve as reparation to entire communities.

Accept the category of political crimes and political prisoners related to the conflicts. Recognize the political dimensions of the conflict and the ways in which they are related to the dynamics of religionization and communalization. Release combatants from minority communities that have served their sentences. The state should ensure that prosecuted criminals from majority communities serve their sentences and not be discharged on frequent parole. As well, prosecuted criminals from majority communities must have conditions around their parole, including stipulations regarding contact with victim-survivors.

Do not hold communities in suspicion. Ensure the rehabilitation of former combatants. Cease the continued questioning, interrogation, surveillance, and humiliation of surviving family members of militants and former militants

in Punjab and Kashmir. Review and halt use of disproportionate force. State institutions and personnel should be required to undergo mandatory education to unlearn prejudice and reflect on internalized oppression. School curricula at the primary and secondary levels should appropriately address issues of fairness, self-respect, ethics toward others, the value of social and individual difference, and facilitate the unlearning of discriminatory notions of self and other. Education must build capacity in critical thought, social imagination, creative action, ethical relatedness, and alliance building. Teachers must be educated to enable student learning of complex histories of culture, politics, and social injustice, and legacies of social justice activism. The state should accept criminal liability. The state must understand that its regularized use of force produces persistent challenges to establish inclusive, accountable, and effective institutions of democratic governance.

Law

In particular, India should:

Amend Indian criminal law and employ international criminal and human rights legal standards to define rape and related provisions as a violation of bodily integrity and a crime of violence, rather than a crime against modesty. Indian criminal law should also recognize the coercive circumstances in custodial situations and armed conflict. The progressive recommendations of the Verma

Commission report that were short-circuited in 2013, including the provisions to combat impunity for gender-based violence in conflict areas, must be adopted.

India should address its treaty obligations, cognizant that the Supreme Court of India has in a number of cases held that if India has ratified a treaty or convention it is binding within India and will be treated as a part of the Indian law unless there is a conflicting municipal law. India should resume the process to enact a torture law and meet its obligation under CAT.

Adopt legislation that provides a comprehensive, equitable, and efficient system of reparations for victims of sexual violence in internal conflict or incidences of mass violence. India should provide adequate, timely, and comprehensive reparations to victims of gender-based crimes and their families, including monetary compensation; rehabilitation, such as medical care and psychological and psychosocial support; measures of satisfaction, such as public acknowledgment of wrongdoing, memorialization, and historical analysis of commitments; and measures of guarantees of non-repetition, including effective criminal investigation and the prosecution and punishment of those responsible.

"Whoever commits wrongs, Hindu or Muslim, should be punished. The law should be above religion, above all else. The convicted should not be getting parole for [trivial] reasons." (She, Of Gujarat, ACRes)

Ensure acts of sexual violence in areas of internal conflict and incidences of mass violence are exhaustively and effectively investigated and those responsible are promptly prosecuted and punished by a competent, independent, and impartial tribunal. India should repeal legislation, such as the AFSPA, 1958 (with subsequent amendments), and sections of the Indian Code of Criminal Procedure, including section 197, that do not permit the trial or prosecution of paramilitary and military personnel without government permission.

These laws encumber the investigation, prosecution, and punishment of public officials and members of the armed forces. In particular, it is imperative that India strengthens its efforts to effectively investigate and prosecute historic crimes, such as the acts of sexual violence that occurred in Jammu and Kashmir, to signal a break with the legacy of impunity and ensure victims' access to justice. To this end, India should expand the resources available to the judicial system to address the backlog of cases and establish an effective protection program for victims and witnesses. India should address de jure failure wherein "security laws" are reincarnated under different names, often by creating oversight mechanisms and implementing the repeal of earlier legislation.

Address the ways in which the lapse or repeal of one extraordinary law often leads to the objective and spirit of such a law to transfer to another promulgation.

Given the overt challenges and failures of the ad hoc commissions and government human rights bodies (see, section II, "Human Rights Commissions," "Commissions of Inquiry") in addressing gender-based violence, India must develop a format for commissions that excavate truth without compromising justice, in consonance with current developments in comparative contexts. Human rights courts must be made operational in each state.

Amend Indian criminal law to include criminal command responsibility. Impose criminal and administrative sanctions on public officials, including elected officials, military personnel, and police officers that obstruct investigations or intimidate, harass, or assault victims and witnesses of sexual violence that occurred during internal conflict or mass violence. Authorities should initiate disciplinary proceedings against public officials

Militants have also used coercion and threats against victim-survivors, including spouses of the reportedly involuntarily disappeared, termed "half-widows," prohibiting them from pursuing of cases for compensation or other engagement or negotiations with the government
(Association of Parents of Disappeared Persons, 2011).

"There is a growing sense that something can and must be done, not only to stop atrocities but also to bring those responsible to account, to make the facts known, and to succor the victims." (Naomi Roht-Arriaza, 2006: 1)

who perpetrate or fail in their duties to respond to sexual violence, including investigating officials who fail to follow investigative procedure by, for example, refusing to register First Information Reports. India also should adopt steps to dismantle the esprit du corps, prevalent among police and military forces, that contributes to a climate of impunity in which members of the police and military may harass and intimidate victims and witnesses or their families without consequence. The system of reward for extrajudicial killings or other extra-legal actions must be eradicated and past perpetrators must be prosecuted according to the law.

Protect religious freedom by repealing the freedom of religion acts that are punitive towards those that seek to convert, and often employed to bolster majoritarian arguments to the detriment of minorities.

Implement specialized investigative units, prosecutors, and courts to respond to, investigate, and prosecute acts of sexual violence in internal conflict and incidences of mass violence. India should ensure that individuals responsible for inciting and committing acts of sexual and collective violence are held criminally accountable. India should increase institutional capacity to effectively prosecute and punish perpetrators of sexual violence and care for victims of conflict and mass violence by creating specialized police units to investigate crimes of sexual violence, increasing the number of female police officers and medical examiners, establishing specialized units within prosecutors' offices, and strengthening specialized courts to address the backlog of cases and ensure the independence and impartiality of investigations and prosecutions. India should ensure that the rights of prisoners serving sentences are respected.

Many women have been forced into the impossible choice between pursuing justice for their lost and disappeared partner or providing for their families by accepting some form of government "compromise." The compromise may include obtaining a government position for themselves or their children on compassionate grounds, by officially admitting and accepting that the involuntarily disappeared person suffered a "natural death."

Adopt effective witness-victim protection measures to enable victims and witnesses of sexual violence, including state officials, in areas of internal conflict and incidences of mass violence to participate fully and safely in proceedings. Measures should take into account the particular vulnerabilities of victims of sexual violence in these contexts and may include relocation assistance, privacy protections, and other security measures to ensure protection from retaliation or intimidation, and physical and psychological safety.

Provide ongoing professional development educational programs to officials involved in sexual violence cases, including police, medical personnel, and judicial

officers, for the unique challenges of working in areas of internal conflict and mass violence and to appropriately support victims and sensitively conduct their duties. This should include effective efforts to standardize medical forensic examination procedures and train medical personnel to competently conduct exams. For example, although Indian courts have rejected the legal validity of the “two-finger” vaginal test, it is still used. India should take steps to eliminate practices that re-traumatize victims of sexual violence.

Take steps to create a peace plan to demilitarize in conflict zones and disarm perpetrators. Prosecute individual perpetrators and perpetrator collectives responsible for organizing and inciting violence. The state should address the issue of perpetrators who have been incorporated into the ranks of the state and hold prominent social positions. Address animosity and mistrust between communities and alienation of victim-survivors and affected communities. Bear witness to grief and dispossession.

Transformations

India should review and shift the existing national parameters and positions on autonomy and self-determination premised under international law. A sanguine commitment to addressing internal armed conflict where parties advocate for heightened autonomy, federation, or self-determination requires openness on the part of the state to commit to complex and new resolutions.

The law should enable the families of those disappeared (combatants and civilians) to access justice, receive equal compensation and pensions, search for the missing, and hold the perpetrators of wrongful acts accountable. The law should respect the rights of the dead and their entitlement to the rites of passage. The law should preempt a standard and simplified process of obtaining death certificates for all deaths during the time of ongoing conflict violence and during the period of a social upheaval. In various Latin American countries, the families of forced disappearance victims do not wish for a declaration of death. However, they require some acknowledgment of the disappearance to remarry, dispose of property, and for other life-needs. Several countries have created a special status of “forcibly disappeared” that does not require the family to admit death yet allows them to attend to related needs and actions. This would be relevant in Jammu and Kashmir, for example, with respect to “half-widows,” as well as in Punjab, and Gujarat and Odisha.

“It is not about me as an individual. We care what is said about us collectively.

So we speak. Even if it’s painful for me, for her, for us, because we need to explain what our Punjab was like, and what happened. How can we not remember?”

(She, Punjab, ACRes)

The state should acknowledge when men from targeted communities are disproportionately killed and involuntarily disappeared in conflict, and separate their families in accordance with the highest standards in international humanitarian and human rights law. That women and children constitute a majority of rape victims, refugees, and the displaced, and recognize their leadership and agency in reconstituting lives and worlds. Uphold the right to freedom of speech and freedom of movement. Uphold the rights of social movement organizers, nonprofits, and human rights defenders.

Remove the recent censorship and harassment of activists, academics, artists, and human rights defenders regardless of their political opinions, and reverse the tide of despair, dismissal, resignation, and protest from various sections of Indian civil society in 2015. The pathway to a just and democratic peace requires that the state uphold its support of difference, disagreement, and the right to dissent. This functions like a safety valve and allows for emotion and expression that, when constrained, festers and can be unleashed through violence.

Address broader social inequities to negate the reach and impact of conflict violence and upheaval on particular communities. Toward this, for example, afford legal recognition to LGBTIQ communities. Incorporate the category of “indigenous” into Indian law and policy as it is endorsed in international law. Recognize all religious, linguistic, and ethnic minorities under the constitution, and the spectrum of gender identities. Define provisions for amnesty to immigrant victim-survivors of historical and present day conflict and upheaval. This would assist in remediating the hostilities between the Adivasi groups and Dalit communities in Odisha and elsewhere. Extend the benefits of reservation to all those eligible on the basis of economic need, including tribes, castes, and religious and sexual minorities.

CIVIL SOCIETY

There have been innovative civil society actions, exercises, and engagements in some areas of conflict areas and spaces of social upheaval in India. Civil society in conflict areas and spaces of upheaval must further imagine the steps necessary in seeking justice and honoring remembrance. Civil society in conflict areas should commit to the cessation of gendered and sexualized violence. In areas of upheaval, rethinking the conditions of majoritarianism and minoritization must be the first order of priority.

Civil society outside conflict areas should continue to reach out to strengthen alliances with their counterparts in conflict areas. It is important that local civil society groups are listened to and supported, and shared and credible (rather than “neutral”) dialogical space created where they may co-drive, indeed participate as equals rather than be co-opted into, the agenda for discourse and action. For example, democratization of power and relations between “Kashmiri civil society”

and its “Indian” and other counterparts remains critical as much as engaging local civil society in talks on demilitarization and disarmament and in fostering forms of support that address local psychosocial, medical, and legal needs. Difficult and honest exchanges, conversations, and education initiatives are imperative to trust building across diverse cross-sections of Kashmiri civil society, including religious communities, and between Kashmiri-outside groups (Fischer, 2011; Poskitt and Dufranc, 2011).

In Punjab, the lapse of time and the absence of relations and mistrust between local civil society and national groups pose further challenges. The isolation of local civil society has rendered difficult the cultivation of vibrant local leadership focused upon post-conflict rehabilitation and reconstruction. The challenges are manifold with the intermittent recurrence of “conflict-like” conditions on the ground be it through the economic disarray that leads to the farmer suicides, and exercises in securitization and saffronization.

The state and civil society should acknowledge and shift the social and institutional majority-minority binaries that privilege the majority/dominant community with respect to social status and access to resources. Civil society and the state should commit to a non-heteronormative polity.

NON-STATE PERPETRATORS

Perpetrators should accept responsibility for their actions. Combatants should cease the use of violence. Combatants should seek to make amends with those they have violated on principled terms that are acceptable to the latter. Combatants and the state should work together to ensure the right of return for those who were displaced in conflict and upheaval.

In Odisha, the police did not prevent a mob from parading the injured, half-naked victim through the village by detaining and arresting individuals engaged in criminal conduct.

ECONOMIC RESTITUTION

Plans for economic sustainability require collaborative development, with political and fiscal commitment on the part of the state to address destruction and loss, local needs, and economic justice. The broad-based participation of victim-survivors and local civil society is critical to their success.

Restitution, or attempting to restore a person to their prior condition as it would have been without violent disruption, often necessitates strong economic measures. To be effective, these must be de-stigmatized and made unconditional and non-discriminatory. The state must not only allocate resources for restitution but also reinforce the notion that these measures are a right of the survivor, rather than state largesse. Given the inherent nature of social disparity in India, this is especially important.

In instances where only particular losses are being addressed—for instance, if the state policy distinguishes between combatants and non-combatants in determining who can claim loss—this must be accompanied by a clear rationale and explanation. The costs incurred, time required, and legal barriers to seeking civil remedies must be addressed and eliminated. Affected communities and civil society must cease to associate negative value with economic restitution. Victim-survivors must not be shamed for demanding or receiving compensation. Relatives of combatants must not be allowed to dictate the terms of survival to victim-survivors. Economic restitution must prioritize school education and adult income generation and well-being.

██████████, a militant who had trained in Pakistan-administered Kashmir, joined Hizbul Mujahideen and later shifted to Al-Badr. Reportedly, during cordon-and-search operations in the area, paramilitary personnel would enter ██████████'s home in northern Kashmir. They would demand to know where her ██████████ was. ██████████ refused to divulge information, and was tortured by state forces personnel on several occasions. After her ██████████ was reportedly killed in an encounter, state forces personnel stopped their torture of her. However, they continued search operations to her residence for several years. Fearing retribution, she never approached the concerned authorities in the area. She suffered psychological abuse and physical violence, as a result of which she underwent multiple surgeries. (Research data communicated to ACRes)

OPENNESS

Openness and equality and deepening of democratic norms are perhaps the foremost preconditions for, and challenges to, justice and peace. Seclusion fosters isolation and discontentment. It conveys that the state is apprehensive of open exchanges between impacted communities and the outside world and invested in governing through the politics of fear, exception, and exclusion. The state must approach with humility the great responsibilities it faces. In doing so, nurturance on the part of the state necessitates that it act inclusively in ways that foster care and democratic inclusion. State institutions must encourage and invite openness.

State institutions must not ban, deter, harass, or intimidate scholars, journalists, artists, musicians, human rights defenders and organizations, civil society, and nonprofit leaders that journey from India and internationally to sites of conflict and upheaval; for example, Jammu and Kashmir. State institutions must not hinder research, inquiries, discussions, and courses at universities in sites of conflict and upheaval that pertain to issues of conflict and upheaval. Such behaviors jeopardize

the basic preconditions necessary for peace. The recurrent disturbances in Punjab evidence the casualties of the state's noncommittal relation to transitional and transformative justice. It reveals the extent to which society is on edge, and the sharp divisions and tensions born of the conflict that are yet to be acknowledged, remedied, and healed. State governments in areas of upheaval (for example, Gujarat and Odisha) are ordinarily averse to local and allied civil society and religious organizations attempting the work of reconstruction. It is the responsibility of the state to undertake reconstruction and support, rather than impede, civil society in their attempts.

ARCHIVES OF PAIN AND HEALING

The question of woman's voice is on one hand a question of one's relation to oneself and on the other hand an historical one.

— Veena Das (2010: 139)

Conflicts, upheavals, and their ever-present challenges and effects overwhelm India's conflicted democracy. The recent past is teeming with injustices that condition foundational violence and political dissension and hold in place extreme gendered and sexualized violence. Structural discrimination, manifold in conflict areas and spaces witness to social upheaval, is operative across India's body politic. Myriad peoples, communities, and state institutions act from deep-rooted and turbulent prejudice against historical and political Others. The hyper-nationalism of majoritarian society dangerously pursues militarization and minoritization to foster unequal economic growth and strengthen mechanisms of state security.

Transition and transformation are prerequisites to dislodge states of exception, interrupt states of violence, disrupt the status quo, and address the range of conflict- and upheaval-related problems facing India today. Transitional and transformative justice processes may be implemented to address issues of gendered and sexualized violence in active and unresolved conflict, as in Jammu and Kashmir. In South Africa, for example, the violence continued even while the TRC undertook its work. In Northern Ireland, a peace agreement occurred even as all parties were not a part of that process. In Palestine/Israel, reconciliation efforts continue even as the conflict itself is unresolved. Transitional and transformative justice processes can be applied where active violence ceased a long time ago without acknowledgment of crimes or holding perpetrators accountable, as in Punjab, or where episodic upheaval

The contemporary Indian context provides an important case study on conflict and democracy, on conflicted democracy.

Small openings
In Konan Poshpura, an acknowledgment and apology from the India Armed Forces is a precursor to reparations.

In Punjab, in the rape case highlighted in this text, an acknowledgment and apology from the Punjab Police is a precursor to reparations.

In Naroda Patiya, an acknowledgment and apology from the Government of Gujarat is a precursor to reparations.

In Odisha, in the rape case highlighted in this text, an acknowledgment and apology from the Hindu majoritarian Sangh Parivar is a precursor to reparations.

has deepened social fragmentation and emboldened civilian terror, as in Gujarat and Odisha. The relative cohesion of community action in Gujarat and the paucity of such action in Punjab, for example, also underscore the relations between the impacted community and outsider-allies or lack thereof.

This may be further attributable to dominant political and moral perceptions of the events and dominant representations of communities that were impacted. Together, these dynamics intertwine with obscure facts on the ground and impede rational social discourse necessary to securing justice. Where issues remain unresolved, defining transitional and transformative justice processes creates trust, establishes preconditions for political agreements and peace processes, defines future needs, and sets up mechanisms providing oversight of state forces. IHL supports processes of transitional and transformational justice and binds states to fulfill basic obligations to protect the fundamental rights of citizens and even enemy soldiers, and respect the rights of enemy combatants and the rights of the dead.

The right to heal from gendered and sexualized violence is a part of a right to a remedy, and of satisfaction and restitution. It refers to the right to truth, justice, and reparation. In the Indian context, the development of a strong and vigorous mechanism for accountability and defining a constitutional review process for its enactment is of vital import.

The state must recognize and honor its responsibility to protect. Peace committees, peace commissions, and anti-violence institution building are crucial to developing a strong mechanism. Canada's a truth commission in residential schools, the US process for Greensboro, North Carolina, and the TRCs in Nigeria and South Korea offer rich lessons. Equally important is the need to build institutional capacity to effectively address poverty tied to discrimination and minoritization and to develop institutional transparency and independence both on appointments and operational modalities. The sequence of steps in transition and transformation must be comprehensive, context-specific, and carefully considered with a focus on restorative justice and reconciliation.

How are transition and transformation gendered? These processes must all take into account the specific needs of women. Women, including victim-survivors, must be involved in the design of the mechanisms that are established and be a part of the leadership. The empowered engagement of victim-survivors and their active and ongoing participation is a priority. In engaging victim-survivors, it must be recognized that they

"Despite the political momentum and visibility gained in recent years, the reality on the ground is that many governments have not been able to create an environment in which survivors feel safe to report sexual violence." (Ban Ki-moon, Report of the UN Secretary-General, 2015: 2)

are a diverse group of individuals with differences in experience, outlook, politics, and expectations. To explore questions of healing requires understanding the effect of the perpetrator on the corporeal and allegorical body of the victim-survivor. To work with perpetrators and serial perpetrators is to access the horrifying spaces of violence and hatred. Such work is structurally healing when there is an admission on the part of the state of the existence of the victim, the perpetrator, and the conflict or the upheaval.

Individuals act within a community and within a political system. How is communal responsibility defined for crimes perpetrated on individuals that target a community, and perpetrated by individuals on behalf of a community (Barkan, 2015, communiqué)? The

context for the memories that hold together the archives of pain and healing are often available (court records; survivor narratives) but not accessible (bureaucratic constraints; lack of their inclusion in conversations on accountability). Shared narratives and constructive narratives between victim and perpetrator are impossible in spaces that lack processes in transition and transformation. The building blocks to accountability begin with memorialization, even as political actors sidestep such work to enforce “reconciliation.”

The work of healing requires decentering institutional memory through positioning the relevance of counter-memory. The task of assembling counter-memory is daunting. As the political reality shifts, memory, too, is reformed and keeps shifting (Daniel, 1996). The circumstances of violence and loss unhinge memory, displacing the contexts and social worlds that shape meaning. The right to heal is the right to elect to

██████ ██████'s ██████, a militant who had trained in Pakistan-administered Kashmir, joined Hizbul Mujahideen and later shifted to Al-Badr. Reportedly, during cordon-and-search operations in the area, paramilitary personnel would enter ██████'s home in northern Kashmir. They would demand to know where her ██████ was. ██████ refused to divulge information, and was tortured by state forces personnel on several occasions. After her ██████ was reportedly killed in an encounter, state forces personnel stopped their torture of her. However, they continued search operations to her residence for several years. Fearing retribution, she never approached the concerned authorities in the area. She suffered psychological abuse and physical violence, as a result of which she underwent multiple surgeries. (Research data communicated to ACRes)

National (and institutionalized) mourning can displace victim-survivor (and often oral) histories and language remembrance as an impediment to healing and progress.

belong and not belong. The right to heal is the right to remember, to memorialize, and to mourn.

The work of this text has been a long journey in listening to, engaging with, and learning and unlearning from an archive of pain, neglect, valor, and injustice that enframe violent conflict and social upheaval. The archive is diverse, and like a sieve, struggles to hold all that it contains. In sifting through fragments and stories narrated by victim-survivors of gendered and sexualized violence from the Punjab conflict (1984-1995) and Gujarat upheaval (2002), amid the shared yet unique threads of experience, certain statements reverberate from person to each person, as She states:

“I carry a weight that is heavier with the passing years.”

“I haven’t slept, it feels, from that day on...”

...

“I won the case, but at what cost? This is not justice, it is pain.”

“I keep seeing perpetrators in powerful positions. How can people talk to me about normalcy?”

“The state prompted cycles of violence. Shut down the non-violent leaders. Now, there are no leaders.”

...

“My family’s loss was profitable for the officer and the larger government.”

“I still see my children’s life incomplete and feel sad and angry.”

...

“Far from over, the conflict is alive. Far from over, the damaal unleashed an abyss in which we live. There has been no justice and the victims are held as criminals.”

“I never thought my neighbors would betray me, and never apologize.”

...

“Before today, no one has come to ask me what I think should be done now; they have only asked me about the past.”

...

“Remembering is a criminal act. I am held suspect for having a memory.”

“I have accepted that life moves on, but the dead, they move with it.”

“Living in loss, living with death. From this, what hope?”

“I have fought so hard. Looking at me, you would never know.”

The layered legacies of oppression cast long shadows. Violence in the post-colonial, decolonial state is enacted through the passage of colonization, in the moment of arrival through independence, and in the forcible consolidation of difference under nation. For the victim-survivor of historical and present violence, an

acknowledgment of injustice affords recognition of the very cycles of abuse that are formative of the state's history and identity. These dynamics of violence intimate to history profoundly impact the present. At these intersections, the right to heal is both personal and intensely political.

APPENDIX

Table 12. Holding Organizations Accountable

Communal Events	Majoritarian Organizations Held Actionable
<p>The Assassination of M.K. Gandhi (January 30, 1948) :Nathuram Godse assassinated M. K. Gandhi in 1948. Godse and several co-conspirators were members of the Rashtriya Swayamsevak Sangh and/or the Hindu Mahasabha, though the RSS attempted to minimize its association with Godse in the wake of Gandhi's murder (Lal, date unknown; Noorani, 2012).</p>	<p>The RSS was banned by the Indian Government from February 1948 to July of 1949 (Ankit, 2012).</p>
<p>Bhagalpur (1989): The 1989 mass killings in Bhagalpur, Bihar, left more than 1,000 dead, and A.A. Engineer reported 876 of them to be Muslims. The commission of inquiry for this violence found that BJP members played an active role in the rioting (Engineer, 1990: 307).</p>	
<p>L.K. Advani's Rath Yatra (1990) :In 1990, then-Bharatiya Janata Party (BJP) President L.K. Advani led a rath (chariot) yatra (journey, here, procession) to travel approximately 6,200 miles through the northern and western regions of India. The procession "sparked serious incidents of anti-Muslim pogroms in its trail," and Advani was arrested and the yatra was stopped by authorities from entering Uttar Pradesh (Hansen, 1999: 164-65).</p>	
<p>Ayodhya – Babri Mosque Demolition and Subsequent Violence (1992-1993): The state-appointed Srikrishna Commission report (1998) and the Liberhan Commission report (2009) pointed to the Sangh Parivar, including the Shiv Sena, for responsibility in anti-Muslim violence in December 1992 and January 1993 that claimed 900 lives (Graff and Galonnier, 2013), the. In 2005, charges were framed against eight Hindu nationalist leaders. The case is still ongoing as of 2015 ("Charges Framed Against Advani, Seven Others," 2005).</p>	<p>RSS banned from December 1992- June 1993 (Jaffrelot, 1996:464; "Since Inception, RSS Banned Thrice," 2009).</p>
<p>Gujarat (2002)</p>	
<p>Orissa (2007, 2008)</p>	

Note: The RSS was banned by the Indira Gandhi-led Government during the Emergency from 1975-1977 (Jaffrelot, 1996: 272; Kelkar 2011: 139).

Table 13. Village Profile

Village Survey, Tarn Taran (ACRes)	
Total Population: Approximately 3,600	Avg. monthly income: 2,800 Indian Rupees
Average land holding: 3-4 acres per household	# of Sikhs Approximately: 3,200
# of Hindus Approximatel: 200	# of Muslims Approximately: 10
% of literate population: Approximately 52%	Killings during conflict: 8
Disappearances during conflict: 6	# Arrested/detained during conflict: 1000-2000
# Affected by property loss during conflict: 5 (building; tractor; cash; jewelry)	# Torture survivors: 10
Land occupied by militarization during conflict: 3000 sq. foot house	Police outposts during conflict: 1
# of conflict-affected families who have received govt. support: 0	# of conflict-affected families who have received NGO/other support: 0
Women widowed in conflict: 5	Reported sexual violence during conflict: 0
# Families migrated due to conflict, to cities from village: 15	Restrictions on travel during conflict—to travel to Harmandir Sahib in 1984; to travel abroad 1984-1996: Approximately 60

Table 14. Memorialization

District Tarn Taran (ACRes)		
<i>If you could have a memorial in your village in the name of those who died or disappeared or were otherwise affected by the conflict, what would that be?</i>		
Nishaan Sahib [Sikh flag]	Sports Club	Library
Computer Center	IT Training Center	

ENDNOTES

1. Conflicted democracy: Defined in the subsequent section; see Ní Aoláin and Campbell (2005). Postcolony: An area once subject to internal (as in North America) and external (as in Algeria and India) colonization by European nations. The “postcolony” and the “postcolonial” are constitutive of contested discursive and political spaces; see Afzal-Khan and Seshadri-Crooks (2000); Loomba (1998); Said (1978); Visweswaran (1997); Young (2001); Zein-Elabdin and Charusheela (2004).
2. “Other” refers to those are historically and structurally marginalized and considered lesser.
3. “Victim-survivor” refers to those who were victimized, and are living. “Survivor” acknowledges their agency, struggle, and resilience. We note as well that “victim” is a legal category of persons with established rights under domestic and international law, and further that many of the women referred to in this text did not survive incidents of sexual violence. We use the term victim-survivor in acknowledging the inordinate courage of women-survivors of sexual justice in seeking justice, and the autonomy of each woman to decide for herself how to identify.
4. Conceptually elaborated on drawing on victim-survivors who speak powerfully to the need for healing.
5. Majoritarianism and minoritization: Defined in the subsequent section.
6. Jammu and Kashmir is often also noted as Jammu & Kashmir.
7. Communalism, communal, communalization are terms commonly used to describe tensions between religious groups in India and parts of South Asia Panikkar (1991). For elaboration, see Section II.
8. “Minority” in the instance of India refers to nondominant religious, ethnic, gender, tribal, and caste groups and peoples, see Section I and II for elaboration. “Caste” refers to Hindu caste system, see endnote below for a brief elaboration.
9. Adivasis: tribal groups, first peoples; Dalits: formerly “untouchable” (asprya) groups traditionally held outside and “below” the caste system. The complex jāti or caste system of social stratification formed the sub-unit of the varna (color, class) system of social categorizations, and the jātis are inferred as belonging to one of the varnas. Varnas were categorized into four groups; brahmins, kshatriyas, vaishyas, and sudras (also referred to as ‘dasas’ or slaves), and their affiliated caste groups, while a fifth category, ati-sudra or avarna, referred to those outside the varna system (Berreman, 1972; Beteille, 1996; Dirks, 2001; Doniger, 1999; Olivelle, 2004, 2008; Sarkar and Sarkar, 2013).
10. CPHS #2014-01-██████.
11. Some of the works used by the research team in framing the methods includes: Abrams (2010); Angel-Ajani (2004); Butler (2009); Charlton, Myers, Sharpless (2007); Craps (2013); Nordstrom and Robben (1996); Visweswaran (1994); Additionally: American Anthropological Association (2014); Belmont Report

- (1979); Denzin and Lincoln (2012); Department of Health and Human Services (2009); Fabian (2014); Lategan (2012); McCrudden (2014); Singapore Statement on Research Integrity (2010); and Weindling (2006).
12. PEN. CODE § 228A (“Whoever prints or publishes the name or any matter which may make known the identity of any person against whom [a sexual offense] is alleged or found to have been committed shall be punished...”).
 13. Holding general consultative status with the Economic and Social Council, UN.
 14. Cisgender men and boys: Those who identify with the gendered body into which they were born, also referred to as chromosomal males.
 15. Such as India and South Africa in the Global South and Ireland in the Global North. Global South refers to countries and spaces in the Southern Hemisphere culturally and politically constructed through colonial encounters, and often referred to as the “Third World” or as “underdeveloped,” or as “developing countries.” Such framing provides cognitive authority to the Global North (countries in the Northern Hemisphere, First World, developed), see Esteva (1997: 10).
 16. Often these states are multi-ethnic and may transition through various stages before civilian rule is established, as in Brazil; or civilian rule proves precarious, as recurrent in Pakistan; or civilian rule is jeopardized for a period, as during the Emergency Rule imposed by then Prime Minister Indira Gandhi in India in 1975-77.
 17. Attendant to which is the development of diasporas and attempted returns and relocations.
 18. There various inconsistencies in the definition and measurement of political democracies (Bollen, 1990; Matos, 2008). These broadly democratic states, with liberal and other forms of government, premised upon basic freedoms, are characterized by transparency of the political system, competition for power, representative government, and people’s participation in political processes. The historical present is prevalently an era of transnational, market-driven, and global democracy (Stanford, 2015) in what Müller (2013: n.a.) describes as “today’s self-consciously post-ideological age.” The growth of political democracy and economic development has not led to the reduction of social inequities (Jackman, 1974; Verba and Nie, 1987).
 19. Elazar Barkan and Karen Barkey distinguish between political and religious factors that drive ethnic and religious groups into conflict, and the role of leadership in compelling or reconciling upheaval (2015). Also see, Cheldelin and Eliatamby (2011); Leatherman (2011); Mlambo-Ngcuka’s (2013); van Reisen’s (2014); Cohen, 2013; Mani, 2014; Russ et al., 2014; USCJ-SHRL, 2012).
 20. The editors thank Jyoti Puri for conversations regarding postcolonial state formation and border-states.
 21. See next section for a discussion of the terms “scheduled tribe” and “scheduled caste.”
 22. Subaltern: Peoples and groups subjugated by ruling classes, see Ashcroft et al. (1998: 215-19); Gramsci (1971). Elite-subaltern: Groups once subaltern and now in the majority, and a part of the governing classes.

ENDNOTES

23. The editors thank Puri for conversations regarding relations between postcolonial governance and the welfare of society.
24. This is not limited to the Global South.
25. Prevalently neoliberal/capitalist economies, mixed economies, or neoliberal-inclined economies.
26. The editors thank Jyoti Puri for conversations regarding religionization.
27. The editors thank Richard Shapiro for conversations regarding racialization.
28. Power as productive, repressive, prohibitive, and constitutive (Foucault, 1978, 1980).
29. The editors thank Puri for conversations regarding securitization.
30. The editors thank Abdul JanMohamed for conversations regarding the affective and structural violence.
31. Prosecutor v. Delalic, 1998; Prosecutor v. Musema, 2000; Juan Carlos Abella v. Argentina, 1997; Prosecutor v. Tadić, 1995.
32. Together the Geneva Conventions and the Hague Conventions of 1899 and 1907 constitute the first and formal global proclamations on laws of war and war crimes in international (secular) law.
33. This monograph draws upon valuable scholarship on gendered and sexualized violence and conflict, including from Butalia (2000); D'Costa (2010); Kazi (2011); and Misri (2014). Further, the monograph draws upon voices important to the conversation in framing the relations between plural societies and conflict, and the challenges of “during-conflict” and post-conflict justice, see Loyle (2014); Nordås (2011); Shaw (2015), and gender mainstreaming, see Manchanda (2010); Baksh-Soodeen (2005), and the role of social enterprise in rebuilding community, see Sepulveda, Syrett, and Calvo (2010); Silver (2011); Vিয়েtez and Dunbar (2007); Wilson and Mitchell (2003).
34. Also see Agamben (1999); Kleinman, Das, and Lock (1997). State formation in South Asia, for example, is replete with examples of “violent rebirths,” as seen in the first partition of India/Pakistan in 1947, the second partition of Bangladesh/Pakistan in 1971, ethnic wars in Sri Lanka, imperial wars in Afghanistan, and in secessionist conflict in Kashmir and Nepal (Banerjee et al., 2012: 4-5). Note: India and Pakistan secured independence from the United Kingdom on August 15 and 14, 1947, respectively.
35. Additionally, China was ranked 106, Global Democracy (2014).
36. The editors thank Naomi Roht-Arriaza for conversations regarding transitional and transformative justice.
37. Ross and Sriram (2012).
38. Customary rights refer to traditional norms observed by specific communities and sociocultural contexts. Customary law refers to customary rights and obligations.
39. Including reshaping civil liberties and natural rights enshrined in the French and American constitutions.

40. See, Vienna Declaration (1993).
41. These principles are defined in the Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (1992). The rights of indigenous groups are defined in the Declaration on the Rights of Indigenous Peoples (2007). The discourses around the Vienna Declaration also affirm the rights to development, asylum, humanitarian aid as well as the rights of migrant workers, women, children, the disabled, and the poor and socially excluded. The discourses around the Vienna Declaration insist upon freedom from torture and from enforced disappearance
42. The General Assembly initially approved the Universal Declaration of Human Rights without the ratification of member nations. The UN Charter did not authorize the General Assembly with powers to frame international law (Posner, 2014).
43. *Lex specialis*: Doctrine in the theory and practice of law pertaining to the interpretation of laws relevant to both domestic and international legal contexts, see (Pineschi, 2015).
44. Refers to an event in 1989.
45. ACRes research team with Angana P. Chatterji as lead researcher.
46. Refers to an event in 2002.
47. Jasen and Nayar, 2010.
48. Panjabi (2012); Visweswaran (2013).
49. Mufti (2007); Weizman (2012).
50. Minority and indigenous women have encountered gendered and sexualized violence from state forces and militia groups during armed conflict and episodic upheaval in Afghanistan, Democratic Republic of Congo, India, Iraq, Nepal, Palestine, Somalia, Sudan, Sri Lanka, Colombia, Turkey, Guatemala, Kyrgyzstan, Yugoslavia, and Burma, and in Colombia. In some states, such as Colombia, (Afro-Colombian) women constituted a majority of the displaced, Minority Rights Group International (2011).
51. See United Nations (2014: 2), “Conflict-related sexual violence takes multiple forms such as, inter alia, rape, forced pregnancy, forced sterilization, forced abortion, forced prostitution, sexual exploitation, trafficking, sexual enslavement, forced circumcision, castration, forced nudity or any other form of sexual violence of comparable gravity. Depending on the circumstances, it could constitute a war crime, a crime against humanity, genocide, torture or other gross violations of human rights.”
52. “Multigender” draws on Bacchetta’s forthcoming work (ACRes, 2015).
53. In April 2014, the Indian Supreme Court recognized transgender individuals as a legal third gender.
54. Kamala Visweswaran (2004: 485) writes “most feminist human rights work locates the foundation of feminist internationalism in women’s shared experience of oppression, constructing a transnational identity of ‘woman.’”

ENDNOTES

55. Also see Das (1990, 2000); Manjoo and McRaith (2011).
56. The editors thank Puri for conversations regarding the responses to gendered violence against minority women.
57. This includes lesbian, gay, bisexual, transgender, third gender, and intersex individuals.
58. To date, 188 states have ratified CEDAW, Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW]. Further, the textbox on this page uses the following citations: *See e.g.*, S.C. Res. 1820, UN Doc. S/RES/1820 (June 19, 2008); S.C. Res. 1888, UN Doc. S/RES/1888 (Sept. 30, 2009); S.C. Res. 1889, UN Doc. S/RES/1889 (Oct. 5, 2009); S.C. Res. 1960, UN Doc. S/RES/1960 (Dec. 16, 2010); S.C. Res. 2106, UN Doc. S/RES/2106 (June 24, 2013); UN OFFICE ON DRUGS AND CRIME (2014).
59. Declaration on the Elimination of Violence against Women (1993).
60. See, Miller (2004).
61. The editors thank Puri for conversations regarding the evaluative parameters for democracies.
62. Dimensions of transformative justice include Quaker-driven influences focused upon healing. A strand of its history has been connected to the eighteenth century mental health worker, Samuel Tuke, and psychologist and radical behaviorist, Burrhus Frederic Skinner, acknowledged as having repressive relations to individual freedom and mental health.
63. See, for example, Rubio-Marín, “it is common knowledge that in most cases women play a crucial role in the follow up of violence, searching for victims or their remains, trying to reconstitute families and communities, carrying on the tasks of memory, and demanding justice” (2009: 2-3); S.C. Res. 1325 (2000).
64. This segment draws in part on a Working Paper prepared by IHRL for ACRes, “Comparative Country Studies Regarding Truth, Justice, and Reparations for Gross Human Rights Violations: Brazil, Chile, and Guatemala” (International Human Rights Law Clinic, 2015).
65. The monograph notes all monetary sums in the local currency.
66. This segment draws in part on a Working Paper prepared by IHRL for ACRes, “The Right to a Remedy for Enforced Disappearances in India: A Legal Analysis of International and Domestic Law Relating to Victims of Enforced Disappearances” (International Human Rights Law Clinic, 2015).
67. See UDHR (1948: 18, Article 8). Though only a declaration, many provisions of the UDHR are seen as binding, authoritative sources of customary international law, See Hannum (1996) “[T]here would seem to be little argument that many provisions of the Declaration today do reflect customary law.”
68. See, e.g., ICCPR, Arts. 2(3), 9(5), 14(6); CED, *supra* note 6, at art. 24; CAT, at Art. 14; International Convention on the Elimination of All Forms of Racial Discrimination art. 6, G.A. Res. 2106 (XX), Annex, 20 UN GAOR Supp. (No.14)

- at 47, UN Doc. A/6014 (1966), 660 U.N.T.S. 195, entered into force Jan.4, 1969 [hereinafter ICERD]; CRC, Art. 39.
69. See ECHR, *supra* note 250, at art. 13; American Convention on Human Rights arts. 25, O.A.S.T.S. No. 36, 1144 U.N.T.S. 1231, entered into force July 18, 1978 (Inter-American system's codification of the right to a remedy); African [Banjul] Charter on Human and Peoples' Rights arts. 7, 21, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58, entered into force Oct. 21, 1986 (African system's codification of the right to a remedy).
 70. See ILC Draft Articles, *supra* note 144, at arts. 28-39.
 71. See General Comment No. 31, *supra* note 248.
 72. In 2005, UN also "endorsed the Updated Set of principles for the protection and promotion of human rights through action to combat impunity" (E/CN.4/2005/102/Add.1) (van boven, 2005).
 73. Human Rights Council, Resolution: Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of NonRecurrence, 2-3, UN Doc. A/HRC/RES/18/7 (Oct. 13, 2011).
 74. Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of NonRecurrence (2012: 57): ("[C]riminal prosecutions in cases of [gross violations of human rights] give life to the principle of the sovereignty of law and of the related principle of equality. No one, regardless of rank or status, is above the law. Second, at a more practical level, given the complexities of criminal trials for systematic abuses, these processes help to develop transferable skills that contribute to strengthening the overall capacity of judicial systems.").
 75. See, Genocide Convention (1949: 290, Article 4-5, 9).
 76. See, CAT (1984: 145, Article. 4, 5, 7).
 77. See, CED (2006: 6, Article. 3-7).
 78. See, Scharf, (1996: 41-43) commenting that: "[i]t is noteworthy, however, that these Conventions were all negotiated in the context of the cold war and by design apply only to a narrow range of situations."
 79. See Scharf, (1996: 41-43), "[w]hen these Conventions are applicable, the granting of amnesty to persons responsible for committing the crimes defined therein would constitute a breach of a treaty obligation for which there can be no excuse or exception."
 80. Scovazzi and Citroni discuss the formation of CONADEP in Argentina, which had the "mandate to investigate the thousands who disappeared during the junta rule" (2007: 75).
 81. "Compensation" means to compensate for any financially assessable damages that the state caused, and includes monetary recompense for physical, mental, emotional harm (Shelton, 2009: 25). For a discussion of looking beyond economic compensation to more holistic compensation, see Antkowiak (2008: 354, 400), arguing for a remedy structure that focuses less on economic compensation and more on equitable, nonmonetary, and forward-looking remedies.

ENDNOTES

82. “Satisfaction” includes incalculable damages to redress moral or legal injury—for example, an acknowledgment of the breach, an expression of regret, or an apology. Shelton (2009: 314, at 28). See also Antkowiak (2008: 373-74), (providing several examples of satisfaction and citing particular cases where courts granted satisfaction to the victim such as “revers[ing] criminal convictions, grant[ing] retrials, nullify[ing] death sentences, expung[ing] criminal records, and cancel[ling] fines imposed”).
83. “Interest” is granted on a case-by-case basis, and awarded only to ensure full reparation. Shelton, (2009: 26).
84. “Guarantee of nonrepetition” generally involve a promise (more than a mere statement) not to repeat the violation; often this requires states to take preventative measures to avoid repetition. See Antkowiak, (2008: 362), (noting the diversity of forms that this category can assume, including “the establishment of effective civilian control over state security forces and human rights educational and training programs”).
85. “Rehabilitation” provides for mental, medical, and psychological care, and legal and social services. Shelton (2006). See Antkowiak (2008: 375-77), (providing an overview of the Inter-American Court’s approach to providing rehabilitation as a remedy, which has included “the establishment of special education and vocational assistance programs for former detainees,” “scholarships for higher education,” and provisioning future necessary medical and mental care from state facilities).
86. The UN has commented on this as it applies to post-conflict peace consolidation. See also UN Secretary-General, UN Doc. A/52/289 (1997).
87. CED, which India is not a party to, requires states to provide guarantee nonrecurrence by reforming domestic institutions, for example by requiring the state to clarify their modalities of detention (Art. 17), punish conduct that impedes the states’ ability to fulfill their treaty duties (Art. 22), train and educate personnel who detain individuals (Art. 23), and establish robust procedures to address wrongfully adopted children in cases of enforced disappearance (Art. 25).
88. See Sub-Commission on Prevention of Discrimination and Protection of Minorities; *supra* note 309, at ¶ 55. Security Sector Reform (SSR) represents a newer movement that developed in the nineties and seeks to ensure “the development of effective, efficient, affordable and accountable security institutions” (UN Peacekeeping, 2014).
89. See Sub-Commission on Prevention of Discrimination and Protection of Minorities. Lustration and vetting serve to assess individuals’ “suitability for public employment.... The end result of such procedures may be to exclude or purge officials of prior regimes and/or human rights violators from public office” (Ní Aoláin, 2011).
90. See Sub-Comm’n on Prevention of Discrimination and Protection of Minorities, noting that “more gradual measures [] may be taken to prevent recurrence (or occurrence) of abuses within the security and justice sectors. These include the expansion of legal identity through birth or civil registration, reduction in the reliance on confessions as the sole source of evidence for convictions, improvements

in violence reduction (in particular for the most serious crimes, such as homicides and rapes) and improvement in the resolution under due process of violent crimes. These measures have universal relevance across countries at different levels of development, and have the important quality of being rights-based measures that also contribute to other developmental goals.”

91. After Israel and before Pakistan.
92. The country’s population is predicted to become the world’s youngest by 2020 (IRIS and UN Habitat; 2012:114) and the world’s largest by 2022 (UN, 2015).
93. Post-1947, India struggled with structural adjustments and the demands of a rising middle class. The political economy was divided between a vision of the rural economy as the foundation for development and Nehruvian ideals of ‘progress’ mediated through aggressive modern development, and a ‘mixed’ economic model. The Second Five Year Plan in 1956 was calculated to aid India’s recovery from the active deindustrialization imposed during colonialism and position India as an emergent power (Baviskar, 1995). This model endowed “three powerful interest groups -- capitalist merchants and industrialists, the technical and administrative bureaucracy, and rich farmers” (Baviskar, 1995:22). The liberalization of the 1990s facilitated the globalization and corporatization of the economy.
94. Partially taken from Chatterji (2009: 86).
95. See next subsection for an elaboration of “racialization.”
96. Lanjigarh is the site of an aluminum smelting plant and bauxite refinery in Kalahandi District in Odisha.
97. The construction of large dams on the Narmada River exemplifies crises facing Adivasi peoples in India. The Narmada River in its passage across 1,312 kilometers through the states of Madhya Pradesh, Maharashtra, and Gujarat in western India, has been the site of large, medium, and small dams. These dams, construction on which began in the 1980s, was projected to cost about US\$ 4 billion in 2000, a disproportionate share of the irrigation budget of postcolonial India. The 133-mile-long reservoir was projected to drown 91,000 acres of land, and the canal network projected to damage 2,00,000 acres. The reservoir proposed to displace 200,000 people, affect another 200,000, and impact more than one million lives, 56 percent of them Adivasis. The Narmada Sagar (formally called the Indira Sagar Pariyojana) is another multipurpose mega-project, located in east Nimar in Madhya Pradesh. The Narmada watershed has been home to about 20 million peasants and Adivasis whose subsistence has been critically linked to their land, forests, and water. Dam construction in the Narmada Valley proceeded without consent of a majority of the marginalized that were impacted and the state failed to provide effective resettlement and rehabilitation. In 1985, Narmada Valley communities and activists shaped the Narmada Bachao Andolan (Save the Narmada Movement), a nonviolent effort (Narmada Bachao Andolan, n.d; also Friends of the Narmada (n.d).
98. Also by Human Rights Watch (2015), NHRC (2014), and United States President Barack Obama (2015).
99. Murji and Solomons, 2005; Rattansi, 2005.

ENDNOTES

100. The Bharatiya Janata Party is the Hindu Right's parliamentary wing. The Bharatiya Janata Party-led national government was in power at the center in Delhi in 1999-2004, and was again elected to national government in May 2014.
101. Per the tax records of 2006, Ekal Vidyalaya reportedly allocated US\$ 2 million to India, India Development and Relief Fund (IDRF) allocated US\$ 1.6 million, and Sewa International USA allocated US\$ 284,800. The VHP-America allocated US\$ 247,579, for "*funds provided for relief & services, support-a-child activities, youth books & emporium, educational vidyalayas, seva projects, one teacher school, festival celebration etc.*," which might likely have been, in part or entirely, sent directly to India (Chatterji, 2009: 349).
102. Ganguly (2013).
103. Hyper-masculinization, see Chopra et al. (2004).
104. They sought the revocation of certain "Section 144 CrPC orders, and [demanded] clear guidelines for further use" (*Kashmir Observer*, 2014).
105. See Heyns (2013: 21), discussing that AFSPA applies to Manipur, Assam, Arunachal Pradesh, Meghalaya, Mizoram, Nagaland and Tripura, and revealing that the Jammu and Kashmir Armed Forces (Special Powers) Act is almost identical to AFSPA, and was enacted by the respective state in 1990.
106. First, the definition of "terrorist activities" was vague and officers were entitled to loosely interpret "involvement" and "terrorist acts." Second, Section 7 allowed officers to seize all property of those accused of POTA offenses, thus impoverishing individuals and family members accused under the act. Third, no system existed to monitor and verify the validity of charges made against the accused. Without adequate controls, state authorities violated the rights of individuals by too broadly applying "terrorist activity." For example, possessing an unlicensed firearm and causing "significant damage to any property" could be considered a terrorist act under POTA.
107. Originally adopted in 1967, UAPA gave the central government power to ban unlawful organizations (CDRO, 2012).
108. "Unlawful activity' in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise), (i) which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession; or (ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India; or (iii) which causes or is intended to cause disaffection against India" (CDRO, 2012).
109. Such an order will be final once a government tribunal—created under the act—confirms the order.
110. Articles 25-28; Articles 29-30.
111. Saffron is considered an auspicious color by Hindus and is identified with Hindutva

and here, refers to Hinduization.

112. Ranbir Penal Code: Special code applicable in Jammu and Kashmir, see later in this section.
113. The Justice Niyogi (Retired) Committee Report on Christian Missionary activity of 1956, published by the Government of Madhya Pradesh, formed the basis of the Freedom of Religion Acts passed by various states (for a text of some of these Acts, see Ratho and Panda, 2005: 639-46, 543-47). The first such act was passed in Odisha, entitled the “Odisha Freedom of Religion Act, 1967, [No. 2 of 1967, INDIA CODE]” (Kim, 2003: 10-11, 76). The implementation of the freedom of religion acts has increased in the past decade and a half. In August 2005 and February 2006, the Hindu nationalist Vishwa Hindu Parishad called for a law banning (non-Hindu) religious conversions (Arora, 2005; Dasgupta, 2006). In June 2008, the VHP passed a resolution at its executive council meeting in Kanpur, asking to decree religious conversion a ‘heinous crime’ across India (Arora, 2008).
114. Reservations are quota provisions to offset historically-mediated inequities, elaborated upon later in this section.
115. In India, the Anglo Indian community is not a notified minority (National Commission for Minorities, 2015). In February 2014, Member of Parliament Charles Dias advocated in the Lok Sabha (Lower House) for the recognition of Anglo Indians as a minority community (*Economic Times*, 2014).
116. See Spivak, “white men are saving brown women from brown men” (1988: 296) and Visweswaran, “brown women in need of saving from brown men” (2004: 484).
117. This Act proposes to incorporate previously excluded castes in the category of SC and amend the prevailing list pertaining to communities in Chhattisgarh, Haryana, Kerala, Madhya Pradesh, Maharashtra, Odisha, and Punjab.
118. *People’s Union for Democratic Rights v. Union of India*, Writ Petition (Civil) No. 400 of 2012 and No. 604 of 2013 (2014).
119. Dahal et al. (2003); Geneva Academy (2014).
120. See generally, Chatterji (2009); HRW (2002); Kumar et al., 2003: 39-40).
121. See *APDP (2011)*; Kumar et al., 2003: 42).
122. PEN. CODE § 377. Section 377 criminalizes sexual assault not covered by Section 375 and consensual sodomy.
123. See Gayer and Jaffrelot (2012); Asia Awthc & Physicians for Human Rights (1993).
124. Submission to the UN Human Rights Council for India’s Second Universal Periodic Review.
125. See Raquel Martí de Mejía v. Perú, Case 10.970, Inter-Am. Comm’n H.R., Report No. 5/96, OEA/Ser.L/V/II.91, doc.7 ¶ 157 (1996)(acknowledging that rape may rise to the level of torture if it were “an intentional act through which physical and mental pain and suffering is inflicted on a person; [] committed with a purpose; and [] committed by a public official or by a private person acting at the instigation of the former”).

ENDNOTES

126. *Aydın v. Turkey*, 25 Eur. Ct. H.R. 251, ¶ 83 (1988); (providing that “rape of a detainee by an official of the state must be considered an especially grave and abhorrent form of ill treatment given the ease with which the offender can exploit the vulnerability and weakened resistance of his victim”).
127. Human Rights Committee, *General Comment No. 31 on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, ¶ 3-4, UN Doc. CCPR/C/21/Rev.1/Add.13 (Mar. 29, 2004) [hereinafter *HRC General Comment No. 31*].
128. Manjoo (2014: 47).
129. CEDAW General Recommendation No. 19; see Committee on the Elimination of Discrimination against Women, *General Recommendation No. 30 on Women in Conflict Prevention, Conflict and Post-Conflict Situations*, UN Doc. CEDAW/C/GC/30 (Oct. 18, 2013) [hereinafter *CEDAW General Recommendation No. 30*]; see also UN OFFICE ON DRUGS AND CRIME, (23). Many other international human rights instruments, including the UN Declaration on the Elimination of Violence against Women, the Inter-American Convention on the Prevention of Violence against Women, and the Council of Europe Convention Preventing and Combating Violence against Women and Domestic Violence, contain a due diligence obligation.
130. India’s reservation to the ICCPR states: “Government of the Republic of India takes the position that the provisions of the article shall be so applied as to be in consonance with the provisions of clauses (3) to (7) of article 22 of the Constitution of India. Further under the Indian Legal System, there is no enforceable right to compensation for persons claiming to be victims of unlawful arrest or detention against the state.” See ICCPR (18).
131. *See id.* at art. 2(3) (obliging states “[t]o ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity[.]”).
132. *See id.* at art. 2(3)(b) (providing that state parties must ensure individuals have access to “competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the state” to enforce their right to a remedy).
133. Special Rapporteur on the Situation of Human Rights Defenders, *Mission to India*, ¶ 13, *delivered to the Human Rights Council*, UN Doc., A/HRC/19/55/Add.1 (Feb. 6, 2012) (by Margaret Sekaggya) [hereinafter *Sekaggya*].
134. Notably, in *Vishakha and others v. State of Rajasthan and others*, 1997, the Supreme Court drew from CEDAW to pass guidelines on sexual harassment. They demanded justice for Bhanwari Devi and urged action against sexual harassment at work place.
135. Indian Constitution, Article 51(c)). This act may provide grounds for individuals to domestically claim international legal violations, but this discussion is beyond the scope of the paper.
136. INDIA CONST. art. 32 (“Remedies for enforcement of rights conferred by this Part [Right to Constitutional Remedies]”).

137. Additionally, the Supreme Court may grant special leave to appeal from any judgment or sentence passed by any Indian court or tribunal, except from those passed by courts of the armed forces. INDIA CONST. art. 136.
138. No. 10 of 1994, India Code, 30. Although the act authorizes state governments to create human rights courts, it does not appear that state government have exercised this authority. Subordinate courts of Judicial Magistrates have jurisdiction over “crimes against modesty.” CODE CRIM. PROC. § 29. The Sessions Court will hear any matter outside of the jurisdiction of the lower courts. *Id.* at § 9.
139. CODE CRIM. PROC. § 29. The Sessions Court will hear any matter outside of the jurisdiction of the lower courts. *Id.* at § 9.
140. The Protection of Human Rights Act, 1993. See also Tiwana (2004).
141. See The Protection of Human Rights Act, § 12, No. 10 of 1994 (India) (§12 of the Human Rights Act lists the different functions of NHRC, which includes the power to (a) inquire into complaints of human rights violations, (b) intervene with proceedings pending before court, (c) visit jail,...and (f) study treaties to make recommendations for effective implementation).
142. Heyns (2013: 18), “The Guidelines require that (a) police officers record information about an encounter and a FIR must be registered; (b) encounter cases should be investigated by an independent investigating agency; (c) a magisterial inquiry must be undertaken in instances where deaths have occurred and compensation is awarded to the dependents of the deceased; and (d) disciplinary action should be taken against delinquent police officers and no out-of-turn promotions should be made.”
143. 18(a)-(c). See also Tiwana (2004).
144. The Protection of Human Rights Act, 1993, 12(b), 29.
145. General Comment No. 31, (“Article 2 requires that States Parties adopt legislative, judicial, administrative, educative and other appropriate measures to fulfill their legal obligations. The Committee believes that it is important to raise levels of awareness about the Covenant not only among public officials and state agents but also among the population at large.”).
146. *Id.* (noting that, in particular, the NHRC has been unwilling to take a stand against court decisions).
147. *Id.* at ¶ 89.
148. *Id.*
149. Méndez & Bariffi (2012).
150. *Id.* at ¶¶ 18(e).
151. Tiwana (2004: 132).
152. *Victims & Inhabitants of the Village of Kunan Poshpora v. J&K State*, (15-16).
153. In a July 23, 2015 decision, the Indian Supreme Court restricted the power of states to grant relief of remission for prisoners, including those who had been sentenced under (now repealed) TADA (Rajagopal, 2015).

ENDNOTES

154. Victims & Inhabitants of the Village of Kunan Poshpora v. J&K State, J&K SHRC, at 7-16 (Oct. 16, 2011); HRW (2002: 60-62).
155. National Commission for Women Act (1990: 10).
156. National Commission for Women Act (1990: 10). In 1999, the NCW received 4,329 complaints involving sexual harassment, torture, rape, refusal to register a FIR, and gender discrimination; Shri Tezoswie Dowarah, Legal Protections of Women Under the Constitution of India, 166 (June 1, 2010).
157. National Commission for Minorities Act, No. 19 of 1992, ¶ 9(i) INDIA CODE (1993), http://ncm.nic.in/NCM_Act.html (last visited May 10, 2015). *See also Profile of NCM*, NATIONAL COMMISSION FOR MINORITIES, http://ncm.nic.in/Profile_of_NCM.html (last visited May 10, 2015).
158. National Commission for Minorities Act, 1992, ¶ 9(i).
159. *Id.* at ¶ 9(iv).
160. *Community Wise Complaints (1 Apr 2014 – 31 May 2014)*, NCW.
161. The Commissions of Inquiry Act, §3 (1), No. 60 of 1952 (India). The central government may appoint a commission on a matter that is enumerated in the subject list for the center under the constitution, and state government can appoint a commission on a matter that is enumerated in the subject list for the states under the constitution. Commissions of Inquiry Act, §2(a). The central government cannot constitute a commission into a matter, pertaining to which, a commission has already been appointed by the state, Commissions of Inquiry Act, *Proviso*, §3 (1).
162. Nanavati Commission of Inquiry, Justice Nanavati Commission of Inquiry Report, Volume 2, Annex II.
163. Nanavati Commission of Inquiry, Annex IV. The Justice Misra Commission was set up right after the riots by the Government of India under the commissions of inquiry act and it recommended an investigative commission under a high authority to look into police involvement in the riots. The Banerjee Commission was set up after the recommendations of the Mishra Commission to look into cases of riots but the Delhi High Court later quashed it.
164. Nanavati Commission of Inquiry, Annex VI.
165. Nanavati Commission of Inquiry, Annex IX.
166. Nanavati Commission of Inquiry (2008: 154)
167. Human Rights Watch (1996) stated that: “In the weeks that followed, Muslims publicly demonstrated against the events in Ayodhya. Initially, these demonstrations were stopped by the police, who opened fire on the crowds. Later, protesting Muslims were attacked by Hindutva supporters. Large-scale riots ensued in which at least 1,700 women, men, and children were killed, 5,500 injured and an unknown number of women and girls raped.” Further in the corresponding footnote to text above HRW noted that: “Unofficial accounts put the figures even higher. See Raj Chengappa and Ramesh Menon, ‘The New Battlefields,’ *India Today*, January 31, 1993, p. 28. Precise statistics on the number of women raped and sexually abused are

unavailable. However, reports from Indian nongovernmental organizations indicate that such attacks were widespread and disproportionately affected Muslim women and girls. According to the Joint Delegations of National Women's Organizations, which interviewed over 500 women who were affected by the riots: 'Attacks on women, including sexual atrocities-stripping, rape and burning, verbal abuse etc. took place more on women from the minority [Muslim] community....The delegation is in no doubt that whereas there may certainly be unreported instances of sexual attacks on women of the majority [Hindu] community in these cities, the brunt of such atrocities was borne by women of the minority community, the worst such cases being in Surat. We feel it important to emphasize this point because we found a concerted and deliberate attempt in all three cities to ignore or whitewash this reality or 'balance' it by saying 'it happened on both sides' (1993: 10)."

168. Changes to rape law prior to 1983 addressed age of consent and marital rape (Vandana, 2009: 95-104). In *Tuka Ram v. Maharashtra*, known as the ██████ case, the Supreme Court concluded that the sex was likely a "peaceful affair" because the medical examination showed no injuries on ██████'s body and had reported that she was "habituated to intercourse" (1979) S.C.C. 143 (1978) at 146, 144; see also Baxi (2014).
169. Articles 14, 19, 21, 51A.
170. Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Political Rights; Beijing Principles of the Independence of the Judiciary; Convention on the Political Rights of Women; and The Declaration on Elimination of Violence against Women; and Convention on Elimination of all forms of Discrimination against Women.
171. Apart from the existing Dowry Prohibition Act, 1961, and the Protection of Women from Domestic Violence Act.
172. Section 9 of the Criminal Law (Amendment) Act, No. 13 of 2013, "Explanation 2".
173. In certain cases pertaining to rape, the act allows for the application of the death penalty and adds a minimum sentence of one year and extends the maximum available sentence from two years to five years for a modesty offense; Section 6 of the Criminal Law (Amendment) Act, No. 13 of 2013, "Amendment of Section 354."
174. Amendment to Section 309
175. Discussed in the following section.
176. "At the outset, we notice that impunity for systematic or isolated sexual violence in the process of Internal Security duties is being legitimized by the AFSPA, which is in force in large parts of our country. It must be recognized that women in conflict areas are entitled to all the security and dignity that is afforded to citizens in any other part of our country" (Justice Verma Committee Report, 2013).
177. Acts criminalized under Section 166A, Section 166B, Section 354, Section 354A, Section 354B, Section 354C, Section 354D, Section 370, Section 375, Section 376, Section 376A, Section 376C, Section 376D or Section 509 of the Indian Penal Code.

178. The Committee noted that, “there is an imminent need to review the continuance of AFSPA and AFSPA-like legal protocols in internal conflict areas as soon as possible” (2012: 151). The Criminal Law (Amendment) Act, 2013, amended Section 197 to include:
- “Amendment of Section 197. 18. In Section 197 of the Code of Criminal Procedure, after subsection (1), the following *Explanation* shall be inserted, namely:—
‘*Explanation.*—For the removal of doubts it is hereby declared that no sanction shall be required in case of a public servant accused of any act alleged to have been committed under Section 166A, Section 166B, Section 354, Section 354A, Section 354B, Section 354C, Section 354D, Section 370, Section 375, Section 376, Section 376A, Section 376C, Section 376D or Section 509 of the Indian Penal Code’ 45 of 1860” (2013: 10).
179. “Epistemic disobedience” that seeks to intervene on the legacies of coloniality deeply embedded within the logics and structuring of postcolonial states.
180. This is distinct from the religionization of politics.
181. Census (2011).
182. Reorganization of boundaries took place during the India-Pakistan partition in 1947, the restructuring of 1956, and the trifurcation of the state along linguistic lines in 1966, making Punjab a Sikh-prevalent state.
183. During this period the region was still demarcated into Patiala and East Punjab States’ Union (Government of Punjab, 1992).
184. Per Article 356 of the Indian Constitution, President’s Rule is occasioned by the failure of the constitutional machinery in an individual state, during which the state remains under the direct jurisdiction of the central government.
185. See Chima (2010).
186. See Telford (1992).
187. Also known as the “Golden Temple,” see Kaur (2006); Jaijee (2002); Kumar (2000).
188. See (Kumar et al., 2003) A number of women survivors from Delhi 1984 currently reside in an area pronounced to be the “Widow Colony.”
189. Jaijee (2002); Kaur (2002).
190. See HRW (2008). Although this act does not directly shield police officers from arrest or prosecution, it may have contributed to a general culture of impunity by discouraging victims from reporting. The act was repealed in 1997.
191. Singh et al. (2003).
192. Notably by Jaswant Singh Khaira who was subsequently was disappeared (Kumar et al., 2003).
193. Keppley-Mahmood (1996), Chapter 9, “The Princess and the Lion”
194. The panchayat system, or Panchayati Raj (rule), refers to the three-tier structure of rural governing bodies from the village to the district level.

195. “RDX” (an explosive Nitroamine) was often “discovered” in large quantities and served as the basis for large-scale arrests in Punjab following the 2005 round-up and reported torture of several dozens of young Sikh men (Ensaaf, 2005), 2010 was the next big year of arrests of “alleged militants” in connection with the seizure of over 15 kilograms of RDX and other weapons (“1 year on, mystery over missing 5kg RDX deepens” (*Times of India*, 2011).
196. Which was followed by appeals to the High Court and the Supreme Court. *See* Pet. of ██████ Praying for Impleading the Complainant as Resp’t No. 2, *Radha Krishan v. Chandigarh*.
197. See Section III, Part Three for a definition.
198. Formed to secure the rights and freedoms of Muslims in Kashmir.
199. Also see UN Resolutions 38, 39, 51 of 1948; UN Resolution 91 of 1951; and the reports of the UN Military Observer Group in India and Pakistan (UNMOGIP). The UNMOGIP was constituted in January 1949 to “supervise the ceasefire agreed between India and Pakistan in the State of Jammu and Kashmir. Since renewed hostilities in 1971, UNMOGIP monitors the ceasefire called for by the UN Security Council,” see UNMOGIP website (2009).
200. In Kashmir, local resistance groups have tended to distinguish themselves as “militants” or “freedom fighters,” and further distinguish themselves as “armed militants” or “nonviolent militants.” While some persons did travel to Pakistan to seek training, such activity was largely confined to the early days of the armed militancy, circa late 1980s through the early-mid 1990s (Chatterji, 2012). Post 2001, as Robert Wirsing (2003, 118) states that the actions of Kashmiri resistance groups are increasingly “conflated with....terrorism,” see Asad (2007); Roy (2004).
201. Governor’s Rule expires after a period of six months. After the expiry of Governor’s Rule, President’s Rule was imposed in the past to extend the provisions of emergency.
202. Asia Watch and Physicians for Human Rights (1993); *see* INDIA CONST. Art. 370, “Temporary provisions with respect to the State of Jammu and Kashmir.” The investigations described in this monograph were internal to Jammu and Kashmir and do not implicate Indian law.
203. HRW (2006: 29-30). The first Disturbed Areas Act was promulgated in 1990. By identifying Jammu and Kashmir as a “disturbed” area, rather than an area of “armed conflict,” India may avoid incurring obligations under IHL and increased scrutiny under IHRL. Committee on the Elimination of Discrimination against Women, *General Discussion on women in conflict and post-conflict situations*, July 18, 2011, Written Submission, North East Network; *see generally* Amichai Cohen & Yuval Shany, *Beyond the Grave Breaches Regime: The Duty to Investigate Alleged Violations of International Law Governing Armed Conflicts*, in 14 YEARBOOK OF INTERNATIONAL HUMANITARIAN LAW 37 (M.N. Schmitt & L. Arimatsu eds., 2012).
204. The applicability of the AFSPA in Jammu and Kashmir has been recently called into question by the expiration of the Disturbed Areas Act of 1997 (Rafiq, 2015). Though, the Mufti government stated “that the power to declare an area disturbed was ‘inherent in AFSPA’” Jaleel, (2015).

ENDNOTES

205. Justices B S Chauhan and Swatanter Kumar, during the hearing for a fake encounter case that took place in Kashmir in March 2000, stated, “You go to a place in exercise of AFSPA, you commit rape, you commit murder, then where is the question of sanction? It is a normal crime which needs to be prosecuted, and that is our stand” (Husain, 2013).
206. In 2011, there were 400,000 to 750,000 Indian soldiers stationed in Jammu and Kashmir (Ahmad, 2002; Kazi, 2011).
207. Asia Watch and Physicians for Human Rights (1993); HRW (1991).
208. Asia Watch and Physicians for Human Rights (1993); HRW (1991).
209. The chart below from *BURIED EVIDENCE* (2009) is reproduced with permission.
210. The Human Rights Council of the United Nations sent a letter of allegations on July 8, 2008, inquiring into the intimidation and harassment of Tribunal conveners Angana P. Chatterji and Parvez Imroz. The Government of India responded on March 19, 2009, denying the allegations. United Nations General Assembly, A/HRC/11/4/Add.1, May 27, 2009, “Promotion and Protection of All Human Rights, Civil, Political, Economic, Social, and Cultural Rights, Including The Right To Development; Summary of Cases Transmitted to Governments and Replies Received,” United Nations Human Rights Council, Eleventh Session, Agenda Item 3, 2009, 192-93.
211. Centre for Policy Analysis, New Delhi, Report: Kunan Poshpora by a Fact finding CPA delegation, 19th June 2013; Pg 3 para 4
212. Between 1961 and 1971, 799 incidents of community violence occurred involving Hindu and Muslim communities in Gujarat.
213. JUDGE J. REDDY, REPORT OF THE COMM’N OF INQUIRY: AHMEDABAD COMMUNAL DISTURBANCES (1969) 162, 217 (1970); Spodek (1989); Shani (2007: 164); During the mid-1960s, seven large mills in Ahmedabad, Gujarat’s capital, shut down and around 17,000 workers—predominantly Hindus—lost their jobs; Jaffrelot and Thomas (2011: 53-60); JUDGE V.S. DAVE, REPORT OF THE COMM’N OF INQUIRY: INTO THE INSTANCES OF VIOLENCE AND DISTURBANCES WHICH TOOK PLACE AT VARIOUS PLACES IN THE STATE OF GUJARAT SINCE FEBRUARY, 1985 TO 18TH JULY, 1985 269-70 (1990).
214. Dave (1990: 161).
215. Jaffrelot and Thomas (2011: 66, 78).
216. Jaffrelot and Thomas (2011: 53-60).
217. Jaffrelot and Thomas (2011).
218. HRW (2002: 13).
219. The editors thank Teesta Setalvad for making available various records and official documents that form a critical part of the archive utilized in this section.
220. See, HRW (2002); IJJ (2003); Sarkar (2002).
221. See CRA 205/2014, Zakia Jafri v/s Special Investigation Team (SIT) pending in the Gujarat High Court.

222. The State of Gujarat v. Chhara and Ors., 1583-84 (2012) (Before the Special Court, Designated for Conducting the Speedy Trial of Riot Cases, Navrangpura, Ahmedabad). (“The above discussion shows that different charged acts which have been proved to have been committed in the morning occurrences were committed with common intentions, objects, and were based on the agreement the accused had arrived at. The presence of all these mentioned accused clearly proves their oneness”).
223. See <http://www.gujarat-riots.com/pdf/crimeagainstwomen.pdf>
224. Teesta Setalvad is a senior journalist and co-editor of *Communalism Combat*, which also houses a repository of archival material on Gujarat 2002, at www.sabrang.com. Additional web portals where original court documents and government records are available are at, www.cjponline.org and www.gujarat=riots.com.
225. Setalvad has been accused of tutoring witnesses (in 2004, Best Bakery Case) and exonerated by the Registrar General of the Special Court and in 2011 the Sardarpura and Naroda Patiya Judgements of Special Courts also exonerated Setalvad and CJP.
226. Ford Foundation supported the work of Sabrang Trust, another organization that Setalvad is part of. CJP’s social justice work has been largely drawn on domestic funds and grant from the United Nations Victims for Torture Fund (UNVFVT) since 2010.
227. (2004) Four Supreme Court Cases 158 Zahira Habibulla H. Sheikh And Another v/s State of Gujarat And Others.
228. See Rediff (2002); Mitta, (2005).
229. *Gujarat v. Chhara*, at 311.
230. *Id.* at 1-11, 1911; Dasgupta (2012).
231. *Id.* at 259, 1708. Section 354 of the Indian Penal Code states that: “Assault or criminal force to woman with intent to outrage her modesty.—Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.” Section 376 in The Indian Penal Code 1[376. Punishment for rape—(1) Whoever, except in the cases provided for by subsection (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both: Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years. It is relevant to note here that the CJP had assisted, through expert pro bono legal aid, the process of victim-survivors directly filing affidavits representing their testimonies before the Supreme Court of India. CJP’s direct involvement through legal aid from the Trial Court to the Supreme Court has, to date, ensured 126 Convictions to life imprisonment in mass crimes cases related to 2002.

ENDNOTES

232. Additionally see, Citizens for Justice and Peace (2002: 26-35); *Hindustan Times* (2009); Khetan (2007).
233. Khan (2015).
234. Mehta and Shah (2003: 492-94); Griffiths (2010).
235. *Id.* at 25.
236. Chatterji (2009: 302-03); Griffiths (2010: 26-27).
237. Chatterji (2009: 35, 303, 324); Griffiths (2010: 14-15); Sengupta, (2002).
238. The Odisha Freedom of Religion Act states that “[n]o person shall convert or attempt to convert, either directly or otherwise, any person from one religious faith to another by the use of force or by inducement or by any fraudulent means.” Section 3 of The Odisha Freedom of Religion Act, 1967, No. 2 of 1967, INDIA CODE.
239. Chatterji (2009: 297n56).
240. Vanavasi: “Forest dweller,” a derogatory reference contrary to tribal self-descriptions as Adivasi or “first dweller.”
241. A report of the Indian People’s Tribunal on Environment & Human Rights.
242. *Id.* at 296-97.
243. *Id.* at 289. See also Asma Jahangir, Special Rapporteur on Freedom of Religion or Belief Concludes Visit to India, (Mar. 20, 2008).
244. Chatterji (2009: 289).
245. *Id.* at 311.
246. *Id.* State forces offensives against ‘Maoist’ groups have led to various human violations, including reported incidents of sexual violence since 2006.
247. *Id.* at 311-13.
248. The State and Sexual Violence, Challenging Impunity, Demanding Justice, WSS Report.
249. First person account (2008).
250. The area focused upon falls within the cultural region known as the Doaba, the land between the two rivers, Beas and Sutlej.
251. ██████████. Radha Krishan, C.C. 4 of 1997, D. & S.C. Chandigarh 8, 15 Aug. 1997. While the police alleged Sikh militants had killed the principal, some villagers pointed out that the principal was well-liked in the area for supporting political activists and alleged that he had been killed with police complicity. Skeptics of Sikh separatist involvement in the murder claimed that the principal of the secondary school was known for good relations with Sikh political activists in the area.
252. Thirty-two people of Village Paili filed a petition before Police Station House Officer Radha Krishan (“Krishan”). Charanjit v. Punjab, (2013) 11 S.C.C. 163, 165.
253. *Gurmail Singh v. Radha Krishan*, at 19.

254. *Id.*
255. *Id.*
256. *Id.* at 20.
257. *Id.* at 3, 23.
258. *Id.* at 22-23.
259. *Id.* at 4.
260. *Id.*
261. *Id.*
262. *Charanjit v. Punjab*, at 169. *See also Gurmail Singh v. Radha Krishan*, at 5.
263. *Gurmail Singh v. Radha Krishan*, at 5.
264. *Id.*
265. *See* Letter from ██████████ to S.S. Ray, Governor, Punjab (Feb. 13 1989).
266. *Gurmail Singh v. Radha Krishan*, at 5.
267. *Id.*
268. *Charanji v. Punjab*, at 165.
269. *Gurmail Singh v. Radha Krishan*, at 5.
270. *Id.* (referring to Sections 323 and 504 of the Indian Penal Code).
271. *Id.* at 6.
272. *Id.*
273. PEN. CODE §§ 366, 342, 376, 506, respectively.
274. *Gurmail Singh v. Radha Krishan*, at 6.
275. *Id.*
276. *Id.* at 7. In addition to the district judge, there may be a number of Additional District Judges depending on the workload.
277. *Id.*
278. *See id.* (referring to Section 376(2)(g) of the Indian Penal Code).
279. *Id.* at 7.
280. *Gurmail Singh v. Radha Krishan*, at 7.
281. *Id.*
282. *Id.* at 9.
283. *Id.* at 15.
284. *Id.* at 23, 26.
285. *Id.* at 27.
286. *Id.* at 28.

ENDNOTES

287. *Id.* at 30.
288. *Id.* at 38.
289. See Appeal of Radha Krishan, *Radha Krishan v. Chandigarh*, No. 769 S.B. of 1997, Cr.A. H.C. P. & H., 25 Sept. 1997.
290. *Id.* at 9.
291. See Pet. of ██████ Praying for Impleading the Complainant as Resp't No. 2, *Radha Krishan v. Chandigarh*.
292. *Id.* at 2.
293. *Id.*
294. See Order Granting Bail to Krishan, *Radha Krishan v. Chandigarh*.
295. ██████'s Motion for Cancellation of Bail Granted to the Appellant at 4, *Radha Krishan v. Chandigarh*. SHO Krishan claimed that he had been suspended from the police force on August 13, 1996 and merely was receiving a "subsistence allowance." Reply Br. of Krishan to ██████'s Motion Opposing Bail at 5, *Radha Krishan v. Chandigarh*.
296. See Record of Hearings 17 Sept. 2003, 14 Jan. 2004, 25 Feb. 2004, 12 May 2004, 28 July 2004, *Radha Krishan v. Chandigarh*.
297. *Charanjit v. Punjab*, at 170.
298. Human Rights Watch, "Abdication of Responsibility: The Commonwealth and Human Rights," 1991, 14.
299. The villages are often referred to together as KunanPoshpora, Kunan-Poshpora, or Kunan Poshpora.
300. Official Website of District Kupwara (Feb. 2, 2015), <http://www.kupwara.gov.in>.
301. *Victims & Inhabitants of the Village of Kunan Poshpora v. J&K State*, at 1; Jammu and Kashmir SHRC Judgment [hereinafter SHRC Judgment], Hon'ble Justice Syed Bashir-Ud-Din, (Oct. 16, 2011), at 1.
302. Writ petition under Article 226 of the Constitution of India and 103 of the Constitution of J&K at ¶ 2, *Abdul Ahad Shah v. Union of India* (2013) ("Throughout the night, the men were physically and emotionally tortured in the most brutal ways. The tools of torture included the passing of electric currents on the bodies of the men, including their penis, hanging the men upside down and beating them with sticks, and pushing their heads into cold, chilly water.").
303. Remarkd for further investigation in 2013, 22 years later, *Indian Express* (2013).
304. *Victims & Inhabitants of the Village of Kunan Poshpora v. J&K State*, at 3 ("[A]t about 11 PM...security personnels entered in her house[,] gagged her mouth and tied down her hands[,] and then till she was [un]conscious[,] eight army personnel one after another did all that what was not expected of them. They ravished her chastity and even ravished her in unnatural way[s].").
305. Writ petition, at ¶ 8, *Uzma Qureshi v. J&K Chief Civil Sec'y* (quoting in its entirety the

- report by then-Deputy Commissioner of Kupwara District, S.M. Yasin submitted to then-Divisional Commissioner, W. Habibullah [hereinafter Yasin Report]). Human Rights Watch report that a woman was gang raped four days after giving birth HRW (1993: 15).
306. *Id. supra* note 233 (quoting Yasin Report).
 307. Verghese (1991), the report is entitled, Press Council of India. 1991. Crisis and Credibility. New Delhi: Lancer International.
 308. Verghese (1991).
 309. HRW (1991: 14n4). Two police constables also allegedly reported the abuse to their commanding officer after seeing men emerge from interrogations unable to walk and hearing women's screams.
 310. Writ petition, at ¶ 8, *Uzma Qureshi v. J&K Chief Civil Sec'y* (quoting Yasin Report, *supra* note 233). According to Human Rights Watch, villagers submitted their complaint to Yasin on March 5, 1991 and he visited the community on March 7, 1991. HRW (1991: 7).
 311. HRW (1991: 14n4).
 312. Verghese (1991).
 313. Writ petition, at ¶ 8, *Uzma Qureshi v. J&K Chief Civil Sec'y* (quoting Yasin Report).
 314. *Id.*
 315. *Id.*
 316. *Id.*
 317. Writ petition, at ¶ 8, *Uzma Qureshi v. J&K Chief Civil Sec'y*.
 318. Order re: Ikhtitani (final report) at 2, In the case of Final Police Report u/s 173 Cr.P.C. (June 18, 2013) (Court of Sub-Judge Judicial Magistrate, Kupwara).
 319. Writ petition, at ¶ 8, *Uzma Qureshi v. J&K Chief Civil Sec'y*; HRW (1991: 15).
 320. HRW (1991: 15); Verghese (1991: 120-121); Order re: Ikhtitani (final report) at 2, In the case of Final Police Report u/s 173 Cr.P.C.
 321. Order re: Ikhtitani (final report) at 2, In the case of Final Police Report u/s 173 Cr.P.C.
 322. HRW (1991); Verghese (1991).
 323. HRW (1991); Verghese (1991).
 324. HRW (1991); Verghese (1991).
 325. HRW (1991: 14), reporting that Singh was transferred in July “without ever carrying out the investigation.”
 326. Order re: Ikhtitani (final report) at 2, In the case of Final Police Report u/s 173 Cr.P.C.
 327. HRW (1991: 14).

ENDNOTES

328. HRW (1991).
329. HRW (1991).
330. Writ petition at ¶ 6, *Abdul Abad Shah v. Union of India*.
331. Habibullah (1991); victims and advocates rebutted this presumption, stating that the purpose of Habibullah's report was "clear—to chart out a course of action to restore confidence in the armed forces." Writ petition at p. 6, *Abdul Abad Shah v. Union of India*. The petition cites Habibullah's report in which he stated that he had a discussion with the DGP and the Corps Commander "to determine the course of action required to be followed to allay doubts and restore confidence." P. 6. Habibullah recently stated that the Indian Government "'deleted important portions of his confidential report' on the KunanPoshpora mass rape case in which he had recommended a police probe, upgradation in the level of investigation, entrusting the case to a gazette police officer and seeking an order from the 15 Corps Commander to ensure Army cooperation in the probe;" Jaleel (2013); *see also* Sukuma (2014).
332. Habibullah (1991: 3-4).
333. Habibullah (1991: 4).
334. The Press Council of India is an autonomous quasi-judicial body enacted by the Indian Parliament that is intended to serve as "a watchdog of the press" (Jha, 2013). The report was published by Lancer International, which was reportedly started by a former senior officer of the armed forces (Dutta, 2013). The members of the fact-finding mission were journalists not trained in law. Further, the mission accepted the hospitality of the armed forces, which made it a "sponsored visit" (Jha, 2013).
335. HRW (1991: 15). During their investigation, Council members "stayed in the quarters of the brigade alleged to have committed the act and took along with them as interpreter someone from the local police-station" (Jha, 2013).
336. Verghese (1991: 116).
337. Verghese (1991: 121).
338. Verghese (1991: 121). In a recent article, B.G. Verghese, the head of the Press Council committee in 1991, stated that he still believed the claims were "bogus" and merely the product of a militant-inspired Army smear campaign that would "make them reluctant to go into areas" (Jha, 2013).
339. Verghese (1991: 127).
340. Order re: Ikhtitani (final report) at 2-3, In the case of Final Police Report u/s 173 Cr.P.C.
341. Order re: Ikhtitani (final report) at 3, In the case of Final Police Report u/s 173 Cr.P.C.
342. *Id.* at 5 (quoting the observations recorded by the then-Director Prosecution).
343. *Id.* at 4-5 (quoting the observations recorded by the then-Director Prosecution).
344. *Victims & Inhabitants of the Village of Kunan Poshpora v. J&K State*, at 5; *see id.* at 3-5 (stating that the then-Director Prosecution had "opined that the [allegations

- were] not maintainable and accordingly...closed the investigation on 12-09-1991 as untraced” and noting that the investigation was closed on September 9, 1991, but the closure report was submitted to the district court on April 3, 2013).
345. CODE CRIM. PROC. § 173(2).
 346. *Victims & Inhabitants of the Village of Kunan Poshpora v. J&K State*, at 1.
 347. *Id.* at 1-4.
 348. *See id. generally.*
 349. *Id.* at 7.
 350. *Id.* at 15-17.
 351. *See* Writ petition, at ¶¶ 8-11, *Uzma Qureshi v. J&K Chief Civil Sec’y.*
 352. Order re: Ikhtitani (final report) at 1-3, In the case of Final Police Report u/s 173 Cr.P.C.
 353. Denial of PIL Petition, *Uzma Qureshi v. J&K Chief Civil Sec’y*, ¶ 7 (May 14, 2013) (High Court of J&K) (determining that “it may not be prudent for the writ petitions to press for this petition at this stage because whatever has been prayed before this Court might be given to the victims by the State itself”). The first PIL petition was filed April 20, 2013. Writ petition, *Uzma Qureshi v. J&K Chief Civil Sec’y.* This petition was rejected in May 2013. Denial of PIL Petition, *Uzma Qureshi v. J&K Chief Civil Sec’y.* A second PIL petition was filed the following October. Writ petition, *Abdul Ahad Shah v. Union of India.*
 354. A Protest Petition/Application under Section 173(8) of the Cr.P.C., 1989 at 7 (June 10, 2013) (Kupwara District Court).
 355. Order re: Ikhtitani (final report) at 1-3, In the case of Final Police Report u/s 173 Cr.P.C.
 356. *Id.* (denying the final police report and directing “further investigation to unravel the identity (sic) of...perpetrators of the alleged crime”).
 357. *Id.*
 358. *Gujarat v. Chhara*, at 15-16; see also HRW (2002: 15-17).
 359. *Id.*
 360. *Gujarat v. Chhara*, at 15, 22-23. According to a news report, Muslim men, women, and children were sliced with swords, rammed with iron rods, doused with acid, and tossed alive into fires during the attack, Yadav (2012).
 361. *Gujarat v. Chhara*, at 16.
 362. *Gujarat v. Chhara*, at 235. Yadav, *supra* note 313.
 363. *Gujarat v. Chhara*, at 15-16, 983.
 364. *Gujarat v. Chhara*, at 13. *See also Naroda Patiya Case: Kodnani, 30 Others Get Life Term, Business Standard*, 2011).
 365. HRW (2002: 15-17); Citizens’ Initiative (2002).

ENDNOTES

366. HRW (2002: 16-17).
367. *Gujarat v. Chhara*, at 474-475; HRW (2002: 6).
368. Citizens' Initiative (2002).
369. *Id.* According to one witness: "The residents of the...[neighborhood] segregated young girls (Muslims) and made them stand on one side.... The girls were stripped and then two men held them down by legs and arms. Those who raped were 20-25 in number. The girls screamed so loud that even now when I remember my blood boils.... The rape started at 6:00 in the evening until 9:00 at night. The girls were then burnt" _HRW (2002: 17-18).
370. *Id.* at 15-17.
371. *Gujarat v. Chhara*, at 657, 664-65.
372. *Id.* at 653.
373. *Id.* at 663-64.
374. HRW (2002: 16-17).
375. Citizens' Initiative (2002).
376. *Gujarat v. Chhara*, at 1699.
377. *Id.* at 16-17.
378. HRW (2002: 15-16).
379. *Id.* at 17. According to Human Rights Watch, state government officials were involved in the rioting and contributed to the police's ineffective response to the mob violence. *Id.* at 15-27.
380. *Gujarat v. Chhara*, at 15-17.
381. Citizens' Initiative (2002).
382. HRW (2002: 21-27).
383. *Gujarat v. Chhara*, at 767.
384. *Gujarat v. Chhara*, at 17, 486.
385. Gupta (2011).
386. *Gujarat v. Chhara*, at 17.
387. *Id.* at 485.
388. *Id.* at 152, 1529.
389. *Id.* at 489, 491-495.
390. *Id.* at 493, 495-96, 502-03.
391. HRW (2002: 48).
392. *Gujarat v. Chhara*, at 496, 498.
393. *Id.* at 497-498.

394. *Id.* at 497.
395. *Id.* at 499-500.
396. *Id.* at 500-01.
397. *Id.* at 503-06.
398. HRW (2002: 60-61).
399. *Gujarat v. Chhara*, at 482, 1530.
400. HRW (2002: 648).
401. *Gujarat v. Chhara*, at 380-81.
402. *Id.* at 502.
403. *Id.* at 14.
404. HRW (2002: 49).
405. *Id.*
406. *Gujarat v. Chhara*, at 17. The NHRC has strongly condemned the Gujarat government for its failure to deliver justice to the riot victims. Nat'l Human Rights Comm'n v. Gujarat, (2009) 6 S.C.C. 767.
407. *Gujarat v. Chhara*, at 31.
408. *Id.* at 1-11, 23-24.
409. *Id.* at 1-11.
410. See HRW (2003).
411. *Id.* at 26-77.
412. *Id.*
413. *Id.* at 156, 181-82, 263-65.
414. *Id.* at 1-11, 1911. Dasgupta (2012).
415. These individuals were respectively, Babu Bajrangi and Maya Kodnani. See *Gujarat v. Chhara*, at 1914, 1919.
416. PEN. CODE § 315. See *Gujarat v. Chhara*, at 1694-95.
417. *Gujarat v. Chhara*, at 259, 1708.
418. *Id.* at 1708. With the exception of one accused, the Court held that “[i]n none of the [other] case[s] of rape or outraging [the] modesty against any Muslim woman [has] it...[been] proved beyond reasonable doubt as to who the tormentor was.” *Id.*
419. *Id.* at 771, 1697-1709.
420. *Id.* at 1702-1703.
421. *Id.* at 1965-66. See *Daily News and Analysis* (2013).
422. See *id.*
423. Rahul Sharma, testimony, 2004, and deposition date 30.10.2004. Sharma was the

ENDNOTES

- Deputy Commissioner of Police in Ahmadabad, Crime Branch, and had submitted a CD with 500,000 phone call records between February 28-March 5, 2002.
424. *Id.* at 311.
425. *Id.*
426. *Id.* at 311-13.
427. *Id.* at 317. While government figures confirmed 54 deaths, Janvikas, a civil society organization stated that 86 died (Grover: 2010).
428. *Orissa v. Santosh Pattnaik*, 3, 26 (2014).
429. *Id.* at 3. The roof of the home was subsequently destroyed and the house was set on fire. *Id.* at 15.
430. *Id.* at 3-4, 16.
431. *Id.*
432. *Id.* at 14, 24, 27-28.
433. *Id.* at 24-27.
434. *Id.* at 25.
435. *Id.* at 27-28.
436. *Id.* at 4, 14.
437. *Id.* at 14.
438. (██████, 2008).
439. *Id.* at 4.
440. *Id.* at 28.
441. *Id.*
442. *Id.*
443. *Id.*
444. *Id.* at 10, 20.
445. *Id.* at 21.
446. *Id.* at 31, 34.
447. *Id.* at 30-35.
448. *Id.* at 35.
449. *Id.* at 4-5.
450. *Id.* at 5, 28. (██████, 2008).
451. *Carvalho* (Oct. 24, 2008).
452. *Orissa v. Pattnaik*, at 15; Mohan (2010).
453. *Orissa v. Pattnaik*, at 5, 29; Kalia (1994).

454. *Orissa v. Pattnaik*, at 29.
455. *Id.* at 29-30. Dayal, *supra* note 420.
456. *Orissa v. Pattnaik*, at 19.
457. *Id.*
458. *Id.* at 36.
459. *Id.* at 5.
460. *Id.* During Test Identification Parades (TIPs), arrested persons are lined up in front of the victim or witness for identification. For every arrested person, nine “dummies,” or prisoners with similar physiques, appear in the line.
461. *Id.* at 5-6, 27.
462. *Id.* at 5-7.
463. *Id.* at 6, 23.
464. *Id.* at 24.
465. *Id.* at 5.
466. Cuttack is the former capital of Odisha. Odisha’s High Court is located in Cuttack. Dr. S. Chand & Dr. S. Tripathy, *History of Cuttack*, available at <http://cuttack.nic.in/history/HISTORY-CUTTACK.htm>.
467. *The Hindu* (2010).
468. *Id.*; Mohan, *supra* note 422.
469. *Orissa v. Pattnaik*, at 6.
470. Mohan, *supra* note 422.
471. *Id.*
472. *Orissa v. Pattnaik*, at 7, 58.
473. Mohan, *supra* note 422.
474. *Id.*
475. *Id.*
476. *Id.*
477. *Orissa v. Pattnaik*, at 15.
478. *Id.* at 53.
479. *Id.* at 30.
480. *Id.* at 29-30. Rabin Babu is a lawyer from Baliguda who is associated with Father Dibya Parichha, the archdiocese’s legal affairs coordinator for the 2008 Kandhamal violence.
481. ██████████ (2008).
482. *Id.*

ENDNOTES

483. *Orissa v. Pattnaik*, at 2, 54-55.
484. *Id.* at 55. According to witness testimony, Digal and Badhei made extrajudicial confessions. *Id.* at 47.
485. *Id.* at 6, 55. Dayal, *supra* note 420.
486. *Orissa v. Pattnaik*, at 56-57.
487. *Id.* at 57.
488. Askin, *supra* note 16, at 293; *see generally* Mitchell (2005); *In-depth Study on All Forms of Violence Against Women*, ¶ 31.
489. *In-depth Study on All Forms of Violence Against Women*, *supra* note 33, at ¶ 31. *See also* AMNESTY INT'L, RAPE AND SEXUAL VIOLENCE: HUMAN RIGHTS LAW AND STANDARDS IN THE INTERNATIONAL CRIMINAL COURT 6 (2011) (arguing that “[a]cts of rape which are committed in the jurisdiction of the [International Criminal] Court can be identified as war crimes and crimes against humanity of rape and torture”). *See* Shaksi v. Union of India, (1999) 6 S.C.C. 591, at ¶ 14 (stating that “[u]nder Article 5 of the Statute of the International Tribunal, rape is a crime against humanity. Rape may also amount to a grave breach of the Geneva Conventions, a violation of the laws or customs of the war or an act of genocide, if the requisite elements are met, and may be prosecuted accordingly.”). Additionally, evidence is mounting that sexual violence has reached the level of a *ius cogens* norm. Askin, *supra* note 16, at 293; *see generally* Mitchell (2005).
490. *See, e.g.*, CEDAW *General Recommendation No. 19*, *supra* note 35; CEDAW *General Recommendation No. 30*, *supra* note 44; UN OFFICE ON DRUGS AND CRIME, *supra* note 10, at 23. Many other international human rights instruments, including the *UN Declaration on the Elimination of Violence against Women*, the *Inter-American Convention on the Prevention of Violence against Women*, and the *Council of Europe Convention Preventing and Combating Violence against Women and Domestic Violence*, include a due diligence obligation.
491. Inter-American Commission On Human Rights Follow Up On The Demobilization Process Of The AUC In Colombia, Digest of published documents (2004-2007), *Report On The Demobilization Process In Colombia*, OEA/Ser.L/V/II, CIDH/INF.2/07, ¶ 21 (Dec. 13, 2004).
492. Although a rape conviction required penetration, “the slightest degree of penetration [was] sufficient to prove sexual intercourse.” *Premiya AKA Prem Prakash v. Rajasthan*, (2008) 10 S.C.C. 81, at 83.
493. *See* Tarkeshwar Sahu v. Bihar (now Jharkhand), (2006) 8 S.C.C. 560, at 569 (“No act under Section 376 IPC can be made out unless there was penetration to some extent.”). “[R]ape by the metonymic substitutes of the penis like sticks, fingers, and other objects did not constitute the legal meaning of rape,” Baxi *supra* note 89, at 4.
494. In 2007, the Indian Supreme Court clarified that a woman’s modesty meant her “reserve or sense of shame proceeding from instinctive aversion to impure or coarse suggestions.” *Ramkripal S/O Shyamlal Charmakar v. Madhya Pradesh*, (2007) 11 S.C.C. 265. Thus, “[t]he act of pulling a woman, removing her saree, coupled

- with a request for sexual intercourse...would be an outrage to the modesty of a woman.” *Id.* The criminal offense of outraging a woman’s modesty thus falls short of a completed act of sexual penetration. *See id.*
495. The crime of “offense against modesty” is often used to charge or convict attempted rape or for charges in marriage cases. *See e.g., Bodhisattwa Gautam v. Subhra Chakraborty; Tarkeshwar Sahu v. Bihar.* The Criminal Amendment Act of 2013 added Section 354B, “Assault against or use of criminal force on a woman with the intent to disrobe.” The Criminal Law (Amendment) Act, No. 13 of 2013, *available at* <http://indiacode.nic.in/acts-in-pdf/132013.pdf>.
496. Inter-American Commission on Human Rights (2011).
497. Inter-American Commission on Human Rights (2011).
498. Manjoo (2014: 50).
499. Manjoo (2014: 61, 75).
500. Prosecutor v. Akayesu, Judgment, ICTR-96-4-T, 2 Sept. 1998.
501. *Id.*
502. *Id.*
503. Askin, *supra* note 16, at 228, 319.
504. Inter-American Commission on Human Rights (2011) (“In many criminal codes, values such as honor, social decency, virginity, chastity, and good morals prevail over values such as the mental and physical integrity of the woman and her sexual self-determination, thereby impeding the due protection under the law of victims of such crimes, or compelling them to prove that they resisted in the case of the crime of rape, or subjecting them to interminable procedures that perpetuate victimization.”).
505. *See* Askin, *supra* note 16, at 228, 319.
506. HRW (2002: 24).
507. *Gujarat v. Chhara*, at 16-17, 490. *See also* [HRW](#), WE HAVE NO ORDERS TO SAVE YOU, *supra* note 13, at 21, 27.
508. *Gujarat v. Chhara*, at 490. *See also* [HRW](#), WE HAVE NO ORDERS TO SAVE YOU, *supra* note 13, at 15, 16.
509. *Gujarat v. Chhara*, at 1914.
510. AFSPA (1990: 4).
511. India Constitution. Art. 15 § 1. In India, caste-based discrimination “condemns women to a life of...marginalization,” as women from low-caste communities are denied education and economic opportunities and perform dangerous and unprotected work, including manual scavenging. Manjoo 2014, *Mission to India*, *supra* note 11, at ¶ 15.
512. India Constitution. Art. 51(A) § (e).
513. *In-depth Study on All Forms of Violence Against Women*, *supra* note 33, at 2, 15, 104-

ENDNOTES

108. *See also* Declaration on the Elimination of Violence Against Women, *supra* note 26.
514. Manjoo (2013)).
515. CEDAW *General Recommendation No. 19*; CEDAW *Concluding Observations*, Manjoo (2014).
516. ICCPR, Art. 20(2). The Human Rights Council observed that sexual violence “often target[s] victims associated with communities, ethnic groups or other groups regarded as antagonistic to or insufficiently supportive of the group or entity whose forces commit the crime;” can be a form of ethnic cleansing; and [is] often intended to “humiliate, dominate, instill fear in, disperse and/or forcibly relocate members of such groups” (Accelerating Efforts to Eliminate All Forms of Violence Against Women).
517. CEDAW *General Recommendation No. 19*. According to the Special Rapporteur on Violence Against Women in India, women are “discriminated against and subordinated” on the basis of sex, caste, class, and traditions, underscoring a continuum of structural and institutional violence from the “womb to the tomb.” Manjoo (2014: 7).
518. Committee against Torture, *General Comment No. 2, Implementation of Article 2 by States Parties*, (2008: 22).
519. CEDAW *Concluding Observations*, Manjoo (2013: 44, 49, 53). *See also* UN Secretary General (2002: 31-32). *See* notes 151-159.
520. *Rochela Massacre v. Colombia*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 216, (2007: 158). *See also* *Serrano Cruz Sisters v. El Salvador*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 120, (2005: 83).
521. *See* notes 160 - 162.
522. Shani (2007: 19-23).
523. Verghese (1991: 127).
524. UN HUMAN RIGHTS COUNCIL, HUMAN RIGHTS IN INDIA: STATUS REPORT 2012 69 (2012), *available at* <http://wghr.org/wp-content/uploads/2013/07/Human-Rights-in-India-Status-Report-2012.pdf>.
525. Kohli (2012).
526. *Gurmail Singh v. Radha Krishan*, at 33.
527. Verghese (1991: 127).
528. *See* *Fernández Ortega v. Mexico*, Preliminary Objection, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 215, (Aug. 30, 2010); *see also* *Cantú v. Mexico*, Preliminary Objection, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 216, (Aug. 31, 2010).
529. A cognizable offense is one where a police officer may arrest without warrant. All sexual crimes: rape and sexual assault, and sexual harassment, are cognizable offenses.

530. CODE CRIM. PROC. § 156.
531. *Id.* at § 41.
532. First Schedule, CODE CRIM. PROC.
533. *Gujarat v. Chhara*, at 503-06.
534. *Gurmail Singh v. Radha Krishan*, at 28.
535. See CEDAW *General Recommendation No. 30*, *supra* note 44, at ¶ 2.
536. See HRC *General Comment No. 31*, *supra* note 42, at ¶ 15; see also ICJ-A PRACTITIONERS GUIDE, *supra* note 52, at 65-66.
537. See CEDAW *General Recommendation No. 30*, *supra* note 44, at ¶ 34.
538. See HRC *General Comment No. 31*, *supra* note 42, at ¶ 15; see also ICJ-A PRACTITIONERS GUIDE, *supra* note 52, at 65-66.
539. See CEDAW *General Recommendation No. 30*, *supra* note 44, at ¶ 35.
540. UN Manual on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions, Doc. E/ST/CSDHA/12 (1991).
541. *Id.*
542. *Gujarat v. Chhara*, at 482, 1530.
543. Amnesty International (2011)..
544. *Victims & Inhabitants of the Village of Kunan Poshpora v. J&K State*, *supra* note 128, at 5.
545. *Orissa v. Pattnaik*, at 19. In *Gonzalez (“Cotton Fields”) v. Mexico*, the Inter-American Court held that “irregularities occurred” where officials exhibited “negligible rigor in the inspection and preservation of the crime scene” and failed “to adopt ‘necessary measures’ to ensure that the scene of the crime ‘was not contaminated.’” Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 205, ¶ 293 (Nov. 16, 2009).
546. Special Rapporteur on Extrajudicial, Summary or Arbitrary Execution, *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions: Mission to India*, ¶ 85, delivered to the General Assembly, UN Doc. A/HRC/23/47/Add.1 (Apr. 26, 2013) (by Christof Heyns).
547. *Id.*
548. HRW (2002: 60) quoting Proceedings of the NHRC, *Proceedings*).
549. Order re: Ikhtitani (final report) at 2, In the case of Final Police Report u/s 173 Cr.P.C.
550. Zargar & Masood, *supra* note 246.
551. *Id.*
552. Basic Principles and Guidelines on the Right to a Remedy and Reparation, *supra* note 70, at 6.

553. ICRC (2014).
554. Jagadeesh, *supra* note 112; *see also* Karnataka v. Manjanna, (2000) 6 S.C.C. 188 (holding that the need for medical examination was a “medicolegal emergency”).
555. Amnesty International (2011) (“[D]iscriminatory assumptions lead to a disproportionate and unreasonable emphasis being placed on having evidence other than the victim’s testimony – irrespective of how clear, detailed, and consistent such testimony is – such as medical evidence on examination of the victim’s body, traces of semen, and independent witness testimony.”).
556. INDIAN COUNCIL OF MEDICAL RESEARCH; DEPT OF MEDICAL HEALTH RESEARCH (DHR), FORENSIC MEDICAL CARE FOR VICTIMS OF SEXUAL ASSAULT 55-63 (2013), *available at* <http://www.icmr.nic.in/dhr/pdf/1%20DHR%20Forensic%20Medical%20Manual%20Sexual%20Assault.pdf>.
557. HRW (1991: 15); Verghese (1991: 116).
558. Verghese (1991: 116).
559. In 2005, the criminal procedure code was amended to require medical examination of victims of rape (Section 164(A)), medical examination of those accused of rape (Section 53(A)), and investigation by judicial magistrates of custodial rape and deaths (Section 176(1A)(a)(b)). The Criminal Procedure Code, No. 25 of 2005, CODE CRIM. PROC. (1973). The Delhi High Court in *Delhi Commission for Women v. Delhi Police* ordered medical personnel to use of the SAFE Kit (Sexual Assault Forensic Evidence collection Kit). (2009) S.C.C. OnLine Del 1057, at 68.
560. ICRC (2014).
561. *Id.* at 21, 26, 28.
562. *Id.* at 26.
563. *See* CEDAW, *supra* note 7; *see also* HRC *General Comment No. 31*, *supra* note 42, at ¶ 18.
564. *Incorporate Knowledge of Gender-based Violence Into Policies and Protocols*, UN WOMEN (2015).
565. OPEN SOCIETY FOUNDATIONS, FROM JUDGMENT TO JUSTICE: IMPLEMENTING INTERNATIONAL AND REGIONAL HUMAN RIGHTS DECISIONS 34 (2010), *available at* <http://www.opensocietyfoundations.org/sites/default/files/from-judgment-to-justice-20101122.pdf>.
566. *See* REDRESS, WAITING FOR JUSTICE, THE POLITICS OF DELAY IN THE ADMINISTRATION OF JUSTICE IN TORTURE CASES: PRACTICE, STANDARDS AND RESPONSES 20 (2008), *available at* http://www.redress.org/downloads/publications/WAITING_FOR_JUSTICE_Mar%2008%20Fin%20_2_.pdf.
567. Office of the High Commissioner for Human Rights, *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers*, 268-69 n.70-72, UN Doc. HR/P/PT/9 (2003), *available at* <http://www.ohchr.org/Documents/Publications/training9chapter7en.pdf>.
568. *See* CEDAW, *supra* note 7.

569. Commission on Human Rights, Sub-Commission on Prevention of Discrimination & Protection of Minorities, Revised Final Report on the Question of the Impunity of Perpetrators of Human Rights Violations (Civil & Political), E/CN.4/Sub.2/1997/20/Rev.1, UN ESCOR, 49th Sess. (1997).
570. Heyns (2013: 69).
571. HRW (2009).
572. *Manipur: A memorandum on Extrajudicial, Summary, or Arbitrary Executions*, submitted by the Civil Society Coalition on Human Rights in Manipur and the UN, to Christof Heyns, Special Rapporteur on extrajudicial, summary or arbitrary executions, *Broken System* (2012).
573. Heyns (2013: 65).
574. *Gurmail Singh v. Radha Krishan*, at 28.
575. Zargar & Masood, *supra* note 246.
576. The AFSPA (1990: 4).
577. *Id.* at § 7. “International law is absolutely clear in its rejection of such an immunity clause.” Devyani Srivastava, *Rights Based Critique of AFSPA, Armed Special Forces Powers Act: The Debate*, INST. FOR DEF. STUDIES & ANALYSIS, 73(2012) (citing Human Rights Committee, *Concluding Observations on India*, UN Doc. CCPR/C/79/Add.81 (Aug. 4, 1997)).
578. In addition to J&K, the northeastern states of Arunachal Pradesh, Assam, Manipur, Meghalaya, Misoram, Nagaland, and Tripura have been defined as disturbed areas. Manjoo 2013, *supra* note 45, at ¶ 68.
579. Heyns, *supra* note 523, at ¶ 27.
580. *Id.* at ¶ 22 (quoting Part IV of the Report of the Committee to Review the Armed Forces (Special Powers) Act of 1958, ¶ 5 (2005)).
581. Committee on the Elimination of Discrimination against Women, *Concluding observations of the Committee on the Elimination of Discrimination against Women: India*, UN Doc. CEDAW/C/IND/CO/3 (Feb. 2, 2007), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N07/243/98/PDF/N0724398.pdf?OpenElement>.
582. See Harris (2014); *Indian Express* (2014); *Sangai Express*, (2005).
583. *Barrios Altos v. Peru*, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 75, ¶ 41 (Mar. 14, 2001).
584. *Gujarat v. Chhara*, at 379-81. See also UNODC HANDBOOK ON JUSTICE FOR VICTIMS, *supra* note 73, at 9-10.
585. *Nachova v. Bulgaria*, App. Nos. 43577/98 & 43579/98, Eur. Ct. H.R. (2004).
586. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, *supra* note 67, Annex, ¶ 4, at 214.
587. Economic & Social Council, *Report of the Working Group on Enforced or Involuntary*

ENDNOTES

- Disappearances*, ¶ 73, UN Doc. E/CN.4/1998/43 (Jan. 12, 1998).
588. SHELTON, *supra* note 563, at 10-II, 120, 216.
589. CODE CRIM. PROC. §§ 357(1)(b), 357(5).
590. CODE CRIM. PROC. § 29. The Sessions Court will hear any matter outside of the jurisdiction of the lower courts. *Id.* at § 9.
591. People's Union for Democratic Rights v. Union of India, (1982) 3 S.C.C. 235.
592. Neuborne, at 505-506.
593. Denial of PIL Petition, at ¶ 7, *Uzma Qureshi v. J&K Chief Civil Sec'y*.
594. *Punjab and Haryana High Court Bar Ass'n v. Punjab*, 1996.
595. United States Department of State (1993). *See also* HRW (1993: 6).
596. National Commission for Minorities Act, 1992, ¶ 9; Tiwana, *supra* note 132, at 3.
597. HRW. WE HAVE NO ORDERS TO SAVE YOU, *supra* note 13, at 63, Appx. I (citing National Commission on Human Rights Recommendations on Gujarat Report ¶ I(viii) (2002)).
598. *Id.* at 13.
599. Shelton (1999: 50-51).
600. *Id.* at 230, 302-03.
601. Committee on the Elimination of Discrimination against Women, *Concluding observations of the Committee on the Elimination of Discrimination against Women: India*, ¶ 36, UN Doc. CEDAW/C/IND/CO/SP.1 (Nov. 3, 2010).
602. *Id.* *See also* Oomen (2008).
603. Shelton (1999: 15).
604. Refers to the events of 1984.
605. Refers to the events of 2002.
606. Refers to certain events of the Punjab conflict.
607. Jarnail Singh Bhindranwale was a Sikh leader and head of the Damdami Taksal group who organized Sikhs to agitate against the state, calling for increased autonomy and other demands since 1947. He died in the Harmandir Sahib Gurdwara Complex in June 1984, while commanding a group of 300-400 Sikhs in combat with the Indian Army.
608. Color of police uniform.
609. Refers to certain events of 2002.
610. Islamic phrase, "God is greater."
611. Panchnama: A written document attesting to "things which were found at particular place at particular time" (Lone, Maharashtra Judicial Academy, Date unknown: 1).
612. The editors thank Jyoti Puri for conversations regarding states of exception.

613. Agamben uses the term “elimination,” modified here to ‘subjugation,’ with respect to the context at hand.
614. States of exception, Agamben writes, are conditioned by the distinctions between bare life and political life (Agamben, 1998; Sylvester, 2011).
615. “Quaestio facti concerns the questions what is knowledge and whether there is knowledge” (Beiser, 2014: 245).
616. The editors thank Naomi Roht-Arriaza for conversations regarding international law and states of exception.
617. The editors thank Richard Shapiro for conversations regarding biopolitics and biopower.
618. See, Section II, “Four Areas Under Study.”
619. India has a federated parliamentary system. The central government exercises greater power over individual states than, for example, in the United States, and exceptional circumstances merit intervention on the part of the central government, by presidential decree. A presidential decree (President’s Rule), per the provisions of Article 356 of the Indian Constitution, may be applied in the event of a national, state, or fiscal emergency. Further, Article 355 states that, “It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the government of every state is carried on in accordance with the provisions of this Constitution” (Basu, 2001: 1589). Such powers may be used in circumstances where states are faced with a violation of governance as authorized by the Constitution of India. The failure to restore such governance may lead to the dismissal of the state government. Following the destruction of the Babri Masjid, emergency was declared in Uttar Pradesh then a BJP governed state, on December 6, 1992, for almost a year. The imposition of emergency was contested in the Supreme Court of India, in *S. R. Bommai & Others v. Union of India & Others*.
620. PSA allows for the arrest and long-term detention of persons (without trial for up to two years) on uncorroborated suspicion.
621. Vigilantes were recruited and then absorbed into the Punjab Police itself (Jaijee, 2002: 133-35).
622. Butalia adds, “and who are not tainted by what is a crime against them.”
623. Further, Butalia adds, “dealing with things like education and health--the more general things. Legislative reform is another ongoing concern of the women’s movement...”
624. Khalra Mission Committee continues to exist as a separate entity, though it is largely dormant in Punjab (Khalra Mission Committee, 2015).
625. Ní Aoláin and Campbell (2005); Layús (2010); in the absence of transformative justice mechanisms; and Kilara (2007); Shaw, Waldorf, and Hazan (2010).
626. See, Ní Aoláin (2009); Engle, (2006); Kilara (2007).
627. The editors thank Naomi Roht-Arriaza for conversations in defining this segment.
628. The editors thank Naomi Roht-Arriaza for conversations regarding transitional and transformative justice.

629. The editors thank Elazar Barkan for conversations regarding historical dialogue.
630. Mona Bhan is Associate Professor of Anthropology at Depauw University and Deepti Misri is Associate Professor of Women and Gender Studies at the University of Colorado, Boulder.
631. “For instance, in an *Al Jazeera* interview, an adviser to the chief minister claims the state’s inability to investigate the mass graves highlighted by human rights activists, but notes the need for a truth and reconciliation commission to ‘reveal everything,’ ‘Regarding mass graves, we can’t open them. It’s an Islamic area. It will hurt people’s sentiments,’ he told *Al Jazeera* in a phone interview. ‘We also want to establish a truth and reconciliation commission which will help reveal everything that has happened in Kashmir during the conflict.’ Here, TRC is brought up as a way of deferring the demands for justice. Another activist points to the ways in which reconciliation might place a burden of forgiveness on the injured: ‘Kashmiris are always expected to forget and forgive all the gory incidents under the label of reconciliation’” (Bhan and Misri, ACRes).
632. “Because the divisions between Pandits and Muslims have taken up the most space within the Indian nationalist imaginary both rhetorically and in terms of the state’s efforts to facilitate the return of Kashmiri Pandits, in this document we focus on these communities, even as we recognize that these are far from being the only communities that have been affected by the conflict” (Bhan and Misri, ACRes).
633. “The term ‘occupation’ encompasses both the affective and legal dimensions of the existing Indian rule in Kashmir. Many Kashmiri Muslims view the overwhelming presence of a hostile, largely Hindu, military force and their violent tactics to suppress popular demands for self-determination. Indian military presence can justifiably be called an occupation based on Article 42 of the Hague Convention, which states the presence of a “hostile” army and the exercise of its authority over the local population as a fundamental characteristic of an occupation (Ferraro, 2012: 7). The ICRC report notes that in recent years, the meanings of occupation and the laws governing occupation have undergone many shifts, mainly because “in addition to the persistence of traditional forms of occupation,” extraterritorial military interventions “have given rise to new forms of foreign military presence on the territory of a state, sometimes consensual but very often imposed” (Ferraro, 2012: 7) (Bhan and Misri, ACRes).
634. “While there are multiple sources of disagreements between Pandits and Muslims that reflect their divergent stakes in Kashmiri politics and its history, an important, albeit less discussed, question is how the experience, fear, memory, and also at times the abstract rhetoric of sexual violence has played a crucial role in exacerbating the historic divisions across communities, thereby presenting a key challenge to dialog or reconciliation. Although accusations of rape abound on all sides, the single biggest documented perpetrator of sexual violence in Kashmir has been the Indian state, via the Indian army, CRPF, and BSF. A recent report by the International Peoples’ Tribunal on Human Rights and Justice and the Association of Parents of Disappeared Persons, extensively documents how “human rights violations are the norm rather than an aberration,” and how individual cases of rape or torture must be situated within institutionalized structures of law and impunity in Kashmir. At the same time,

as a report from the 1990s by Asia Watch and Physicians for Human Rights suggests, non-state actors/militants have also been involved in sexual violence against women, albeit in much smaller numbers. Simplifying distinctions between state and non-state actors, however, can potentially obscure the complexity of the counterinsurgency grid in Kashmir in which pro-government militant outfits such as the Muslim Mujahadeen or the Ikhwanis carry out crimes against Kashmiri men and women that include rape and other forms of sexual violence” (Bhan and Misri, ACRes).

635. “Historically, brahminical restrictions of *tooth and trootch*, contagion and purity, structured labor hierarchies as well as patterns of interdining and other modes of sociality between Pandits and Muslims. In extreme cases, such restrictions also applied to bodily contact with non-Hindus, particularly Muslims” (Bhan and Misri, ACRes).
636. See for instance “Atrocities on Women and Children” on the website of the “Kashmiri Pandit Network” (Kashmiri Pandit Network, n.d).
637. Also used, *The Hindu* (2015; Umar (2013).
638. Notes from Angana Chatterji, who was a member of the drafting committee.
639. Declaration of Basic Principles of Practice for Victims of Crime and Abuse of Power, UN General Assembly Resolution 40/34, of November 29, 1985. For the definition of the concept of “victim” and its development in the Inter-American Court of Human Rights, see (Borloz, 2003).
640. ICRC/TheMissing/01.2003/ES/10.

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INDEX

- 1947, Partition, 6, 75, 76, 87, 110, 120, 128, 135, 145, 183, 187, 233, 247, 263, 268, 275, 296
- 1984; June, 110, 113; November, 6, 16, 76, 97, 100, 102, 108, 110, 111, 112, 113, 116, 183, 185, 188, 189, 190, 194, 195, 235, 260, 266, 275, 295, 296,
- 1990; Gawakadal, xi, 4, 6, 43, 46, 76, 78, 79, 85, 87, 108, 110, 112, 117, 119, 120, 121, 122, 123, 124, 125, 127, 128, 145, 190, 259, 262, 265, 269, 273, 276, 277, 291, 294
- 2002 Gujarat, 6, 44, 49, 61, 73, 77, 80-82, 91, 93, 99-100, 102, 107-108, 128-135, 143-145, 154-158, 160, 164-172, 174-176, 179-181, 191, 198-213, 218-221, 224, 232,
- 2007-2008, 135
- 9/11, 40, 84, 235
- Abdul Abad Shah v. Union of India*, 281, 283-284
- Abrams, Lynn, 261
- Abu-Lughod, Lila, 43
- accountability, 3-5, 7-9, 12, 21, 24, 28-30, 33, 36, 54, 58-61, 69-70, 81, 90, 99, 111, 131, 143, 146, 150, 165, 167, 173, 179, 198, 201, 206, 211, 219-220, 223, 227-230, 232, 234, 237, 239, 247
- Achankeng, Fonkem, 20
- ACRes, 9-10, 14-15, 31, 42, 80, 117-118, 131, 134-135, 149, 179, 182-183, 187, 196, 198-199, 225, 240-241, 244, 264-265, 268, 297-298
- Act Now for Harmony and Democracy, ANHAD, 78
- Adams, Melissa K., 46
- Adivasi, 8, 21, 51, 77, 87, 89, 131, 135-138, 159, 180, 254, 268, 279
- Afghanistan, 234, 263-264,
- Afzal-Khan, Fawzia, 20, 261
- Agamben, Giorgio, 29, 217, 219-220, 229, 263, 296
- agency, 16, 26, 32, 41, 44, 53-54, 60, 88, 113, 125, 153, 180, 182, 184, 229, 238-239, 253, 261, 272
- Agrawal, Girish, 80
- Ahangar, Parveena, 226
- Ahmadiyahs, 50
- Ahmedabad, 76, 128-129, 134, 154, 156, 198, 277-278
- Akali Dal, 185, 226
- Akande, Dapo, 38
- Akhand Paath, 196
- Aksai Chin, 120
- Alcoff, Linda, 43
- Allah, 203, 210
- Alliance, 67, 81, 205, 211, 234, 246, 249
- All India Kashmir Committee, 120
- Althusser, Louis, 28,
- Amarnath, 80
- American Anthropological Association, 46, 261
- amnesia, 19
- Amnesty Commission, 235
- Amnesty International, 27, 40, 104-105, 117, 119, 122, 170-171, 175, 292-293
- Amnesty Law of 1979, 29
- amrit, 117, 188
- Amritdharis, 188
- Amritsar, 114, 118, 182, 184, 188, 190Anand, 43, 129-130, 133, 198
- Anand, Dibyesh, 43
- Anand, Kumar, 129
- Anand, S., 133
- Angel-Ajani, Asale, 261
- Angola, 31
- Anonymization, 14
- Anthropology of violence, 43
- anti-colonialisms, 36
- Anti-Rape Act, 232
- Antkowiak, Thomas M., 267
- Aoláin, Fionnuala Ní, 19-20, 29-32, 59, 62, 219, 227, 229, 261, 267, 297,
- Aoun, Joy, 76, 302
- apartheid, 20, 50-51
- Appadurai, Arjun, 4, 302
- applied research, 9-10, 14, 16
- archival research, 9, 12-14
- archive, 9, 130, 179, 238, 244, 258, 278, 299, 301-302, 304
- archive of sexual violence, 244
- ardaas, 194
- Argentina, 31, 59, 64, 67, 237, 263, 266,

- Argenti, Nicolas, 180
 Arias, Enrique Desmond, 34,
 armed forces, 24-26, 44, 52, 80, 82-83, 94,
 98, 104, 110-113, 122, 127, 173, 225,
 251, 272, 283, 294
 Armed Forces (Special Powers) Act, AFSPA,
 52, 83, 98, 104-105, 113, 122, 127, 174,
 221, 251, 271, 276-279, 292, 296
 Arondekar, Anjali, 90, 302
 Arora, S. C., 110, 121, 270
 art, and memorialization, 67-68, 265-267,
 271-272, 276, 291
 Arthur Kleinman, 20, 28
 Arunachal Pradesh, 83, 269, 294
 Arzu, Alvaro, 66
 Asad, Talal, 35, 43, 79, 276
 Asian Center for Human Rights, 94
 Asian Human Rights Commission, 15, 70
 Asian Legal Resource Center, 15
 Asia Watch, 121, 123, 276-277, 298
 Askin, Kelly D., 90, 289-290
 Assam, 76, 83, 269, 294
 assimilation, 20, 22, 29, 35, 39, 50, 77, 79
 Assmann, Aleida, 14
 Association of Parents of Disappeared
 Persons, APDP, 12, 225, 298
 Atlantic Charter, 33
Aydin v. Turkey, 271
 Ayodhya, 77, 102, 273
 azadi, 119
 Babbar Khalsa, 191
 Babbitt, Eileen F., 228, 234, 236
 Bacchetta, Paola, 23, 26, 43-47, 51-52,
 91, 264
 Badhei, Saroj, 161-162, 289
 Bailey, Marlon M., 46, 66
 Bajrang Dal, 44, 80, 85, 102, 137, 157,
 202, 209
 Bajrangji, Babu, 286
 Bamzai, Kaveree, 77
 bandh, 200
 Bangladesh, 28, 70, 223, 263
 Ban Ki-moon, 258
 Bannerji, Himani, 91
 Barbieri, Katherine, 20
 Bariffi, Francisco J., 69, 272
 Barkan, Elazar, 5, 14, 223, 239-240, 262,
 297
 Barkey, Karen, 262
Barrios Altos v. Peru, 174, 295
 barsi, 196
 Barstow, David, 131
 Baruah, Bipasha, 132
 Bashir, Aliya, 125
 Bassil, Noah R., 20
 basti, 208
 Bastick, Megan, 120, 123
 Basu, Amrita, 34, 43, 74, 84, 122, 129,
 296
 Basu, Durga Das, 34, 43, 74, 84, 122, 129,
 296
 Basu, Moni, 34, 43, 74, 84, 122, 129, 296
 Baweja, Harinder, 124
 Baxi, Pratiksha, 39, 274, 290
 Baxi, Upendra, 39, 274, 290
 Beijing Declaration and Platform for
 Action, 47
 Bellman, Eric, 74
 Benjamin, Walter, 217
 Berreman, Gerald D., 261
 Bhabha, Homi K., 5, 21, 43
 Bhabha, Jacqueline, 5, 89
 Bhadrak, 77, 136
 bhajans, 209
 Bhalla Commission, 114
 Bhan, Rohit, 135, 242, 297-298
 Bharatiya Janata Party, BJP, 80, 129, 269
 Bhat, Gowhar, 133, 226
 Bhattacharya, Neeladri, 77
 Bhattacharya, Sabyasachi, 77
 Bhindranwale, Jarnail Singh, 191, 296
 Bickford, Louis, 29
 Biju Janata Dal, 219
 Biju Mathew, 299
 biopolitics, biopower, 218, 296
 Blumberg, Rae Lesser, 64
 Boesten, Jelke, 143
 Bolte, Patrick, 22
 Border Security Forces, 118
 Borneman, John, 44
 Bosnia, 31, 43, 68
 bounties, 117
 Bourgois, Philippe, 45
 Bouvard, Marguerite Guzman, 64
 Boyd, Rosalind, 62
 Boyle, Michael J., 44

- Brahm, Eric, 237
Brasil: Nunca Mais, 65
 Brazil, 29, 40, 60, 65, 68, 237, 262, 265
 Brazilian Catholic Church, 65
 Brazilian Truth Commission, 235
 BRICS, 60, 74
 British Broadcasting Corporation, 74, 85, 130, 219
 British Government of India Act, 87
 Broadbent, Edward, 34
 Bubandt, Nils, 80
 Buchanan, Allen E., 33
 Buendia, Rizal G., 22, 34
 Buikema, Rosemarie, 67
 Bukhari, Parvaiz, 98, 119
 Bukhari, Sujaat, 98, 119
 Buluswar, Shashi, 27, 62
Buried Evidence, 125, 277
 Burk, Connie, 246
 Burnell, Peter, 34, 309
 Butalia, Urvashi, 25, 49, 224, 263, 297
 Butler, Judith, 4, 27, 46, 261
 Campbell, Colm, 19-20, 27, 29-32, 59, 219, 227, 229, 261, 297
 Cano, Ignacio, 65
Cantú v. Mexico, 292
 Carvalho, Nirmala, 288
 caste, caste oppression, 7-8, 36, 45-46, 49-50, 56-57, 63, 78, 85-89, 107, 165, 194, 243, 261, 291
 Cavatorta, Francesco, 64
 Census, 87, 203, 275
 Center for Economics and Business Research, 5, 74
 Central Bureau of Investigation, CBI, 114, 128, 133
 Central Intelligence Agency, 125
 Central Reserve Police Force, 118
 Chakma, Suhas, 118
 Chakrabarty, Dipesh, 43
 Chakravarti, Uma, 78
 Chandrashekar, C. P., 74
Charanjit v. Punjab, 280-281
 Charlton, Thomas L., 261
 chastity, 164, 168, 282, 290
 Chatterjee, Indrani, 20, 22
 Chatterjee, Partha, 4, 22, 33, 43, 49, 77, 79, 90
 Chatterji, Angana P., 4, 22, 40, 43-45, 47, 78-80, 82, 84-87, 91, 108, 122-127, 135-139, 219, 243, 264, 268-270, 276-277, 279, 298-299
 Chatterji, Bhola, 77
 Chaudhry, Lubna Nazir, 49, 91
 Chellaney, Brahma, 112
 Chengappa, Raj, 274
 Chenoy, Anuradha M., 112, 124
 Chester, Lucy P., 21
 Chhattisgarh, 21, 77, 219, 270
 children, 27, 48-49, 53-54, 56, 64-65, 112, 116, 127, 129-131, 154, 165, 182-184, 187-188, 190-191, 193, 195-196, 199-205, 207, 211-212, 220, 235, 248, 253, 264, 267, 274, 285, 298
 Chile, 26, 59, 68, 237, 265
 Chima, Jugdep S., 275
 China, 21, 41, 60, 74, 120, 263
 Christianity, 86-87, 135, 137, 249
 Christians, 50, 78, 86-87, 99, 108, 124, 129, 135-139, 159, 161, 166, 209
 churches, 136-138
 cisgender, 16, 45, 48, 51, 262
 Citizens for Justice and Peace, CJP, 12, 131, 134, 157, 225, 279
 Citroni, Gabriella, 69, 266
 CIVIC, 40-41, 80
 civil disobedience, 118
 civil liberties, 27-28, 33, 38, 84, 110, 118, 220, 263
 Civil Society Coalition on Human Rights in Manipur and the UN, 52, 83, 294
 Clad, James, 121
 Clark, Donald, 14, 34, 53
 Clark, Fiona C., 14, 34, 53
 class, 5, 36, 45, 47, 50-51, 57, 63, 88-89, 125, 135, 184, 224, 261, 268, 291
 class action suits, 224
 Code of Criminal Procedure, 82, 250, 275
 Cold War, 41, 266
 Collaborative Network, 9
 collective internment, 220
 collective trauma, 56
 Collectivization, 224
 Cololi, Isabela, 41
 Colombia, 31, 51, 59, 237, 241, 264, 289, 291

- colonial jurisprudence, 35
 command responsibility, 251
 Commission on Reception, Truth and Reconciliation, 66
 Commissions of Inquiry Act, 273
 Committee for the Protection of Human Subjects, 10
 Committee on Enforced Disappearances, CED, 69
 Committee on the Elimination of Discrimination against Women, 55, 132, 271, 276, 294-295
 Committee on the Elimination of Racial Discrimination, 50
 Commonwealth Human Rights Initiative, 94
 communal, 6, 78, 81, 96, 102-103, 134, 147, 157, 165-166, 198, 200-201, 212, 219, 242, 261, 277, 299
 communalism, 6, 77-78, 137, 261, 278
Communalism in Orissa, 137
 communalization, 78, 249, 261
 Comparative Contexts, 65, 102, 237-238, 251
 Concerned Citizens Tribunal-Gujarat, 49, 131
 conflicted democracy, 4, 28, 76, 233, 258, 261
 Conflict Resolution, 9, 15, 57-58, 62, 121, 131, 226, 228
 conflict violence, 8, 10-11, 23, 26, 30, 51-52, 89-90, 122, 253-254
 Congress of Vienna, 50
 Congress Party, 81, 134
 Conrad, Sebastian, 14
 consent, 10, 13, 64, 104, 163-164, 268, 274
 consociational, 22
 Constitution of India, 21, 84, 86, 94-95, 120, 165, 219-220, 271, 273, 281, 296
 Constitution (Scheduled Castes) Order, 87
 Constitution (Scheduled Castes) Order (Amendment) Bill, 87
 contextual analysis, 163, 166
 continuum of violence, 42, 58, 89, 143
 Convention on the Elimination of All Forms of Discrimination against Women, CEDAW, 54
 Convention on the Prevention and Punishment of the Crime of Genocide, CPPCG, 93
 Convention on the Rights of the Child, CRC, 56, 144
 conversion, 84-86, 135, 137-138, 270
 Cook, Rebecca J., 55, 186
 Coomaraswamy, Radhika, 63
 cordon-and-search operations, 123
 counterinsurgency, 112, 298
 counter-memory, 10, 29, 35, 87, 180, 234, 238
 cow protection movement, 85
 cow slaughter, 85, 136
 Craps, Stef, 261
 crime against humanity, 42, 163, 264, 289
 Crime Branch, 156, 160-161, 287
 crimes against modesty, 168, 272
 criminalization, 87, 104, 113, 163-164, 235
 Criminal Law (Amendment) Act, 103, 274-275, 290
 cross-border dimensions, 26, 76
 Crossette, Barbara, 112
 CrPC, 82, 103, 122, 152, 173, 269
 CRPF, 118, 121, 127, 194-195, 298
 cultural dominance, 44
 cultural nationalism, 22, 91, 108
 cultural survival, 27, 35, 88
 culture of impunity, 173, 184, 275
 culturesscapes, 53
 curfew, 82, 110
 Cuttack, 135-136, 288
 cycles of violence, 218, 230, 234, 258
 Dabhi, Parimal A., 101
 Dalit, 8, 21, 51, 77, 87-89, 135-136, 138, 159, 180, 254
 Daly, Erin, 31, 59-60
 damaal, 200, 203, 207
 Danan, Liora, 76
 danga, 204
 Daniel, Valentine, E., 260
 Danspeckgruber, Wolfgang F., 33
 Darbar Sahib, 110, 183, 188-190, 195-196
 Das, Arul, 3, 5, 20, 22-24, 26-28, 43, 45, 49, 76, 91, 136, 179-181, 256, 263, 265
 Dasgupta, Manas, 85, 134, 270, 278, 286
 Das, Veena, 3, 5, 20, 22-24, 26-28, 43, 45,

- 49, 76, 91, 136, 179-181, 256, 263, 265
- Dauer, Sheila, 46
- Davis, Laura, 234, 236
- Dayal, John, 288-289
- Day of Dignity, 67
- D'Costa, Bina, 91, 263
- de Alwis, Malathi, 48
- death certificates, 65, 190, 253
- death penalty, 104, 207, 274
- Decade of Disappearances, 113
- decolonial movements, 3, 20
- decolonial scholars, 43
- degradation, 195
- dehistoricization, 43
- dehumanize, 57, 189
- Delhi, 5, 12, 74, 76, 89, 100, 102-103, 111, 121, 269, 273, 275, 277, 282, 293
- demilitarization, 121, 234
- democracy, 3-5, 22, 28-31, 36, 47, 59, 65, 73, 76-78, 227, 233-234, 258, 261-263
- de-notification, 87
- Denzin, Norman K., 262
- Deol, Harnik, 118
- depression, 212
- Derrida, Jacques, 19
- Desai, Akshayakumar Ramanlal, 128
- Desai, Mihir, 78, 131, 137, 304, 312, 318, 388
- Devi, Manorama, 83, 87, 271
- Dhawan, Himanshi, 93
- Dias, Charles, 270
- diasporas, 20, 262
- dictatorship, 47, 217
- Digal, Gajendra, 161-162, 289
- Dirks, Nicholas B., 19, 49, 261
- Dirty War, Argentina, 67
- disciplinary power, 4
- discrimination, 35, 49-50, 54-56, 68-69, 78, 89, 132, 143-144, 163, 165, 167-168, 174, 256, 266-267, 271, 273-274, 276, 291, 294-295
- displacement, 28, 53, 63, 74, 123, 125
- distress-sell, 202
- disturbed area, 122
- Diwali, 210
- DNA, 65, 225
- Doaba, 146, 279
- Doda, 128, 330
- domestic violence, 63-64, 89, 271, 274, 289
- dominant discourses, 78
- Doniger, Wendy, 34, 261
- Dossa, Parin, 180
- dowry, 88, 274
- Drake, St. Clair, 21
- drugs, 183, 265, 271, 289
- Dudouet, Veronique, 59
- Duggan, Colleen, 63-64
- Dupuy, Kendra, 39, 94
- Dupuy Pierre-Marie, 94
- Durrani, Nusrat, 41
- Dutta, Abhijit, 283
- East Timor, 31
- Eckel, Jan, 39
- economic justice, 61
- economic redress, 48, 223
- Economic & Social Council, 295
- Edwards, Alice, 55
- Edwards, Margie L. Kiter, 46
- Eid, 202, 205, 208
- Eide, Asbjørn, 35
- Ekal Vidyalaya, 80, 269
- El Salvador, 29, 31, 64, 291
- emasculating, 47, 51
- Encyclopædia Britannica, 21
- enforced disappearance, 42, 53, 69, 112, 238, 244, 264, 267
- Engineer, Asghar Ali, 51, 78
- Englishes, 16
- Enlightenment, 35
- Ensaaf, 114-115, 117, 276
- episodic violence, 6, 26-29, 61, 76, 80, 82, 85, 89-90, 102, 230, 247
- epistemic disobedience, 107, 275
- Essa, Azad, 226
- ethnic democracy, 77
- ethnic minorities, 21, 254
- European Court of Human Rights, 94
- European Union, 41
- Evans, Alexander, 66, 125
- Evans, Christine, 66, 125
- Extrajudicial Executions, 40, 53, 112, 244
- Fabian, Johannes, 262
- fake encounter, 40, 123, 277
- Faleiro, Sonia, 80
- Farabundo Martí para la Liberación Nacional, FMLN, 64

- fast-track courts, 89, 104
 Fear and Forgiveness, 241
 federalism, 110
 Feldman, Allen, 3, 43, 180
Fernández Ortega v. Mexico, 292
 Ferraro, Tristan, 297-298
 Ferreira, Patrícia Galvão, 65
 feudal-imperial-colonial formations, 3, 20
 First Information Report, FIR, 106, 160
 Fischer, Martina, 255
 Fisher, Max, 167
 Fisher, Melissa, 143
 forced pregnancy, 44, 63, 264
 Ford Foundation, 131, 278
 forensic evidence, 171-172, 175, 225, 293
 Foucault, Michel, 4, 22, 29, 45-46, 49, 218, 263
 foundational violence, 3, 19, 76
 Fourth Rajputana Rifles, 150
 fratricidal killings, 82
 Freedman, Lawrence, 132
 freedom, 22, 28, 39, 70, 79, 84-86, 119, 124, 135, 251, 253, 264-265, 270, 276, 279
 Freedom House, 28, 124
 Freedom of Religion Acts, 85, 135, 251, 270
 Ganai, Naseer, 150
 Gandhi, Indira, 111, 220, 259, 262
 Gandhi, Nandita, 88
 Gangoli, Geetanjali, 132
 Ganguly, Meenakshi, 39-40, 76, 91, 269
 Ganguly, Sumit, 21
 Gawakadal, 121
 gay, 16, 90, 265, 327, 336, 375
 Gaynair, Gillian, 89, 323
 Gaza, 40
 Gellner, Ernest, 33, 323
 gender identity, 45-46, 246
 gender presentation, 52, 63
 genealogy, of violence, 217-218
 Geneva Declaration on Armed Violence and Development, 230, 323
 genital mutilation, 48
 geographicity, 20
 Gera, Shalini, 299
 ghar vapasi, 135
 Ghassem-Fachandi, Parvis, 73, 79, 86-87, 154
 Ghildiyal, Subodh, 87
 Ghosh, Peu, 110
 Giles, Wenona Mary, 53, 323
 Global Democracy, 28, 262-263
Global Gender Gap Report, 75
 Global North, 28, 51, 74, 224, 262
 Global Peace Index, 73
 Global South, 20-21, 23, 28, 224, 262-263
 Godhra, 101, 129, 200, 210, 212
 Goldstein, Daniel M., 34
 González, Eduardo, 67
 González, Olga, 67
 Gossman, Patricia, 78
 Governance and Social Development Resource Center, GSDRC, 54
 Government of India, 83, 87, 102, 114, 133, 176, 273, 277
 Government of Jammu and Kashmir, 126, 248
 Gready, Paul, 32, 60
 Grewal, Inderpal, 49, 111
 grief, 213, 239, 253
 Griffiths, Martin, 279
 Grimm, Karin, 120, 123
 Groome, Dermot, 67, 94
 Gross, Aeyal M., 5, 59, 68-69, 84, 122, 264-266
 Gross Domestic Product, GDP, 5
 group violence, 4, 21, 182
 Grover, Vrinda, 70, 136, 138, 229, 287
 guarantee of non-repetition, 70
 Guatemala, 20, 29, 58, 62, 66, 102, 264-265
Guatemala: Memory of Silence, 66
 Guatemala National Revolutionary Unity (URNG), 66
 Guha, Ranajit, 21, 49, 77
 Guha, Sumit, 21, 49, 77
 Guidelines on Encounter Deaths, 97
Gujarat v. Chhara, 278, 284-287, 290-292, 295
 Gujjars, 187, 243
 Gulbarg, 134, 329, 341
 Gupta, Akhil, 21, 28, 76, 285
 Gupta, Alok, 90
 Gupta, Prakriti, 124
 Gurdaspur, 111-112, 118, 190g
 urdwaras, 110, 189

- Guru Granth Sahib, 196
 habeas corpus, 113, 220, 314
 Habibullah, Wahat, 151, 282-283
 Hagen, Jamie J., 48, 327
 Hague Conventions, 54, 263
 Hague Tribunals, 59
 Haksar, Nandita, 78
 Hames-García, Michael, 43, 299
 Hannum, Hurst, 33-34, 228, 234, 236, 265
 Hansen, Thomas Blom, 4, 20, 34, 44
 Haritaworn, Jintana K., 41, 51
 Harmandir Sahib, Darbar Sahib, 110, 296
 Harris, Gardiner, 156, 295
 Hashmi, Shabnam, 131
 Hayes, Niamh, 37
 Hayner, Priscilla B., 66, 238
 Hazarika, Sanjoy, 112
 healing, 7, 14, 29, 92, 106, 151, 181, 223-224, 228, 234, 236, 239, 246, 261, 265
 Health and Human Rights Info, 45
 heteronormative, 43, 47, 220, 234
 Heyns, Christof, 83, 269, 272, 293-294
 Hijra, 52
 Hilberg, Raul, 86
 Hindu cultural dominance, 44
 Hinduized Adivasis, 131, 137
 Hindu Mahasabha, 135
 Hindu Nationalism, 44
 Hindu Pandits, 120, 125
 Hindutva, 44, 77, 135, 137, 210, 270, 274, 299
 Hindutvadis, 44, 209
 Hinnells, John R., 27, 90
 Historical Clarification Commission, CEH, 66
 Holocaust, 35, 42, 51
 Ho, Mian Lian, 155, 210
 homonationalism, 51
 homophobic, 43, 51
 homosexuality, 51-52, 90
 honor, 30, 47, 65, 67, 88, 196, 221, 243, 246-248, 290
 Hoshiarpur, 118, 182
 housing, 125, 128, 134, 202
 Hovannisian, Richard G., 29
 Howell, Clare, 46
 HRW, 5, 39-40, 50-51, 83, 89, 95, 100-101, 107, 112, 114-115, 117-118, 122-126, 128, 130, 134, 154, 173, 270, 273-278, 282-286, 290, 293-295
 Human Development Index, 73
 Human Rights Committee, 38, 83, 173, 271, 294
 Human Rights Council, 40, 266, 270-271, 277, 291
 Human Rights Watch, HRW, 5, 102, 269, 273, 281-282, 285
 Human Subjects, 10
 humility, 247, 256
 hybridities, 19
 hyper-masculinization, 82, 269
 hyper-militarization, 34
 hyper-nationalism, 21, 34
 Immigration and Refugee Board of Canada, 226
 immunity, 48, 83, 122, 153, 163, 165, 173, 294, 328
 impunity, 5, 8, 27, 48, 53, 58, 61, 68, 70, 82-83, 90, 113-114, 117, 122, 143-144, 163, 165, 169, 173, 184, 219, 221-223, 225, 228, 232, 234, 237, 239, 243, 248-251, 266, 274-275, 279, 294, 298
 Imroz, Parvez, 40, 123-127, 226, 277
 inclusion and exclusion, 13
 Indian Foreign Services, 110
 Indianness, 79
 Indian occupation, 119
 Indian Penal Code, IPC, 14, 90, 103-104, 122, 134, 163, 275, 278, 280
 Indian Police Service, IPS, 155, 210
 Indian Supreme Court, 264, 273, 290
 Indian women's movement, 88
 indigeneity, 36, 46, 50, 56-57, 89, 165
 individualization, 224
 individual trauma, 92
 Indonesia, 50
 Institute for Economics and Peace, 73
 Institute for the Study of Human Rights, Columbia University, 239
 Institute of Mental Health and Neurosciences, 125
 insurgent movements, 223
 Inter-American Commission on Human Rights, 163, 289-290
 interdisciplinarity, 9

- Internal Displacement Monitoring Centre, 125
- internally displaced persons, 20, 53
- international armed conflict, IAC, 24
- International Center for Transitional Justice, ICTJ, 19
- International Committee of the Red Cross, ICRC, 24
- International Convention for the Protection of All Persons from Enforced Disappearance, ICPED, 67-68, 94, 97
- International Convention on the Elimination of All Forms of Racial Discrimination, ICERD, 68, 97 266
- International Court of Justice, ICJ, 5
- International Covenant on Civil and Political Rights, ICCPR, 33, 144, 274
- International Criminal Court, ICC, 38, 41, 289
- International Criminal Tribunal for Rwanda, ICTR, 48
- International Criminal Tribunal for the former Yugoslavia, ICTY, 56
- international dimensions, 6, 107
- international humanitarian law, IHL, 24, 37, 56, 277
- International Human Rights Law Clinic, UC Berkeley, 15, 265
- international human rights law, IHRL, 15, 37, 68, 174, 218, 265
- International Initiative for Justice, IJJ, 26, 49, 129
- International Labor Organization, ILO, 75
- International Monetary Fund, IMF, 73
- International People's Tribunal on Human Rights and Justice in Kashmir, IPTK, 125-126, 226, 248
- international treaties, 30, 94-95
- intersex, 16, 46, 48, 90, 265
- Inter Services Intelligence, ISI, 121
- intimidation, 44, 56, 94, 128, 147, 149, 161-162, 164, 168, 173, 252, 277
- IRIS Knowledge Foundation, 74
- irreligiosity, 36, 45, 63, 89
- Islamophobia, 40-41, 235
- Israel, 40, 43, 51, 256, 268
- Jacinto, Leela, 28
- Jacoby, Tim, 7, 23
- Jaffrelot, Christophe, 44, 79, 128, 132, 157, 270, 277-278
- Jafri, Ehsan, 129, 134-135, 278
- Jafri, Zakia; protest petition of, 129, 134-135, 278
- Jaijee, Inderjit Singh, 111-114, 117-119, 146, 221, 275, 296
- Jaisingh, Indira, 131
- Jaleel, Muzamil, 80, 104, 126-127, 277, 283
- Jamabani, 136
- Jamal, Manal A., 65
- Jamia Teachers' Solidarity Association, 84
- Jammu and Kashmir, conflict, 6, 9-10, 12-13, 21, 44, 61, 76, 80, 82-83, 85, 93, 97-98, 104, 107-109, 119-122, 124, 126-127, 143-145, 150-151, 153, 219-221, 228, 235, 241-242, 247-248, 251, 253, 261, 269-270, 276-277, 281, 306, 321-322, 325, 330-331, 352, 382
- Jammu Kashmir Coalition of Civil Society, JKCCS, 82, 153, 226
- Jammu & Kashmir High Court, 127
- Jan Commission, 102, 127
- JanMohamed, Abdul, 4, 23, 43, 79, 263
- jati, 261
- Jawahar Yojna, 202
- Jayawardena, Kumari, 48, 88
- Jeffery, Patricia, 43
- Jeganathan, Pradeep, 20, 43, 49
- Jewish, 35, 43
- Jha, Prashant, 85, 283
- Jha, D.N., 85
- JKCCS, 82, 153, 226
- Johnson, E. Patrick, 46, 49, 62
- Joint Delegations of National Women's Organizations, 274
- Joshi, Binoo, 121
- Joshi, Sandeep, 82
- Juan Carlos Abella v. Argentina*, 263
- Juhapura, 129
- Justice Jan Commission, 127
- Justice Reddy Commission, 83
- Justice Verma Committee, 103, 275
- Kabir, Ananya Jahanara, 91, 131, 242-243
- Kak, Sanjay, 120, 125
- Kandhamal, 101, 136-139, 159, 249, 289
- Kannabiran, Kalpana, 131
- Kanungo, Sujata, 125, 136

- Kaplan, Caren, 49
 Kapur, Ratna, 70, 90, 129, 154, 229
 Karkazis, Katrina, 46
Karnataka v. Manjanna, 293, 381
 Kashmir, 6, 9-10, 12-13, 21, 44, 61, 76,
 80, 82-83, 85, 93, 97-98, 102, 104,
 107-109, 119-127, 143-145, 150-153,
 164-176, 219-221, 225-226, 228, 235,
 241-244, 247-251, 253, 261, 263, 269-
 270, 276-277, 281, 297-298
 Kashmir, conflict, 6, 9-10, 12-13, 21, 44,
 61, 76, 80, 82-83, 85, 93, 97-98, 102,
 104, 107-109, 119-127, 143-145, 150-
 153, 164-176, 219-221, 225-226, 228,
 235, 241-244, 247-251, 253, 261, 263,
 269-270, 276-277, 281, 297-298
 Kashmiri Pandit Network, 243, 298
 Kaul, Suvir, 120
 kaumvaad, 200
 Kaur, Jaskaran, 275
 Kaur, Mallika, 118, 124-125, 275
 Kazi, Seema, 49, 120, 263, 277
 Kellenberger, Jacob, 37
 Kenya, 29
 Kenyatta, Uhuru Muigai, 236
 Khalidi, Omar, 22, 78-79, 111
 Khalistan Commando Force, 44, 113
 Khalra, Jaswant Singh, 12, 114, 116, 226,
 276, 297
 Khalra Mission Organization, 12, 226
 Khalra, Paramjit Kaur, 116, 226
 Khalsa, Surat Singh, 118, 191
 Khanna, Renu, 22
 Khan, Saeed, 96, 134, 279
 Khetan, Ashish, 279
 Kidwai, Saleem, 46
 Kleinman, Arthur, 3, 20, 23, 28, 43, 180,
 263
 Klingner, Jeff, 364
 knowledge, 4, 7, 10, 11, 23, 48, 225, 229,
 234, 239
 Kochi, Tarik, 19
 Kodnani, Mayaben Surendrabhai, 134,
 285-286
 Koenig, Mark, 41
 Kohli, Ambika, 292
 Kolkata, 76
 Kondh, 136
 Kothi, 52
Koushal v. Naz Foundation, 90
 Krishan, Radha, 146-148, 276, 280-281,
 292, 294
 Kui, 136
 Kumar, Amitava, 41
 Kumar, Ram Narayan, 107, 110
 Kunan Poshpora, 93, 98, 127, 150-151,
 273, 277, 281-282, 284, 292
 Kunz, Rahel, 120, 123
 Kupwara, 127, 150-151, 153, 171, 281-
 282, 284
 Ladakh, 120
 Laithangbam, Iboyaima, 83
 Lakshmi, Rama, 156
 Lal, Vinay, 146-148
 Lambourne, Wendy, 61
 Lancer International, 282-283
 land reforms, 238
 Langa, Mahesh, 133
 langar, 196
 Larson, Gerald James, 22
 Lategan, Laetus O., 262
 Lawyers Collective, 90
 League of Nations, 50
 legal analysis, 15, 265
 legal redress, 40
 Lehning, Percy B., 33
 Levine, Corey, 63, 66
 Lewis, Bridget, 21, 30
 Liberhan, M.S., 102
 Liberia, 26
 life cycles of violence, 234
 life worlds, 20, 180
 Limkheda, 131
 Lipsky, Laura van Dernoot, 246
 listening, 179-180, 228, 247, 257
 Litrichin, Vera, 63
 livability, 23
 livelihood, 53, 79, 85, 122, 223, 235
 Lloyd, David, 4, 43, 79
 local knowledge, 10
 Lock, Margaret, 43, 212, 263
 Lodge, Tom, 238
 Lok Sabha, 94, 270
 Lone, Mahesh S., 296
 Loomba, Ania, 19, 22, 47-48, 79, 89, 261
 low-intensity conflict, 61, 247-248

- Ludden, David E., 79
 Lugones, María, 19
 Lundgren, Rebecka, 46
 Lutz, Ellen L., 228, 234, 236
 Macauliffe, Max Arthur, 86
 Maguire, Rowena, 21, 30
 Mahapatra, Debidatta Aurobinda, 121
 Mahmood, Cynthia Keppley, 53, 113, 117
 Mahmood, Saba, 4, 43, 79
 Majoritarian Democracy, 22
 majoritarianism, 22, 78, 235, 261
 majority-minority binary, 21
 Malkangiri, 137
 Manchanda, Rita, 95, 120, 263
 Mandair, Arvind-Pal, 77
 Mander, Harsh, 131, 241
 mandirs, 209
 Manecksha, Freny, 153, 168
 Mani, Lata, 46, 262
 Manipur, 52, 76, 83, 219, 269, 294
 Manjoo, Rashida, 23, 95, 175, 265, 271, 290-291, 294
 Maoist, 80, 118, 137, 159, 279
 marginalization, 23, 43, 48, 56, 58, 64, 145, 291
 marginalized genders, 42
 marginal-subaltern, 21
 marital rape, 89, 104, 274
 marriage, 113, 124, 184, 193-194, 290
 martyr, 184
 Masood, Bashaarat, 153, 293-294
 mass graves, 53, 125, 243, 297
 mass violence, 6, 8, 11, 24, 26, 29, 99, 104, 111, 130, 223, 250-252
 Mathew, Biju, 219, 299
 Mathew, Liz, 219, 299
 Mayurbhanj, 136
 McAuliffe, Pádraig, 30
 McCoy, Jennifer Lynn, 237
 McCrudden, Christopher, 262
 McDermott, Yvonne, 37
 McRaith, Calleigh, 23, 265
 McVeigh, Tracy, 167
 Meghalaya, 83, 269, 294
 Mehta, Akshay H., 279
 Mehta, Priya, 279
 Meintjes, Sheila, 47
 Memoria Abierta, 67
 memorial, 68, 193-194, 196-197, 202, 208, 213
 memorials, 65, 184, 196, 208, 238
 Méndez, Juan E., 69, 272
 Menon, Nivedita, 88
 Menon, Ramesh, 274
 Menon, Ritu, 49
 mental health, 13, 125, 197, 207, 212, 239, 245, 265
 Merry, Sally Engle
 Mertus, Julie, 62
 Metta, Marilyn, 180
 Mezarobba, Glenda, 65
 Mhlanga, Brilliant, 20
 Mignolo, Walter D., 19-20, 23, 34, 43, 107
 militancy, 26, 105, 111-113, 116-117, 120-121, 124, 182, 189, 195, 276
 militants, abuses by, 112-113, 116-117, 119, 122-124, 126, 128, 147, 189-190, 195, 243, 249, 276, 280, 298
 militarization, 23, 42-43, 48, 107, 150, 219, 335
 Millennium Development Goals, 75
 Miller, Alice M., 265
 minoritization, 4, 42-43, 76-77, 79, 90, 108, 198, 217-218, 220, 235, 261
 minoritized studies, 43
 minority, 6, 8-9, 11, 21-22, 35-36, 43, 47-51, 66, 74, 76, 78-82, 84-86, 88-93, 95, 102, 107, 110, 120, 125, 128-129, 145-146, 164, 179-181, 219, 229, 241, 249, 261, 264-265, 270, 274
 Misra, Leena, 129, 273
 Misra, Ranganath, 129, 273
 Mitchell, David S., 263, 289
 Mitta, Manoj, 111, 157, 278
 Mizoram, 83, 269
 Mladjenovic, Lepa, 63
 MoD, 127
 Modi, Narendra, 81, 101, 129, 134, 166
 Mohan, C.S., 27, 81, 288
 Mohan, Rohini, 27, 81, 288
 Mohanty, Chandra Talpade, 43, 49, 299
 Mohanty, Satya, 43, 49, 299
 Mohan, Vishwa, 27, 81, 288
 Moon, Claire, 29
 moral economy, 223

- Moser, Caroline O. N., 14, 53
 Mosque, 102
 mourning, national, 29, 208
 Moya, Paula, 43
 Moyn, Samuel, 27, 34-37, 39-40
 Mufti, Aamir, 43, 79, 264, 277
 Mukherjee, Krittivas, 75
 Mumbai, 12, 77, 102
 Muslim League, 135
 Mutua, Makau, 39, 41
 Myers, Lois E., 261
Nachova v. Bulgaria, 295
 Nagaland, 83, 269, 294
 Nair, Harish V., 84, 117
 Nair, Ravi, 84, 117
 Namibia, 31
 Nanavati Commission, 100-101, 273
 Nanavati, G.T., 100-101, 273
 Nanda, Harbaksh S., 112
 Nandy, Ashis, 46
 Nani Sanjeli, 131
 Naqvi, Jawed, 69
 Naqvi, Yasmin, 69
 Narmada Bachao Andolan, 268
 Narmada Valley, 77, 268
 Naroda Patiya, 130, 133-134, 154-155,
 157, 167, 221, 278, 285
 Narrain, Arvind, 90
 National Advisory Council, 81
 National Commission for Minorities,
 NCM, 86, 98, 270, 273, 295
 National Commission for Women, NCW,
 98-99, 273
 National Communal Harmony Fund, 201
 National Crime Records Bureau, 88
 National Day for the Commemoration of
 the Disappeared, 68
 national emergency, 220
 National Human Rights Commission,
 NHRC, 70, 92, 96
 National Minorities Act, 86
 National People's Tribunal on Kandhamal, 139
 National Sample Survey Organization, 74
 national security, 22, 24, 122
 nation-states, 4, 19, 35, 40, 62
 Native Americans, 42
Nat'l Human Rights Comm'n v. Gujarat,
 286
 natural rights traditions, 35
 Naxalbari, 21
 Ndlovu-Gatsheni, Sabelo J., 20
 Negi, S.S., 86
 Nepal, 28, 234, 263-264
 Nesiah, Vasuki, 54, 62-63
 Nestle, Joan, 46
 Nigeria, 41, 75, 257
 Niyamgiri, 77
 Nobbs, Katherine, 34
 Nobel Women's Initiative, 62
 non-alignment, 36
 non-conforming gender expression, 234
 non-international armed conflict, NIAC,
 25, 38
 nonprofit organizations, 52, 64
 non-vaginal penetration, 163
 Noorani, A. G., 120
 Nordstrom, Carolyn, 261
 Northern Ireland, 30-31, 256
 Norwegian Refugee Council, 74, 125
 nostalgia, 242
 Nuremberg Trials, 36, 54
 Nussbaum, Martha C., 34
 occupation, 119, 242, 297-298
 Ode, 130
 Odisha/Orissa, 6, 137, 219, 287-289, 292
 Odisha Forum for Social Action, 12
 Odisha Freedom of Religion Act, 135, 270,
 279
 Odisha Prevention of Cow Slaughter Act,
 136
 Office of the High Commissioner for
 Human Rights, OHCHR, 24, 36-38,
 42, 69, 238, 294
 official history, 24, 29
 Olivelle, Patrick, 261
 Operation Bluestar, 110-111
 Operation Rakshak II, 112
 Operation Sadhbhavana, 124
 Operation Woodrose, 110
 Oppenheim, L., 37
 opportunistic violence, 44
 oral history, 9-12, 179, 299
 Organization for Economic Cooperation
 and Development, OECD, 57
 Orientalist, 19, 77
 Osuri, Goldie, 44

- othering, 23, 79, 111, 198
 O'Toole, Laura L., 46
 Our Lady of Charity Catholic Church, 136
 outcome-specific right, 34
 Oxford Poverty and Human Development Initiative, 74
 Oxford Research Group, 354
 Pakistan, 6, 28, 80, 110, 120-121, 183, 189, 262-263, 268, 276
 Pana, 136
 Panda, Dharendra, 139, 270
 Pandey, Gyanendra, 48, 78, 85
 Panikkar, K.N., 78, 261
 Papadopoulos, Yannis, 22, 59
 parole, 201-202, 206, 211, 249
 Parsai, Gargi, 82
 Parsi, 180, 199
 Partition, 6, 110, 187, 223, 263, 275
 Parvez, Khurram, 226, 277
 Pasricha, Anjana, 122
 Patel, Jaideep, 134
 Patnaik, Lalmohan, 101, 161-162
 Patnaik, Santosh, 101, 161-162
 Pattnaik, Sudhir, 136, 287-289, 292
 Paul, Sonia, 60, 90
 Paz y Paz Bailey, Claudia, 66
 Pazzanese, Christina, 5
 PCTV, 96
 PeaceWomen, 57
 Peer, Basharat, 15, 129
 Pejic, Jelena, 38
 Pelly, Grace, 34, 84
 penetration with an object, 163
 penile-vaginal penetration, 163
People's Union for Democratic Rights v. Union of India, 270, 295, 381
 Peréz, Emma, 19p
 performative violence, 49
 Peri, Yoram, 22P
 permanent Mission of India to the UN, 5
 perpetrators, 9, 14, 27-28, 30, 48, 52-53, 58, 69, 88-89, 92, 98, 114, 117, 130, 139, 143, 145, 153-156, 166-170, 172-174, 189, 192, 199, 201, 203, 205-206, 221, 223, 228, 234, 237, 244, 246, 248, 251-254, 284, 294
 persecution, 44, 65, 68
 personal integrity, 54
 Peru, 51, 62, 67, 174, 237, 295
 Pervez, Ayesha, 356
 Peterson, V. Spike, 42
 Pew Research Center, 73
 Phoolka, H.S., 111, 347
 Physicians for Human Rights, 123-124, 270, 276-277, 298
 Pillay, Anu, 3, 5, 23, 36, 41, 47, 228
 Pillay, Navanethem, 3, 5, 23, 36, 41, 47, 228
 Pineschi, Laura, 264
 Pinochet, Augusto, 26, 59, 237
 Pirwali Bhagol, 130
 Pitre, Amita, 167
 Planning Commission, 93
 plebiscite, 120
 pluralist commitments, 22
 PMHLC, 74-75, 84, 129
 police, 25-26, 44, 58, 75, 78, 82, 90, 94, 101-105, 111-114, 116-119, 121, 127, 130-131, 133-134, 137-140, 145-160, 162, 164-173, 176, 183-196, 202, 206, 208-213, 221, 226, 234, 248, 251-252, 272-275, 280-285, 287, 292-293, 296
 political economy, 6, 34, 57, 107, 218, 220, 231, 268
 political silence, 180
 political violence, 3, 5-6, 19-20, 23, 27, 34, 76, 78, 80, 107, 228
 Posner, Eric A., 33-34, 36-37, 40-41, 264
 postcolony, postcolonial, 3, 22, 43, 46, 79, 247, 258, 261
 post-socialist, 19
 Power, Margaret, 43, 77, 91
 power-sharing, 21
 Pradhan, Ashok, 101
 Praeg, Leonhard, 19
 Prashad, Vijay, 40
Premiya AKA Prem Prakash v. Rajasthan, 290
 Press Council of India, 152, 168, 282-283
 Prevention of Terrorism Act, POTa; repeal of, 83
 Prevention of Torture Bill, PTB, 94, 96
 professionalization, 39
 prosecution, 29, 69, 83, 92, 101, 104, 106, 112, 122, 126-127, 147, 152, 157, 161, 165, 167, 169-170, 172-174, 246, 250-

- 251, 275, 284
Prosecutor v. Akayesu, 42, 290
Prosecutor v. Delalic, 263
Prosecutor v. Musema, 263
Prosecutor v. Tadić, 25, 38, 263
 Protection of Human Rights Act, PHRA, 95-96, 272
 protocols, 4, 7, 9-10, 29, 59, 172, 220, 230, 275, 293
 pro-women laws, 88
 psychosocial, 3, 27, 44, 48, 58, 61, 67, 76, 92, 132, 182-183, 188, 198, 201, 207, 212, 223, 232, 235, 239, 241, 244-247, 250
 Puar, Jasbir K, 51
 Public Interest Litigation, PIL, 153p
 ublic law, 217
 Public Leadership, 9, 64
 Punjab, conflict, 6, 9-12, 21, 42, 44, 61, 76, 82, 97-98, 104, 107-114, 116-119, 143-148, 165, 167-169, 171-176, 179-183, 186, 189-191, 193-194, 219-221, 226, 235, 241, 247-250, 253, 270, 275-276, 280-281, 295-297
 Punjab Human Rights Organization, PHRO, 118
 Punwani, Jyoti, 129
 purdah, 205
 Puri, Jyoti, 21-23, 50, 59, 78, 90, 136, 262-263, 265, 296
 Pushkarna, Neha, 93
 Rabinow, Paul, 29
 racialization, 22, 42, 77-79, 108, 263, 268
Radha Krishan v. Chandigarh, 276, 281
 Rafiq, Zahid, 277
 Raghavan, Srinath, 91
 Raikia, 136
 Rai, Mridu, 120, 125
 Rajagopal, Krishnadas, 273
 Rajan, S. Ravi, 299
 Rajshekhar, M., 139
 Rajwade, Tanaya, 104, 123, 128
 Rajya Sabha, 81-82, 94
 Rakner, Lise, 34
 Ramkripal S, 290
 Ranbir Penal Code, 85, 122, 270
 Randall, Vicky, 34, 309
 Rao, Tanushree, 125, 359
Raquel Martí de Mejía v. Perú, 270, 382
 Rashid, D. A., 359
 Rashtriya Sevika Samiti, 44
 Rashtriya Swayamsevak Sangh, RSS, 44, 209
 Reagon, Bernice Johnson, 49
 Reddy, Gayatri, 52, 83, 277, 359
 Redress, 116, 294
 redress, 3, 11, 40, 48, 54, 70, 91, 94, 98, 111, 116, 143-145, 163, 166, 169, 175-176, 184, 219, 223, 229-230, 232, 267, 294, 330, 343, 360
Reduced to Ashes, 341
 Reed, Esther D., 36, 360
 Rege, Sharmila, 87, 360
 rehabilitation, 29, 49, 53, 70, 81, 92-93, 113, 118, 132, 175-176, 193, 230, 237, 246, 249-250, 267-268, 299
 Rehn, Elisabeth, 62
 Reich, Robert B., 20
 religionization, 22, 77, 119, 145, 249, 263, 275
 Religious Freedom, 79, 84, 251
 re-masculinization, 47
 REMHI, Guatemala, 66
 reservation, 86-88, 254, 271
 Reserve Bank of India, 74
 restitution, 70, 92, 175, 223, 230, 237, 239, 244-247, 254-256
 re-traumatization, 62, 106, 172, 180, 236
 retributive violence, 43-44, 108
Revealed Memories, 65
 Revised Scheme for Relief and Rehabilitation of Victims of Rape, 93
 revolutionary, 64, 66, 184
 rights-based framework, 33
 rights of the dead, 253
 right to a remedy, 30, 68-69, 82, 92, 95, 230, 256, 265-266, 271, 293
 right to heal, 4, 215, 232, 256, 258
 Right to Information Act, 84
 right to political autonomy, 34
 right to religious liberty, 43
 right to reparation, 68
 right to secede, 34
 right to truth, 67, 69, 92-94, 230, 240, 245, 247
 right-wing women, 44, 64

- Robben, Antonius C.G.M., 261
 Robins, Simon, 32, 60
Rochela Massacre v. Colombia, 291
 Roessler, Philip G., 34
 Roht-Arriaza, Naomi, 31, 59, 237, 263, 296-297
 Roman law, 35
 Rome Statute, 37-38, 41-42
 Ron, James, 39
 Roscoe, Will, 46, 361
 Rose, Nikolas, 29, 135, 190
 Ross, Amy, 59, 180, 263
 Ross, Fiona C., 59, 180, 263
 Roth, Kenneth, 41
 routine violence, 48
 Roy, Arundhati, 34, 80, 120, 125, 129, 276
 Roy, Srirupa, 34, 80, 120, 125, 129, 276
 RTI, 84, 96, 126
 rule of law, 5, 22-23, 27, 30, 32, 69, 84, 217, 219, 221, 249
 rumors, 187
 Runyan, Anne Sisson, 42
 Rwanda, 48, 54
 Sachar Committee, 74-75
 Sachar, Rajinder, 74-75
 saffronization, 85
 Sahani, Ajay, 27
 Said, Edward W., 19, 43, 135, 155, 180, 183-186, 188-197, 199-200, 202-203, 205-207, 210-212, 261
 Sampford, Charles, 21, 30
 Sanskritization, 136
 Saraswati, Lakshmanananda, 101, 136-137
 Sarkaria, Mallika Kaur, 124-125
 Sarkar, Sumit, 44, 79, 154, 261
 Sarkar, Tanika, 26, 44, 79, 154, 202, 261
 Sarkin, Jeremy J., 31, 37, 41, 59-60, 238
 Sathre, Roger, 309
 Savarkar, Vinayak Damodar, 44
 Schabas, William A., 37, 48
 Scharf, Michael, 266
 scheduled castes, SC, 87, 136
 scheduled tribes, ST, 21, 87, 136
 Schiffman, Jessica R., 46
 Schmitt, Carl, 217, 220, 277
 Schneider, Edgar W., 16, 20
 Schneider, Gerald, 16, 20
 Schramm, Katharina, 180
 Schuilenburg, Marc, 22
 Scott-Clark, Cathy, 123
 Scovazzi, Tullio, 69, 266
 Second Administrative Reforms Commission, 83
 secondary victimization, 175
 sectarian, 26, 78-79, 147, 198
 Secularism, 43
 securitization, 22-23, 58, 219-220, 228, 235, 263
 segregation, 58, 82
 Sekaggya, Margaret, 95, 271
 self-determination, 3, 20, 33-36, 41, 50, 76-77, 87, 111, 119-120, 217, 240-241, 253, 290, 297
 self-governance, 34-35
Serrano Cruz Sisters v. El Salvador, 291
 Seshadri-Crooks, Kalpana, 20, 261, 299
 Setalvad, Teesta, 82, 131, 135, 201, 278
 Sethi, Raghunath, 136
 sexualized violence, 3-4, 13, 15-16, 19, 26, 30, 42-43, 46-50, 54, 58, 63-64, 88-92, 103, 112, 117, 119, 127, 131, 138, 143, 145-146, 150, 167, 182, 188, 218, 220-221, 224, 227, 229, 233, 235, 244-245, 254, 263-264
 Shackle, Christopher, 77
 Shah Commission, 101
 shakhas, 212
 Shaksgam Valley, 120
 shame, 41, 48, 53, 67, 116, 221, 290
 Shapiro, Richard, 35, 263, 296
 Sharma, Aradhana, 28
 Sharma, S.K., 34
 Sharma, Urmila, 34
 Sharpless, Rebecca, 261
 Shastras, 209
 Sheleff, Leon, 35
 shelter, 117, 138-140, 155, 159-160, 183, 188, 235, 256
 Shelton, Dinah, 70, 175, 230, 237, 266-267, 295
 Shetty, Vinita A, 93
 Shia, 50
 Shinde, Sushilkumar, 81
 Shiv Sena, 80, 102, 137
 Shopian, 127

- Shukla, NehaSiachen, 120
 Sidhu, Jaspal Singh, 112
 Sierra Leone, 31, 62, 67
 Sikkim, 96
 Sikkink, Kathryn, 67
 silencing, 180
 Silver, Nora, 4, 263
 Simelane, Nokuthula, 67, 238
 Simon-Kumar, Rachel, 5
 Singh, Gurharpal, 86
 Singh, Harmandeep, 226
 Singh, Manmohan, 74
 Singh, Patwant, 79, 111-112, 114
 Singh, Perneet, 86
 Singh, Sangat, 87, 110
 single women, 52, 113
 Sinha, Mukul, 131
 Sirleaf, Ellen Johnson, 62
 slavery, 41, 44, 123
 Smootha, Sammy, 77
 social alienation, 218, 227
 social and cultural integrity, 34
 social death, 23
 social difference, 4, 21
 social healing, 7, 228, 234
 socialisms, 36
 social suffering, 3, 180-181, 224
 social upheaval, 3, 5-9, 16, 19-20, 23-24, 26, 28-32, 40, 42-43, 45-47, 49, 52-54, 58, 61, 75-76, 80, 82-83, 86, 89-92, 95-96, 99-100, 106-108, 128, 130, 135, 143-145, 166, 179-180, 218-219, 221, 224, 228-230, 232-233, 235, 239, 241, 244, 247, 253, 258
 Social Welfare Department, 157
 sodomy, 90, 96, 164, 270
 Sohn, Louis B., 37
 Sonwalkar, Prasun, 132
 South Africa, 28, 40, 50-51, 58-60, 67, 237-238, 256, 262
 sovereign power, 217, 299
 sovereignty, 23, 25, 36, 90, 217, 266, 269
 sovereign violence, 4, 24, 27, 34
 Special Commission on Political Deaths and Disappearances, 65
 Special Investigation Team, SIT, 130, 278
 Special Police Officers, SPO, 111
 special security laws, 82-83
 Special Weapons and Tactics, SWAT, 112
 speech, 75, 78, 80, 129, 180, 194, 253
 Speed, Shannon, 45-46
 Spelman, Elizabeth V., 46
 Spivak, Gayatri Chakravorty, 21, 35, 86, 226, 270
 Srikrishna, B.N., 102
 Srikrishna Commission, 102
 Sri Lanka, 28, 40, 68, 70, 234, 263-264
 Srinagar, 82, 121, 150
 Sriram, Chandra Lekha, 59, 263
 Srivastava, Devyani, 294
 Srivastava, Meera, 110
 Srivastava, Mihir, 167
 stakeholders, 31, 59, 68, 103, 230-231, 233-234, 240
 State Commission for Women, SCW, 98
 state forces, 40, 61, 77, 82-83, 89, 93, 104, 106, 117, 122, 128, 139, 150, 165, 173, 182, 189, 194-195, 220, 226, 248, 264, 279
 State Human Rights Commissions, SHRC, 96
 states of emergency, 217-220
 states of violence, 217-219, 227, 234, 247
 Stepputat, Finn, 20
 stereotypification, 43
 Stiglitz, Joseph E., 20, 367
 stigma, 48, 90, 113, 167-168
 Stockholm International Peace Research Institute, 73
 Stoler, Ann Laura, 86
 St. Peter, Denisstructural shifts, 218, 229, 238
 subaltern, 5, 29, 35, 81, 180, 220, 262
 subject of rights, 33
 Subotic, Jelena, 237
 Sudarshan, K.S., 137
 suicide, 42, 82, 137, 190, 205, 207
 Sukuma, Arun Mohan, 283
 summary and extrajudicial executions, 40
 surveillance, 184, 249
 Swaine, Aisling, 55, 57
 Swami, Praveen, 117, 121
 Sylvester, Christine, 296
 symbolic power, 21
 taboo, 23, 241
 taken-for-granted location, 180

- talwar, 204
Tandon, Tripti, 90
Tantry, Ishfaq, 153
Tapper, James, 74
Tarn Taran, 182-184, 189
Taylor, Charles, 27
Telford, Hamish, 275
terrorism, 36, 83, 94, 122, 145, 185, 235, 243, 276
terrorist, 83-84, 113, 148, 167, 184, 269
Thangjam, Manorama, 83
Thapar, Romila, 77
Thomas, Charlotte, 128, 277-278
Thomson Reuters Foundation, 88
Tilly, Charles, 44-45
test identification parade, TIP, 161-162, 288
Tiwana, Mandeep, 272-273, 295
Tobin, Brendan, 35
Toral, Almudena, 27
torture, 25-26, 29, 38, 40, 42, 44, 53, 65-66, 68-69, 88-89, 93-96, 107, 112, 117-118, 123, 138, 149, 153, 163, 166, 174, 187-190, 192-193, 242-243, 250, 264, 271, 273, 276, 278, 282, 289, 291, 294, 298
transformative justice, 3-4, 7, 30, 32, 59-65, 68, 92, 227, 229-230, 233, 235-236, 241, 263, 265, 297
trauma, 13, 53, 56, 67-68, 92, 125, 132, 169, 180, 220, 226, 236, 244, 246
Trehgam, 150-151
tribal, 84-85, 87, 92, 107, 136, 261, 279
Trinh, T. Minh-Ha, 49
Tripura, 83, 269, 294
trishul, 154
Truth and Reconciliation Commissions, TRC, 59
Tuka Ram v. Maharashtra, 274
Turkey, 28-29, 41, 264, 271
Turner, Catherine, 62
Turshen, Meredith, 47, 54
two-finger test, 104, 160, 172
Tyson, Laura, 53
Ul-Haq, Shuja, 124
Umar, Baba, 298
Uma, Saumya, 139
UN Habitat, 74, 268
United Kingdom, UK, 5, 28, 80, 263
United Nations Charter, 33
United Nations Committee on the Elimination of Discrimination Against Women, 55, 166, 174
United Nations General Assembly, 277
United Nations Human Rights Committee, 271, 294
United Nations Secretary General, UNSG, 60
United Nations Security Council, 48, 53, 57
United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, 83
United Nations Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, 39
United Nations Special Rapporteur on Violence against Women, Its Causes and Consequences, 88
United Nations, UN, 5, 33, 60, 264, 277-278
United Progressive Alliance, UPA, 81
United States Commission on International Religious Freedom, USCIRF, 79
United States Department of State, 88, 117, 295
United States Institute of Peace, USIP, 234
Universal Declaration of Human Rights, UDHR, 33, 35, 37, 68, 264, 274
Universidad Popular de las Madres, 64
University of California, Berkeley, 10, 15
unknown and unmarked graves, 125-126, 226
Unlawful Activities (Prevention) Act, UAPA, 81
unnamed trauma, 13
unnatural offenses, 164
untouchable, 261
UN Women, 55, 293
Upadhyay, Archana, 21
Uttar Pradesh, 203, 296
Uzma Qureshi v. J&K Chief Civil Sec'y, 282, 284, 295
Valasek, Kristen, 64
Vanavasi Kalyan Ashrams, 136
van Beek, Martijn, 80, 308
Van Boven, Theo, 68, 175, 266

- Vanita, Ruth, 46, 52
 Varadarajan, Siddharth, 131, 154, 326
 Vasquez, John A., 7
 Vaz, Ana, 300
 Venkatesan, J., 134
 Verghese, B.G., 282-284, 291-293
 Verma, Abhinav, 94, 103-105, 153, 250, 275
 Verma, Sanjeev, 94, 103-105, 153, 250, 275
 vestigial abuse, 8
 Viaene, Lieselotte, 67
Victims & Inhabitants of the Village of Kunan Poshpora v. J&K State, 273, 281-282, 284, 292
 victim-survivors, 4-14, 16, 27, 47-48, 50, 53-54, 58, 61, 67-68, 88, 93, 99, 102, 106, 117, 124, 132, 138-139, 143, 145, 151-153, 155-157, 163-164, 168-169, 172-173, 176, 179-182, 198, 219, 221, 224, 226, 228-230, 232-233, 239, 241, 246-249, 253-255, 257, 261, 279
 Vienna Declaration and Program of Action, 36
 vigilante, 26, 91, 112, 154
 Vikas Adhyayan Kendra, 138
 Village Defense Committees, VDC, 124
 Vinayak, Ramesh, 113, 362
 Vishwa Hindu Parishad, VHP, 80, 202, 270
 Visweswaran, Kamala, 48-49, 86, 261, 264, 270
 Waheed, Mirza, 125
 Waheguru, 193
 war crime, 42, 163, 264, 300
 Watto, Saeed Ahmad, 90
 Weindling, Paul, 262
 Weller, Marc, 34
 widows, 93, 113, 116, 191
 Wilchins, Riki, 46
 Williamson, Robert G., 34
 Wirth, Louis, 21
 witness-victim protection measures, 252
 Working Group on Enforced or Involuntary Disappearances, 226, 295
 World Bank, 5, 73-74
 World Economic Forum, 75
 World Health Organization, 47
 Wright, Thomas C., 64, 67
 xenophobia, 36, 40-41, 235
 yaadgaar, 194
 Yadav, Anumeha, 112, 118, 285
 yadgar, 208
 Yamin, Alicia Ely, 36
 Yasin, S.M., 150-151, 282
 Yuval-Davis, Nira, 42, 47
 Zahadi, Saadia, 53
 Zargar, Safwat, 151, 293-294
 Zein-Elabdin, Eiman O., 261
 Zenana, 52
 Zhao, Suisheng, 41
 Zia, Ather, 226
 Zipfel, Gaby, 218
 Zubaan, 70, 221, 223