

When Hate Speech and Writing Infiltrate Public
Discourse

Segregation and Discrimination become the Norm
&
Rape and War can always be Incited in the Name
of that Hatred

*--- An Analysis of the Indian Executive and Judiciary's
Response*

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Indian Criminal Law, since the late nineteenth century has criminalized hate speech and hate writing if and when it leads to violence against particular sections of the Indian population against whom hatred is whipped up, especially on grounds of their religion, race, language or place of birth.¹ There are roughly four sections, two in Indian criminal law and two in election law² that clearly and unequivocally restrict or restrain the use of such hate speech and writing and empower the executive, that is, government (state and central) and the police, as also the judiciary with the task of enforcing them. Under the Representation of the People Act certain practices are deemed to be 'corrupt'.² Quite apart from the fundamental rights to

1. Indian Penal Code, 1860 - Chapter VIII - Of offences against the public tranquility – Part III- Promoting enmity between different classes;

Section 153(A)

Marginal Note - Promoting enmity between different groups on grounds of religion, race, place of birth, language, etc. and doing acts prejudicial to maintenance of harmony or prejudicial to national integration:

Section: 153(A) (1) - Whoever,

(a)- By words, either spoken or written, or by signs or by visible representations or. Promotes or attempts to promote on grounds or religion, race, place of birth, residence, language, caste or community or any other group whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

Section: 153(B)

Marginal Note: Imputations, assertions prejudicial to national integration:

Section 153(B) (1) - Whoever, by words either spoken or written or by signs or by visible representations or otherwise.

- (a) makes or publishes any imputation that any class of persons cannot, by reason of their being members of any religious, racial, language or regional group or caste or community, bear [rue faith and allegiance to the Constitution of India as by law established or uphold the sovereignty and integrity of India, shall be punished with imprisonment which may extend to three years, or with fine or with both.

² Ibid s 123. Corrupt Practices:

2. Representation of the People's Act, 1961 - Part VII - Corrupt Practices and Electoral Offences: s 123(2), (3). For the purposes of that Act.3 It forbids the use of undue influence; appeal on grounds of religion, promoting enmity of hatred between different classes of citizens on the ground of religion, race or community; and character assassination.

The following shall be deemed to be corrupt practices for the purposes of this Act:

(1)...

(2) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent or any other person with the consent of the candidate or his election agent, with the free exercise of any electoral right:

(3) The appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of, or appeal to, religious symbols or the use of, or appeal to, national symbols, such as, the national flag or the national emblem, for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.

(3-A) The promotion of, or attempt to promote, feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community or language, by a candidate or his agent or any other person with the consent of a candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.

4. Supra note 1.

5. Supra note 3.

6. Supra note 1.

equality, equal protection by the law, life, freedom of expression, association and residence, and freedom to promote, practice and propagate one's faith; and the rights of religious minorities to run their own institutions, the consistent and honest application of these sections of the IPC⁴ and the RPA⁵ are-critical to ensure and assert the protection of basic democratic and human rights and especially, the Constitutional rights of Indian religious minorities. Equally important is the regular application of these sections in the public arena, by actions of the executive and the judiciary, whenever violations of these laws take place, is as much necessary for upholding the secular intent of the Constitution of India.

The purposes of these sections of Indian criminal law and Indian election law, apart from being in consonance with all jurisprudence, law or Constitution that purports to be democratic and secular, are intended to preserve public tranquility by containing or severely restricting those individuals, groups or political parties that use hatred or enmity as political currency, and as a result of such use, perpetrate enmity and the demonising of certain sections of the Indian people.

In short, the systematic and clearheaded application of sections 153(A)(I)(a) and 153(B)(I)(a) of the Indian Penal Code⁶ at normal times, and sections 123(2) and 123(3) of the Representation of People Act⁷ at election time - provisions that should impel the executive and the judiciary into prompt action - is vital to both safeguard and deepen the provisions of equality and justice detailed in the Indian Constitution, and specifically imperative if the secular thrust of this document is to be enforced.

It has been the accelerated use of hate speech and hate writing --- largely unchallenged by due process and the rule of law -- that has preceded major bouts of violence against India's religious minorities, Dalits and even linguistic minorities.³ This regular use of hate speech and writing by men and women in public life is a new and disturbing phenomenon within Indian democracy, a trend that can be roughly dated back 20-35 years. This is not to suggest that tendencies towards the calculated and selective use of both venom, stereotypes and demonising of sections of sections of the Indian people were entirely absent before, specifically, since Independence in 1947.

Articles 19 and 20 of the ICCPR (International Covenant on Civil and Political Rights) make the relationship between the advocacy of national religious and

7. Supra note 3.

8. References from Liberty, Equality and Justice: Struggles for a New Social Order, EASTERN BOOK COMPANY, Chapter VIII, Hate Speech and Indian Democracy by Teesta Setalvad

³ The attack on north Indians living in Mumbai and Maharashtra over the fact that they are "outsiders" who do not speak the local language was violent and vicious spearheaded by the right wing supremacist party the Shiv Sena a few years back.

racial hatred which then constitute discrimination, hostility and violence. The critical aspect – that underlines incitement is when there is an actual and real potential of the use of that hate speech or writing to escalate or degenerate into violence. These international norms and parameters that are reflected in sections within criminal law need to be emphasized through advocacy and public discourse. Hate speech and writing needs to be tabooed as a threat to ensure a society that respects peace co existence and tranquility, in fact equality and non discrimination.

Within India, the shift lies in the wider public sanction for the use of this verbal public abuse, its reproduction in writing even through organs of rightwing outfits in the mass media and the inaction of the law and judicial processes against those who calculatedly use this demonisation as a precursor to targeted violence. While many in public life are not immune, the wider use and acceptance of hate speech and writing coincides critically with the entrenchment of political parties with an unabashed rightwing and supremacist agenda, who's manifestoes proudly claim representation of one section of the polity over others.

Offences of this nature, that violate clearly these sections of Indian criminal and election law have gone unprosecuted by the state with the Indian judiciary also turning an unfortunate blind eye to their repeated occurrence. Efforts by aggrieved groups, victims, public spirited citizens to push the executive and the Courts to take action have often been marred by the failure to grant sanction to prosecute, a debilitating provision of Indian criminal law that has protected public servants and others from criminal prosecutions.⁴

Given this context and the level of public discourse, international and regional mechanisms monitoring public discourse and the impact of systematic and perpetual use of hate speech and writing against caste, linguistic and religious minorities becomes crucial.

These principles within the Indian Constitution and other laws should not be merely upheld when complaints/cases filed by private complainants but ought to be enforced by the state - especially the judiciary, even when the executive or the legislative wing of government is being pressured or compromised into inaction against the perpetrators of hate speech and writing. How else can a committed adherence to the secular fabric of our laws be assured? The unfortunate reality of today is that these laws are observed in their breach and violation. It has become the unprecedented and worrisome norm to let the offenders and thereby sanction the corrosive influence of such method of speech and writing to affect public life and public tranquility.

⁴ Section 197 of the Criminal Procedure Code in India protects those in public life, and civil servants and policemen, all politicians from prosecutions unless the state government specifically grants sanction. This rarely happens. New attempts to draft and pass a Law against Communal and Targeted Violence (in progress) have suggested diluting this provision of sanction.

The continued use and overuse of hate speech has become an unfortunate part of public discourse today. A close scrutiny of judicial commissions of inquiries probing outbursts of inter-communal violence has shown that three to six months before the outbreak of violence, the crime of hate speech, venom and writing is committed and used to build up a climate to ensure that the first stone is cast, that violence does break out. Despite this documented history of jurisprudence, why is there this reluctance among judges and the courts to nip this trend in the bud, to play the role in cleansing public life of poison and vitriol?⁵

⁵ Tracing the History of Hate Writing and Speech (Setalvad Teesta, *Who Is to Blame, Communalism Combat*, MARCH 1998)

The following seven excerpts, have been researched by the author, co-editor of *Communalism Combat*, from official judicial commission reports published by State Governments over the years reveal that hate writing and speech is not an entirely new or unexpected phenomenon in India. They also reveal that hate speech and writing are intimately connected to vitiating the atmosphere in the public space, which in turn creates the requisite compliant climate for the explosion of inter-community violence. Finally, they are indicators that, despite these stringent observations in official reports of the government, that prove the involvement of a set of groups in these activities over the years, the Indian judiciary has been inexplicably lax in punitive treatment to them.

(1) Ahmedabad Riots, 1969, Justice Jagmohan Reddy...Some writings in the Gujarat~ newspapers and most leaflets, handbills and appeals made in the name of the Dharm Raksha Samiri related the story of the stray incident of the hitting of a glass panel by a street-child, who happened to be a Muslim to the 'historical' role of Muslims as destroyers of Hindu temples and dharma (religion). They also spread rumours of rape and molestation of Hindu women, again an oft-repeated technique in many riots related again to the 'historical' rapes of Hindu women by Muslim invaders, for which two acts Muslims had to be 'taught a lesson'. On the walls of the large Muslim-owned hostel, Qamar hostel, wall-writings read, "Muslims Quit India."

(2) Justice Raghubar Dayal Commission of Inquiry into the Riots in Ranchi, Sholapur, Malegaon, Ahmednagar, Sursand, Jaipur and Suchetpur, Ranchi Riots, August 1967....In 1967, the riot apparently began in Ranchi and other places on August 22, 1967 when a procession of Hindu boys protesting against the imposition of Urdu were stoned by some Muslims. But if we look at the events 10 days preceding August 22, the provocative slogans raised by the agitators and their conduct throws more light on the methods and motives of the agent provocateurs....In 1967, a United Front government came to power with the Jana Sangh as one of its constituents riding to power on a 33-point manifesto that included the promise to make Urdu the second official language of the state. On July 14 that year when a non-official bill to make Urdu the second official language was introduced in the state legislature, the Jana Sangh, some Congress members and a non-official organisation called the Hindi Sahifya Sammellan announced a state-wide agitation against the bill from August 12 to 26. Various anti-Urdu programmes were launched during the anti-Urdu week including the 'distribution of anti-Urdu pamphlets and taking out processions raising anti-Urdu slogans. The language of the leaflets was most offensive and provocative and objectionable arguments posited against Urdu and Muslims. In one such titled, 'A Challenge to the Manhood of the Next Generation', Muslims were declared anti-national, and the new generation of students exhorted to stand up against them. These series of provocations had been openly carried out for ten days before the first stone by a Muslim was cast.

(3) Report of the Commission of Inquiry into the Communal Disturbances at Bhiwandi, Jalgaon and Mahad, 1970, Justice D.P. Madon

If the events surrounding the Shiv Javanti procession in Bhiwandi, Jalgaon and Mahad are looked at more closely, the start of the riot was not with the simplistic reaction of the procession being attacked by a group of Muslims. Tension, as the Commission of Inquiry report itself suggests, did not begin with the Shiv Jayanti celebrations of that year but began in 1964, the first year that the practice of publicly celebrating Shiv Jayanti had been started and had seen an annual build up in tensions since. This practice did not only introduce the poison of communalism in Bhiwandi indirectly, but through the years, the organisers did not make any attempt to disguise the real motive and anti-Muslim slogans and provocative floats were part of the celebrations from the very beginning, the first year. In spite of police opposition, the organisers made every attempt to incite rioting by insisting on taking their procession through Muslim-dominated areas, throwing gular (coloured powder) at mosques and shouting incendiary slogans like 'we will ground any one who opposes us into dust.' In his report to his superiors, the Superintendent of Police, Thane district, has stated, "I found that a section of Hindu elements, particularly the RSS and some PSP men were bent upon creating mischief. Their idea in accompanying the procession was not so much to pay respects to the Great Shivaji but to establish their right and if possible to provoke and humiliate Muslims. (Vol. I, p. 165).....It was in 1970 that for the first time propaganda was carried on in villages exhorting villagers to participate in the Shiv Jayanti procession in Bhiwandi and this was the first year when villagers were mobilised to participate by the Rashtriya Utsav Mandal, an offshoot of the Jana Sangh, and the Shiv Sena and the object of these organisations in bringing villagers to participate was 'to intimidate the Muslims', the participants carried lathis (sticks) to which bhagwa (saffron) flags were tied, banners of the three organisations, the Jana Sangh, the

Rashtriya Utsav, Mandal and the Shiv Sena were displayed by processionists. (Pts 1,2,3 of the report). The villagers shouted provocative, anti-Muslim slogans, behaved aggressively, threw gulal on the Moti Masjid at Bangad Galli and Hyderi mosque situated at the junction of Dargarh road and Sutar Alli aided by a passive police ... Slogans like "Galli galli mein shor hai, Sob Mussalman chor hai", "Shiv Sena Zindabad". "Rashtriya Utsav Mandal Zindabad", "Aala re aala Hindu aala, Gela re Gela, Lanndva gela."

(4) Report of the Commission of Inquiry, Tellicherry Disturbance, 1971 Justice Joseph Vithayathil.... In Tellicherry the Hindus and Muslims lived as brothers for centuries. The Mopla riots did not affect the cordial relationship that existed between the two communities in Tellicherry. It was only after the RSS and the Jana Sangh set up their units and began activities in Tellicherry that there came a change in the situation. Their anti-Muslim propaganda, its reaction on the Muslims who rallied round their communal organisation, the Muslim League, which championed their cause; and the communal tension that followed prepared the background for their disturbances. According to the RSS, until the Muslims give up their separatist attitude and join the mainstream of Indian national life, there will be no communal harmony in this country. Guruji Golwalkar is said to have a very simple remedy for communal riots in India. He said: "Let Muslims look upon Rama as their hero and the communal problems will be over." (Organiser, June 20, 1971). That is what the rioters who attacked the house of Muhammad (P58W1) asked him to do. "If you want to save your life you should go round the house three times repeating the words 'Rama, Rama!'" Muhammad did that. But you cannot expect the 70 million Muslims of India to do that as a condition for maintaining communal harmony in the country. This attitude of the RSS can only help to compel the Muslims to take shelter under their own communal organisation. (point 249 of the report)

(5) Report of the Commission of Inquiry into the Communal Disturbances at Jamshedpur, April 1979
The evidence of government officials shows that after the communal riots of 1964, the Ram Navmi Festival, like other festivals became the occasion for greater vigilance and alertness from the law and order authorities; simultaneously the number of Ram Navmi processions kept on increasing till it had risen to 79 in the year 1979. (11.3)

In the run up to the communal build-up before the elections prepared by the Intelligence Branch, Jamshedpur (dated March 23, 1979) there was a special mention to the Divisional Conference of the RSS scheduled to be held on March 31 and April 1 in which among others the RSS Sarsanghchalak (Chief) was to participate (11.4).

The dispute of the route of the procession (the administration after consideration had denied permission for the route to pass through Muslim areas) became sharp and agitated reactions from a group of persons calling themselves the Sanyukt Bajrang Bali Akhara Samiti who systematically distributed pamphlets to heighten communal feelings and had organizational links with the RSS. A call for the defiance of the authority and the administration when it refused permission for one of the routes led to a violent mob protesting and raising anti-Muslim slogan (11.11) and thereafter an incendiary leaflet doing the rounds of Jamshedpur (issued on behalf of the Sri Ramnavmi Kendriya Akhara Samity) that is nothing short of an attempt to rouse the sentiments of Hindus to a high pitch and to distort events and show some as attacks on Hindus that appear to be part of a design. (11.20) A survey had already established (Sarvekhshan se yeh saf ho gaya hai) that all policemen, home guards, etc. were at heart ready to give support to them (Hindu communalist organizations). This not only shows the extent of the planning that had been going on, but also how the people in general were being assured of protection from punitive action by the police, due to the alleged attitude of its subordinate formations. (11.20d)

This analysis will leave no scope for doubt that the religious sentiments of Hindus were being raised to a high pitch, that an organisational link had been well established and a plan had been carefully evolved according to which not only some incidents had occurred but also the future course of action had been laid down. And, a call for the defiance of the authority of the Administration, sweeping aside the objections raised by the Muslims, by forcibly taking out the procession of the Dimna Basti Akhara through the disputed route had been sounded, whatever the consequences that may follow. So the authorities were held to blame in advance for any unpleasant incident that may occur from the execution of the plan announced in the (abovementioned) leaflet (11.21)

(6) Justice Venugopal Commission of Inquiry into the Kanyakurnari Riots of 1982 (prolonged confrontation between Hindus and Christians)

The RSS adopts a militant and aggressive attitude and sets itself up as the champion of what it considers to be the rights of Hindus against minorities. It has taken upon itself to teach the minorities their place and if they are not willing to learn their place to teach them a lesson. ...

The RSS methodology for provoking communal violence is-

- (a) Rousing communal feelings in the majority community by the propaganda that Christians are not loyal citizens of this country;
- (b) Deepening the fear in the majority community by a clever propaganda that the population of the minorities is increasing and that of the Hindus decreasing.

(7) Justice B.N. Srikrishna Report into Mumbai Riots of December 1992- January 1993

Justice Srikrishna named Bal Thackeray and the Saamna, many Shiv Sainiks (MLAs, corporators, and shakha pramukhs), a few Muslim leaders and two Congress leaders for leading attacks on either innocent persons or establishments, or carrying them out themselves and even quoted incendiary pamphlets distributed in Urdu (CR No 12 of 1993, for example, in Mahim) that contributed to the heightened communal discourse at the time. The judge also directed action against activists of the Tanzeem Allah-o-Akbar named for violent acts in Dharavi, and the SIMI organisations for provocative slogans and pamphlets provoking sections of the Muslim community.

Political expediency delays the grant of sanction by the executive, that is, the government, and further by its legal and judiciary departments. Technical bars that the laws contain within - like periods of limitation or time bars against prosecution - do not take into account the harsh realities of judicial delays for which the courts themselves are either responsible or which are, unfortunately, condoned by the Judicial authorities. And for the litigation that overcomes all these initiation obstacles to make its presence felt in our courts; the judiciary itself has been wary of clearheaded interpretation of these penal legal provisions.

What has been the role of Indian courts in promoting public tranquility and against the systematic propagation and use of hate speech and writing that has become the unfortunate and corrosive fibre of our public life? Have the courts ever addressed themselves to pivotal and key questions such as should sanction be a necessary prerequisite for application of these sections of the laws or, is it a limitation provision that is being used by the executive to actually curtail effective implementation of these sections? Why cannot the police be empowered to act independently when such violations of hate speech and writing are manifested?

Most pertinently, why have Indian courts, often pro active on matters of monetary corruption, been so conspicuous by their refusal to initiate any suo moto action in the matter of use of such hate speech. The mass media, especially electronic television channels that relay shrill and disturbing headlines as also newspapers, increasingly cavalier on issues related to fundamental human rights and law, often publicise prominently, hate speech by politico-religious leaders, lending themselves as convenient tools or vehicles of this propaganda. Mumbai 1992-1993 post demolition of the Babri Masjid and Gujarat 2002 before and after the pogrom against religious minorities are testimonies to these trends and the complete inaction of Indian institutions of the law, media or judiciary to prosecute the offenders.

The insidious legitimacy being accorded to hate speech and writing; the continuous, -unchallenged and unrestrained use of such speech and writing whereby the phenomena itself becomes the active agent for a general threatening, poisonous and violent-prone atmosphere in public life. There are dozens of examples (cited below) which illustrate that hate speech and hate writing are being used as agent provocateurs in systematically organized rounds of violence against Indian religious minorities.

The Indian courts delivered four or five historic verdicts on this issue in the late eighties and nineties. The first such, delivered by Justices S.P. Bharucha, Hosbet Suresh and Sam Variava of the Bombay High Court made significant inroads on these pivotal issues of jurisprudence.

Justice Hosbet Suresh in *Subhash Desai v. Sharad J. Rao*⁶ and Justice Bharucha in *Ramesh Prabhu v. Prabhakar Kunte*⁷ were straightforward in interpreting certain statements with candidates or their 'agents', whether or not statements attracted the provisions of the RPA and constituted an appeal during an election on grounds of religion.

Justice Suresh, in the *Subhash Desai* case⁸ clearly held that the speeches made by agents of the candidates at electoral rallies exhorting workers (of their party, the Shiv Sena) to disrobe Muslim women in burkhas to ascertain whether they were women were clear threats to ensure that women would not vote at all. Phrases and speeches like "garva se kaho ham Hindu hain" (say with pride that we are Hindus) were held by Justices Bharucha and Suresh to attract the penal provisions of this section as also the ten speeches made in which a speaker said that the saffron flag would fly over Kashmir and Islamabad (use of a religious symbol), speeches that the flame of Hindutva would be lit (if one voted for the BJP/Shiv Sena candidate) and that the Congress was responsible for the desecration of temples and the molestation of Hindu women (Justice Halbe).

Barring these judgments - that incidentally have played the most crucial role in exercising restraint on the perpetrators of hate writing and speech including forcing the Shiv Sena chief to neither vote nor contest an election (July 1999), the Bombay High Court and worst of all the Supreme Court have been also responsible for seriously damaging the history of Indian jurisprudence in the matter of preservation of public tranquility and the rule of law related to upholding the applicability of section 153(A) and (B) of the Indian Penal Code⁹ and section 123(a) and (b) of the Representation of People Act.¹⁰

To substantiate this charge (or claim) the history of two sets of litigation need to be traced and understood. One is the history of an election petition¹¹ against Shiv Sena MLA and former Maharashtra Chief Minister, Manohar Joshi in which Justice S.N. Variava of the Bombay High Court had passed a strong Judgement debarring the candidate, declaring his candidature null and void. Specifically, the judge had held that Bal Thackeray making a speech invoking the dream of Hindutva as his agent and the contents of his appeal were violative of the sections of Indian election law being discussed here. A three member bench of the Supreme Court¹² (Justices J.S. Verma, N.P. Singh, K. Venkataswamy) substantively diluted the High Court judgement and even in its wisdom averred that "In our opinion a mere statement that the first Hindu state will be established in Maharashtra is by itself not an appeal for voters on

⁶ AIR 1994 SC2277.

⁷ (1996) 1 SCC 130; AIR 1996 SC 1113

⁸ Supra note 8.

⁹ Supra note 1

¹⁰ Supra note 3

¹¹ *Manohar Joshi v. Nitin Bhaurao Patil*, Unreported judgment, Bombay High Court

¹² *Manohar Joshi v. Nitin Bhaurao Patil* AIR 1996 SC 796.

the grounds of his religion but the expression, at best, of such a hope." ¹³As a result of this judgment, the judgement of the Bombay High Court that had set aside Manohar Joshi's election was set aside.

Worse still was the fate and history of a historic public interest litigation filed by the former Chief Secretary of Maharashtra, J.B. D'Souza and journalist Dilip Thakore against the state of Maharashtra urging a writ of mandamus for giving sanction for the criminal prosecution of Bal Thackeray for blatantly provocative writings against Bombay's Muslims that encouraged Shiv Sainiks to launch a full-fledged pogrom against their lives and property in December 1992 and January 1993. In December 1992 and January 1993, the Saamna, A self-proclaimed mouthpiece of the Shiv Sena, published a series of editorials that were prima facie violation of articles 153(A) and 153(B) of the 1PC.¹⁴

The question before the court was whether those nine articles cited by the petitioner attracted the section 153(A) and (B) of the Indian Penal Code¹⁷ that is, whether they promoted enmity between Hindus and Muslims on the ground of religion, race and residence.

Abuses, threats and assaults are integral to the culture of the Shiv Sena and other political outfits, and have been shamelessly used to stifle criticism and browbeat opposition into silence. Instead of showing vision and stature during the course of arguments, the Bombay High Court in J.B. D'Souza case,¹⁵ justified, the hate speech and writings of Thackeray's articles. Justices Punchi and Jeevan Reddy of the Supreme Court disallowed the special leave petition¹⁶ filed in appeal against the order of the Bombay High Court without even entertaining the arguments. The attitude of both the courts has failed the Indian Constitution and Indian democracy. This case - a critical one in sharpening Indian jurisprudence on these issues of rule of law and public tranquillity - instead of having their ears to the ground and responding to threats with the fearlessness associated with path-breaking courage - was not given due consideration by the courts.

A division bench of the Bombay High Court¹⁷ (Justices Majithia and Dudhat) was from the outset of the hearing of the petition more concerned with extraneous issues surrounding the personality of the respondent (Thackeray) rather than the crucial legal, ethical and moral issues that this piece of litigation had raised. In April 1993, when arguments in favour and against the admission of the petition were being heard in open court, the advocate for the respondent, Bal Thackeray. Vidyasagar Kanade, issued a well-laced warning, "My Lord," he said, "Bombay will bum if the petition succeeds and sanction to prosecute Mr. Thackeray is accorded." At this stage, the state

¹³ *Ibid*

¹⁴ *Supra* Note 1

¹⁵ J. B. D'Souza v. State of Maharashtra, 1995 Cri LJ 1316 (Bom)

¹⁶ Unreported.

¹⁷ *Supra* Note 16

government was given time to respond whether or not it had given sanction to the police to pursue with the prosecution of the respondent.

Bal Thackeray is the head of a political party who has repeatedly belittled democracy. Thackeray has repeatedly scoffed at both the law and the courts.¹⁸ Despite these insults and provocations to justice issues, the rule of law and above all despite displaying a crude contempt for judges and the courts, no suo moto action has been initiated against Thackeray for these provocative rantings. Can criticism of this major lacunae in Indian jurisprudence and the public criticism of this failure of Indian courts to hold Thackeray accountable for provisions of Indian law attract 'contempt of court' provisions when the man who openly professes contempt for both the rule of law and the courts escapes even mild censure from the higher judiciary?

To quote from an exclusive opinion obtained by us from the noted constitutional expert, the late H. M. Seervai, on the judicial response to this litigation:

I will only deal with one gross instance of the untenable interpretation put on the editorial in Saamna dated December 9, 1992.

At page I325 of the judgment¹⁹ the judges observed: "In this article, it is true that reference is made to 25 crores of Muslims in India and relying on this, Shri Setalvad argued that Muslims as a whole are criticised. It is an admitted position that in fact in India at that time there were 11 crores of Muslims and therefore, the figure given in the editorial appears to be typographical mistake and hence from the reference to 25 crore Muslims one cannot draw an inference that whole dig in the editorial is against Muslims as a whole. If one reads the editorial published on December 9, 1992 as a whole, though some caustic language is used, the dominant impression which the reader is likely to carry is definitely not ill-will, spite or hatred towards Muslims in general but it may carry ill-will and hatred against unlawful behaviour of anti-national Muslims including leaders like Imam Bukhari and Shahabuddin."

In my opinion, the interpretation given to this exhibit is absurd and perverse. The statement that 25 crore Muslims was a typographical error is based on no evidence. It does not seem to have occurred to the judges that the respondents may exaggerate the number of Muslims in India in order to emphasise the dangers which Hindus and Muslims would face.

Further, the passage divides the population of India between Muslims and Hindus and also slates that Pakistan was said to have seven bombs. The seventh bomb was planted in India because Pakistan need not lead an invasion of India: 25 crores of Muslims loyal to Pakistan would stage an

¹⁸ Thackeray was quoted as declaring in the Snanj Jansatta of June 29, 1995, "Mein adalaton ke phaislon par laghooshanka karta hoon") (I piss on the judgements of the courts)

¹⁹ Supra Note 16

insurrection to destroy India. A clearer violation of sections 153(A) and 153(B) of the Indian Penal Code is difficult to imagine.

In the last two paragraphs, which are not conspicuous for their clarity in substance, the court said that if sanctions were given, it would reopen the wounds between Hindus and Muslims. Public interest required that sanction to prosecute should not be given. This is contrary to the evidence on record.

Government is prosecuting Shri Thackeray for some articles. Government is normally a better Judge of the public interest. The Government of India has ordered the prosecution of a number of persons, including a Member of Parliament at the time when riots broke out principally directed against the Sikh community. Although such a prosecution would open up old wounds but justice demanded that the guilty should be brought to book.

In my opinion, the summary dismissal of the petition for special leave against the judgment of the Bombay High Court by Justices Punchi and Jeevan Reddy can only be described as amazing and subversive of the rule of law. The two Supreme Court judges had observed that they agreed with the High Court's conclusion that it was not in the public interest that the issue should be raked up. But the two Supreme Court judges overlooked the fact that in the whole elaborate judgment (except the last two paragraphs) the court held that respondents were not guilty. The necessary consequence of the summary dismissal is that the Supreme Court confirmed the High Court's conclusion that the respondents 3 and 4 were not guilty.

Justice means justice to both sides in a petition. Not to decide the guilt or innocence of respondents 3 and 4 is a grave abdication of judicial duty to uphold the Constitution and the laws. For the second reason, namely, that the High court "had its fingers on the pulse of the situation" and public interest would be better served by leaving the situation where it was, there is not a title of evidence that the two judges had their fingers on the pulse of the situation. On the contrary, the government which must have its fingers on the situation, did not leave the situation as it was and ordered four prosecutions in respect of articles published by respondents 3 and 4 and one Shri Desai. In respect of these prosecutions government upheld the rule of law... In my opinion, the Supreme Court should recall its order, admit the special leave petition and decide the matter on merits.²⁰

On July 28, 1999, twelve years after Shiv Sena chief, Bal Thackeray, had been found in four election petitions²¹ (and judgments delivered) to violate Indian

²⁰ Communalism Combat, "Crime and Punishment", January 1995, p.13

²¹ Subhash Desai v. Sharad J. Rao, AIR 1994 SC 2277; Ramesh Yashawant Prabhu v. Prabhakar Kashinath Kunte, (1996) 1 SCC 130; AIR 1996 SC 1113; Mahohar Joshi v. Nitin Bhaurao Patil, Unreported Judgement, Bombay High Court.

election law, he was debarred from voting or standing for an election. The offences committed by Thackeray under sections 123 and 123(a) of the Representation of People Act related to seeking votes on grounds of religion and spitting venom against one section of the Indian population.

Unfortunately, it took a dozen years for the Election Commission to act on judgments filed by the Mumbai High Court and the Supreme Court in 1989 and 1995. Even after the decision was dished out, the term of the punishment was reduced from six years to two! Further, no restrictions were placed on Thackeray violating this section of Indian law yet again, during the election campaign in 1999.

The offence regarding which action was initiated was committed on November 29, 1987 and later, during three election speeches by Thackeray in support of his candidate, Ramesh Prabhu through that election campaign. Due to predictable delays in the legal and judicial processes it has taken a dozen years for the guilty to be brought to book. Should not the punishment when it is finally applied, extend, at the very least, to the entire six year period for which it has been intended? Reducing its duration to two years is not merely arbitrary. It belittles a grave crime, in this case of misusing religion for political purposes and hate mongering against one section of our people.

More than the letter of the law has been violated in its tardy application. Its spirit is in serious danger of being rendered meaningless since the Election Commission did not extend its imagination and place restrictions on Thackeray's presence in the Shiv Sena's forthcoming election campaign. The spirit behind this section of Indian election law - violated by Thackeray - is surely that the loud proponents of a divisive and corrosive language during an election campaign, should be taught a severe lesson. For the framers of the law, the highest indignity to a citizen who committed such an offence was to be divested of the very basic right that any citizen should have - to vote and contest an election. Our lawmakers had not then encountered, or lived with, a Bal Thackeray.

Action was finally initiated ten years after the Mumbai High Court had found him guilty of crimes under Indian Election Law on August 14, 1998.²² The Chief Election Commissioner, M.S. Gill, and his colleagues unanimously decided to award Bal Thackeray the highest possible punishment, stripping him of a basic citizen's right for six years.

In 1987, the first speech for which Bal Thackeray has been held guilty, appealed "to all my Hindu brothers, sisters and mothers gathered here to please send the Shiv Sena to the legislative assembly." Unless they did so, he warned, "It would be difficult for us to live because there would be a war of religions and Muslims will come... Who are these laandye? (A derogatory term

²²Subhash Desai v. Sharad J.Rao, AIR 1994 SC 2277;

for the circumcised Muslim used commonly in Maharashtra) they should bear in mind that this country is of Hindus, the same shall remain of Hindus." His second speech was even more explicit. On December 9, 1987, Thackeray referring to Prabhu's contest of the Vile Parle legislative assembly seat, "The victory will not be mine or of Dr Prabhu or of the Shiv Sena but the victory will be that of Hinduism ... Whatever Masjids are there, if one starts digging below, one will find Hindu temples."

Similar election speeches were made through December 1997. Since 1987, when the offensive speeches have been made Thackeray has used several occasions to spew a similar kind of venom. Several state and national elections have been coloured with his special brand of campaigning, 1991, 1995, 1996, 1998 and now one more. Enough grounds for the EC to act and put a restraint, under an imaginatively applied Indian Election Law, on Bal Thackeray's public presence in the forthcoming Shiv Sena's election campaign.

The record, before and after of both Bal Thackeray in the Saamna and his editor Sanjay Nirupam in the Dopahar ka Saamna (an Hindi evening), before and after these significant verdicts is testimony to the fact that they have been encouraged by the courts to carry on with their political projects based on hate speech and writing. By failing to restrain these tendencies, the judiciary also plays a role in the destruction of public tranquillity. For example, on June 27, 2000, in a piece called, Chori Bhi zori bhi (Brazenness of the Thief) published in *Dopahar ka Saamna*, Sanjay Nirupam wrote: "Every child in the country knows that Muslims are involved in 90 per cent of the anti-national crimes committed in India. Everyone also knows that 89 per cent of these acts are committed by Muslims who are either pro-Pakistani or Bangladeshi infiltrators. The remaining one per cent of this 90 per cent is perpetuated by Muslims who are forced by poverty, unemployment or other compelling circumstances to assist the national Muslims ... The time has come for swift action now. Such elements should be dug out from wherever they are, thrashed and hanged in a public place. If the police faces any legal hurdle in this it should adopt extra-legal methods ..."

When Hindu pilgrims on an annual Hindu pilgrims yatra to Amarnath were targeted by militants of the Lashkar-e-Taiba, the Dopahar ka Saamna had this headline: "Hindi Ilakon mein shokh, Muslim mohallon mein jashan²⁶ (distress in Hindi localities and celebrations in Muslim localities).²³

When citizens of Mumbai protested the scrapping of the Justice B.N. Srikrishna Commission by the Shiv Sena-BJP government in power in the state at the time, Nirupam in his weekly column titled 'Secular worms crawl out of their holes' published on Feb 3, 1996 wrote, 'Mumbai's frenchcut dhadhiwalas and khadidharis (reference to the city's Marxists, 'pseudo-secular intellectuals' and Gandhians) have suddenly found a new business for

²³ Dopnhar Ka Saamna, August 1, 2000

themselves. The entire lot of them have been so wounded by the scrapping of the Srikrishna Commission as if they had been orphaned ... Who knows in which holes these dadhiwalas hid themselves when Mumbai's anti-national and pro-Pakistani Muslims butchered Mathadi workers and even attacked policemen who were trying to bring back peace in the Pydhonie area".²⁴

Later the same year, the following piece appeared in *Dopahar ka Saamna*²⁵ called 'Halkat Hussaini' (Base Hussein): Maqbool Fida Hussein, by depicting Hindu Gods and Goddesses naked has displayed his innate Muslim fanaticism. But if he had any guts at all he should have painted the prophet of Islam copulating with a pig. Then his co-religionists would have cut him to pieces and thrown his body away. Another follow-up called *Harami Hussein* (bastard Hussein), written by the same author appeared in the same publication dated October 9, 1996: "But Hindus do not forget Hussein's crime! He is not to be forgiven at any cost! When he returns to Mumbai, he must be taken to Hutatma Chowk and publicly flogged until he himself becomes a piece of modern art

In short, put differently, the systematic use of hate speech and writings, in the context of India which has a diverse polity consisting of different sections of Indians, distinguished by class, caste, community, gender, language and race, has been to spread venom against a particular section thereby demonising individuals belonging to that section and leaving them prone to physical and mental forms of violence, exclusion and segregation and demonisation. The critical sections of the Indian Penal Code²⁶ need to be enforced by the executive and the judiciary to ensure that hate speech is not used actively.

Moreover a fundamental aspect of the Rule of Law was as emphasised by Lord Denning and his brother judges to show that no general policy can override the law, and further that the rule of law must be upheld and enforced by the appropriate authority²⁷ In the context of this fundamental obligation to the rule of law and the administration of justice, a question arises as to how power conferred on public authorities in connection with the administration of justice is to be exercised. Justice Jaganmohan Reddy for himself and Palekar J. gave the answer in *M.N.S. Nair v. P.V. Balkrishnan* AIR 1972 SC 496. R.... (Referring to section 494 of the Criminal Procedure Code which permits the prosecution to withdraw from the prosecution), Justice Jaganmohan Reddy observed

"... It is the duty of the court also to see in furtherance of justice that the permission is not sought on ground extraneous to the interest of justice or that offences against the state go unpunished merely because the government as a matter of general policy or expediency unconnected with its duty to prosecute offenders under the law, directs the public prosecutor to withdraw from the

²⁴ *Dopahar ka Saamna*, February 3, 1996.

²⁵ *Dopahar ka Saamna*. October 6, 1996

²⁶ *Supra* Note 1

²⁷ Constitutional Expert HM Seervai in an exclusive legal opinion authored for *Communalism Combat*, January 1995

prosecution and the public prosecutor and the public prosecutor merely does so at his behest": ibid. p.499 (emphasis supplied).... Jaganmohan Reddy J. rightly observed that the delay caused by the accused by repeated revisional applications could not ensure for the benefit of the accused.....In my opinion the summary dismissal of the petition for special leave against the judgement of the Bombay High Court by Justices Punchi and Jaychandra Reddy can only be described as amazing and subversive of the rule of law.

The reluctance of Indian Institutions of Judiciary and Executive to enforce the rule of law and the administration of justice through efforts to prosecute hate speech and hate writing has given the perpetrators impunity and legitimacy. Ten years after Bombay 1992-1993, Gujarat 2002 say the chief minister of the state actually employing the use of hate speech to colour the public atmosphere prejudice his administration into exclusion and denial of basic rights of the minorities. Worse, hate speech was used as a weapon, and continues to be used to polarize the majority against the minority. It is mobocracy not Constitutional democracy,

Annexed at the end of this paper is a brief note on the electronic media, in Vadodara in town in Gujarat. (Annexure A). The excerpts in that table are testimony to the extent to which sections of the media went in Gujarat not simply to ally with the state and administration but I fact, in stepping out of line by being a warmonger for the majority community.

Among the important documents produced in 2002 relating to the widespread use of Hate Speech and Writing are the Editor's Guild Report, *Rights and Wrongs and Communalism Combat's Genocide Gujarat 2002*. The former documents in detail the unprofessionalism shown by sections of the mass Gujarati media and the state government led by the chief minister in using the media as a tool.²⁸ The Editor's Guild Report reproduces an electronic media interview of the Chief Minister Narendra Modi by Sudhir Chowdhury (Zee Television) in which he justifies the violence against the minorities as a reaction.²⁹

In fact the victim minority community in a Memorandum to the Editors Guild of India narrated the depth of minority bashing that the Gujarati newspaper *Sandesh*

²⁸ The Investigations into Conspiracy to Commit mass murder initiated by the Supreme Court of India following a Special Leave Petition 1088/2008 by a victim survivor Zakia Ahsan Jafri and Citizens for Justice and Peace has this as a major ingredient of the conspiracy. This is under investigation. Two serving Officers of the Indian Police Service former Director General of Police RB Sreekuma and Rahul Sharma had in their official communications recommended the prosecutions of two major newspapers on grounds of incitement to violence. The chief minister, accused number 1 in the petition is also the home minister and did not sanction these prosecutions.

²⁹ Zee TV Interview with Chief Minister Mr Narendra Modi in Gandhinagar on March, by Sudhir Choudhury : The Correspondent begins by asking Mr Modi about the Chamanpura massacre in which the former Congress MP, Ehsan Jafri was killed along with at least others. The Chief Minister referred to reports that Jafri had first fired at the violent mob which infuriated the crowd further. It stormed the Housing Society and set it on fire. He refers to Jafri's firing as "action" and the massacre that followed as "reaction". His exact quote is: "Kriya pratikriya ki chain chal rahi hai. Hum chahate hain ki na kriya ho aur na pratikriya". When asked about the widespread violence in Gujarat post-Godhra, he says quote; "Godhra main jo parson hua, jahan par chalees (40) mahilaon aur bacchon ko zinda jala diya, is main desh main aur videsh main sadma pahuchna swabhavik tha. Godhra ke is ilake ke logon ki crimnal tendencies rahi hain. In logon ne pahaile mahila teachers ka khoon kiya. Aur ab yeh jaghanya apraadh kiya hai jiski pratikria ho rahi hai".

indulged in even tracing the history of the newspaper. Hence this publication has never been censured or prosecuted.

On of the aspects of the Government of Gujarat's conduct that is under scrutiny is the mindset of the chief minister who is reported to have written congratulatory letters selectively to only those newspapers who inflamed passions and not to others in Gujarati like Sambhav and Gujarat Today who played a responsible role (pages 8-9 of the Guild Report).

The Central Government in India has periodically issued advisories on Hate Speech and Writing but all in all there is a distinct reluctance to act against the perpetrators of hate speech and writing. As the analysis of many situations of communal conflict do show, inciteful speeches and writings are indulged in by majority groups and even minority groups to whip up mob passions and violence. It is however the majoritarian shift within the Indian polity, that is a distinct majoritarianism that has crept in to institutions of governance, coinciding with the growth and entrenchment of the Hindu right, that have precluded rule of law and Constitutional governance being enforced when these violations take place.

On the Indian sub continent, that is within South Asia what also cannot be disregarded is the legacy of the bitter Partition. Resonances of that bitterness, testing of the patriotism of India's largest religious minority through brute slogans and writings has become common, infiltrating public discourse. The fact that across the border, especially with television and video echoes of this breeding of hatred can be observed, from schools to training camps, further eggs our own manufactures of venom.

It is time, long overdue that a Regional Mechanism to address incitement to violence against minorities and any sections is not just put into place but allowed to function. A credible Regional Mechanism that independently addresses and condemns incitements to violence, even recommends prosecution is a much needed institutional mechanism required to document, monitor (Due Diligence Report) and recommend the prosecution of perpetrators of the incitement to hatred and hate speech.

There is an Urgent Need for a Regional Mechanism to Monitor, Document, Recommend the Prosecution of Perpetrators of Racial, Caste based, Linguistic or Religious Hatred

***Teesta Setalvad, co editor Communalism Combat and Secretary
Citizens for Justice and Peace***

Annexure A

A Brief Note on Electronic Media in Baroda

A. Local TV Channels

On March 14 a group of PUCL representatives told the Police Commissioner that TV Channels need to be warned. We tried to obtain copies of the offensive tapes before the NHRC visit, were not given those. The Police Commissioner gave a notice to the local channels, they were also off the air for two days but then were back again and going about their work with a vengeance. In the last week of March, owners of two TV channels were arrested, VNM and News Plus, when in fact the other channels, J TV and Deep were far more inflammatory.

Given below are some samples of the inflammatory stance of the channels.

Date	Name of Channel	Content
Feb. 27, 2002	VNM Channel	Ajay Dave's (VHP) statement that we will retaliate with violence and create history (in relation to Godhra incident)
From Feb. 27 for more than a week	J TV	Kept repeating images of the Godhra incident many times a day, thereby attempting to create feelings of outrage among Hindus.
March 15, 2002	Siti Cable	Common man on the street said how Hindus want Ram Mandir. We are beginning an andolan today which we will stop after we achieve our goals
March 15, 2002	Deep Channel	Showed rally after shila daan 3 local leaders Deepak Kharchikar (Shiv Sena), Niraj Jain (Bajrang Dal), Ajay Dave (VHP) gave speeches and interviews at the Machhipeeth naka. These contained anti-Muslim sentiments. 'Muslims will have to live the way we want otherwise we will pull them out of their houses and kill them'.
March 16, 2002	VNM or News Plus In Cable	Ajay Joshi 'we will be training Hindu youth to be ladayak (warriors, aggressive???)'
March 29, 2002	VNM or News Cable	Mayor said 'like Hirankashap destroyed evil, we will also destroy deshdrohis'.

Annexure B

Memorandum regarding Provocation and Instigation of Violence During February and March 2002 by Print Media in Gujarat

To
President
Editor's Guild Of India
New Delhi
Camp at Ahmedabad (Gujarat)

Respected Sir,

We the residents of Shahpur locality of Ahmedabad city respectfully present this Memorandum to your honor, seeking the intervention of Editor's Guild regarding misuse of Print media in Gujarat .

We condemn the incident happened at Godhra on 27th February, 2002 but it also requires CBI enquiry. Gujarat is considered to be prosperous State in India. But it is also abundant in hatred against minorities, down trodden, backward classes, the hatred spread by various factors, one of them is Media. All different times one or two big vernacular daily Gujarati newspapers sowed the seeds of communal and racial violence and nurtured them to grow. Many a times Print Media sponsored violence had broken out. We are producing many evidences in the support of our statement.

Role of Press and Audio-video media – among vernacular Gujarati daily newspaper ‘Sandesh’ published news and many articles in provocative, instigative language. Some other dailies also used provocative language to some extent. There are so many instances of provocation by ‘Sandesh’, only glaring instances are cited here.

Past History of ‘Sandesh’

- 1969 – 1981 – 1985-86 Enquiry commissions have mad adverse observations regarding ‘Sandesh’
- 1984 – This daily published many articles against Sikh community
- 1998-99 This daily published many articles against Christian community

Abusing language –

The ‘Sandesh’ daily newspaper is anti Minority. We have no objection of its being pro-Hindu but it is totally biased, partial, uses highly inflammatory language. It projects whole Muslim community as fanatic, frenzy, having disregard for other religions, anti social and anti nation. The whole community is depicted as terrorists, traitors. With every terrorist incident occurring anywhere in India this newspaper involves whole Muslims community with ISI.

The Modus Operandi of ‘Sandesh’ –

- News are twisted, distorted, exaggerated, or printed with instigation, provocation – enclosed herewith Annexure 1, 4, 7
- The truth is suppressed – Annexure 7
- Bogus stories are published – Annexure 2, 3, 6, 9

- Publishes twisted news items or bogus stories which create a sense of fear and terror among Majority community – Annexure 14
- News and photos are put up in such a manner that prima facie one may be under impression that most of the victims and sufferers are of Majority community – Annexure 10
- Condemns neutral news agencies and TV channels – Annexure 12
- Any violence involving Muslims and backward classes – words used – an act by frenzy, cruel, murderous, barbarous mob and the act is described as cruel, heinous, brutal, merciless, atrocious, pre planned
- Any violence involving Majority described as instant, spontaneous, reaction against some action, act by the anguish people – if violence results in killings of Muslims and loss to their properties, the act is not described as cruel, heinous, on the contrary it is justified in the news items
- Photos, heading, box item printed in tricky, deceptive manner
- Provocative articles Annexure 13
- Behaving and acting in a Fascist manner, propagating superior to Gobels
- Its speak on behalf of VHP, Bajrang Dal and RSS – Annexure 11
- During peace time its favorite subjects are – cow slaughter, inter caste marriages where Muslim youths marry Hindu girls, common civil code, birth rate among Muslims, conversions by Christian Missionaries and their working in Tribal areas. At regular interval it prints many provocative, instigative articles and bogus stories on these subjects.

Evidences – Examples of Anti Muslim, Communal Hatred Fomenting, Highly Provocative Inflammatory Headings, writings, and Articles Published in Sandesh newspaper are as under

- Annexure 1 – Sandesh – 28-2-02 page 1 continued page 14 – Title stating that 60 Hindus burnt alive in Godhra. Provocative language used.
- Annexure 2 – Bogus story – 28-2-02 page 1 heading – 10-15 Hindu ladies dragged away by fanatic mob from the railway compartment.. Actually no such incident happened. Police denied happening of any such incident.
- Annexure 3 – Sandesh – 23-2-02 page 16 bogus story repeated with the heading – mob dragged away 8-10 ladies into the slums
- Annexure 4 – Sandesh – 28-20-02 page 5 news item with heading ‘On arrival of Sabarmati Express at Ahmedabad slogans shouted Jai Shree Ram... Blood against blood.’
- Annexure 5 – Suppression of truth – 28-2-02 page 3 Mob killed a youth in Bapunagar, buses and shops set on fire in Ahmedabad. Actually youth killed was a muslim but this paper printed that a youth owning Khanna mutton shop was killed, deliberately his identity is not disclosed. Other victims were Muslims and their properties but ‘Sandesh’ has not mentioned anywhere in the news.
- Annexure 6 – Sandesh – 28-2-02 page 2 heading – on the edge of sword train driver was hijacked – infact there is no such hijack of Sabarmati express train driver, no other news paper either in Gujarati or English

- Annexure 7 – Sandesh 1-3-02 page 1 continued on page 14 – heading 15000 mob did great destruction – 50 burnt alive in Gulberg Society of Chamanpura (Ahmedabad) – Three died, five injured: mob became fierce. News about killings of Ex MP Shri Ehsan Jafery printed on the 1st page, the story tells that Ex MP fired at the mob, so mob was irritated and killed him. In fact widow of Ehsan Jafery denied any firing by his husband. This newspaper had justified the killing and burning of 60 persons by a mob of Majority. Mr. Jafery has called upon the police more than 200 times – ‘Sandesh’ did not disclose this fact in its news story.
- Annexure 8 – Sandesh – 1-3-02 page 16 – heading – out of kidnapped young ladies from Sabarmati Express, dead bodies of two ladies recovered – breasts of ladies were cut – Actually no such incident has happened. Police authority denied this incident. Stating the Chief Minister another Gujarati daily ‘Gujarat Samachar’ published that there is no such occurrence of any incident of kidnapping or breasts cutting, page 3 dated 2-3-02 (Annexure 9) Even Central Minister Shri George Fernandes on his visit to Gujarat confirmed this news as bogus.
- Annexure 9 – Gujarati daily newspaper ‘Gujarat Samachar’ dated 2-3-02 page 3 – denial of any incident of breasts cutting (as described above)
- Annexure 10 – Deceptive and tricky photo and news – Sandesh – 1-3-02 on the top of front page amid colored photo of funeral biers, a big title of ‘98 killed’ is printed thereby creating an impression of death of 98 persons of Majority community on the mind of readers.
- Annexure 11 – Sandesh – 5-3-02 there is a news item on 1st page with heading ‘Karsevaks going ahead neglecting prohibitory orders’. Through this news item disobeying of prohibitory orders by karsevaks is glorified.
- Annexure 12 – Sandesh – On 5-3-02 there is story on page 2 with the title ‘Anger of people against TV Channels’. By this story it is told that some TV channels telecast with partiality creating tensions between two communities. Actually owners of this paper do not like telecast of real facts in which TV channels prove that actual sufferer are the Muslims. TV channels have shown the victims of Godhra also. Till 31st March, 02 Sandesh has not printed any photo of riot victims belonging to Muslim community. Almost 90 percent of Muslims owned shops, commercial, industrial, business establishments ranging from a small vendor’s cabin to factories worth crores of rupees are looted and burnt down, there is a deadly blow to economic backbone of Muslims but neither Sandesh or any other big Gujarati daily printed any single word about the havoc made by Majority community. Many Muslims ladies are raped, killed and burnt alive but Gujarati vernacular press except Gujarat Today has not made it to public.
- Annexure 13 – Sandesh 5-3-02 page 11 A very communal, objectionable and anti Muslim, provocative, inflammatory article of Manoj Gandhi, some excerpts are as under
 Heading – Gory incidents of Godhra – Ahmedabad – dangerous game of Khoon ka badla khon
 Big heading – (1) by the conspiracy of fundamentalist Muslim terrorists, Gujarat is burning ablaze (2) Dangerous reactions of instigation of tolerant Hinduism
 Subheading in block letters (1) after 50 years of Independence, what is the reason of Muslims hatred towards Hindus of Hindustan? (2) After the communal riots of 1992 and Godhra

incident, Muslims should learn that the results of instigation of tolerant Hindus can be dangerous, (3) if fundamentalist Muslims do not understand this truth, then innocent Muslims will continue to be sacrificed in this glory game.

Other writings – 1 any Hindu cannot pardon someone forever, the brutal and cowardly terror, committed by the wicked Muslims of Godhra, cannot be pardoned by any Hindu forever because mistake can be pardoned once or twice, but pardon of every time is considered as the sign of weakness. (2) Juggler who can catch the poisonous snake and put it in the basket, is never afraid of history and he knows better as to how the poison is removed from the snake. This fact should be remembered forever by the traitors and treacherous of the minority and all the fundamentalists as well as terrorists of not only Godhra or Gujarat but of entire India. (3) Those who cannot remember this, always suffer losses. It is fact that their mistake takes their own toll (4) By treating Hindus, as their enemies, any incident of massacre of Hindus by conspiracy of religious fanatics, fundamentalists and terrorists among the Indian Muslims, will not be tolerated, and hissing snake will be brutally bended (5) There is no way out other than adopting the policy of Tit for Tat against Pakistan sponsored terrorism, and then only the ghosts of kikes will continue to take place and the very existence of Hindus in Hindustan will be entrapped in the shameful sorry plight.

Annexure 14 Sandesh 6-3-02 page 1 – 8 columns heading ‘Dangerous to Hindus’

‘Terrible conspiracy of return attack after Haj

Subheading – doubts of RDX, bomb blast or plane hijacking

Prasieworthy Role by English newspapers and English, Hindi TV channels – On behalf of citizens of Gujarat we are thankful to The Times of India, The Indian Express, Hindustan Times, Mid Day and all other English daily newspapers and TV channels like Aajtak, Star news, Zee for their impartiality, neutrality, boldness, adherence to Secularism. In many cases TV channel reporters and their cameras helped in saving the lives of human beings and detecting real culprits.

Role of vernacular TV channels – The local vernacular TV channels being operated through private agencies played villain role and they abated violence, spread violence through their instigative, provocative, misleading, distorted telecasts.

Blot on Journalism – Owners, editors and correspondents, some columnists and some writers of Sandesh newspaper are not the men of journalism but they are blot on journalism. Actually owners and editors of this paper are biased, communal minded and more than that they are mafias, blackmailers, terrorists and extremists.

Our humble submissions – Our humble submissions to your honor are

- 1 Government should Lodge a criminal case and Arrest owners and editors of ‘Sandesh’ daily
- 2 Lodging a criminal case and Arrest of owners and editors and Operators of vernacular channels operating all over Gujarat.
- 3 Pre censorship be imposed on the ‘Sandesh’ daily
- 4 If any newspaper or magazine publishes any bogus story, right from early morning Government should declare such story as bogus, not reliable and far from truth through TV

channels, radio etc. Inaction by Government should also be made liable to criminal proceedings.

5 A bench of Press Trust of India, Editors' Guild of India and other related Tribunal should be set up in Gujarat so as to put check on such mischief mongers.

Sir, we have represented you the real picture of Role of Media during the present violence. But since last 50 years it is the experience of our forefathers also that representation against Press do not yield any fruitful result, we do not know any incident of punishment to real culprits of Media. The Mafias of media know that any twisted, exaggerated, distorted news or news suppressing truth and bogus stories once published bring result, terrorists of majority community start killing Muslims and devastating their properties, the outcome is always in favor of Mafias and fanatics of Minority community, enquiry commission functioning many many years publishes its report which accepted by the ruling party or not accepted at all, no harm done to Media mafias and they once again repeat their Modus operandi. Still we hope the result will come and Mafias of Media will be punished.

Date: April 2002