



# ARCHIVES OF VIOLENCE : SEEKING AND PRESERVING RECORDS ON MASS SECTARIAN ATTACKS IN INDIA

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**Abstract**—Independent India has seen multiple instances of systematic mass violence, targeted at minorities, and tolerated, if not facilitated, by the state. However, the preservation and publicisation of official records on these instances has been inadequate. This is despite such information being vital to preventing as well as responding to future episodes of mass violence. This paper examines the difficulties in obtaining official records on mass violence through the Right to Information (RTI) Act. It specifically looks at records concerning four instances between 1983 and 2002, in Nellie, Delhi, Bhagalpur, and Gujarat. The author concludes by proposing a framework to make such records more accessible to the general public.

## I. INTRODUCTION

Since India gained independence, it has experienced a number of episodes of targeted sectarian violence against religious minorities.<sup>1</sup> The worst of these episodes have claimed hundreds of lives, injured hundreds, and displaced thousands from their homes. This article evaluates access to information about mass sectarian violence in India.

I focus on four occasions between 1983 and 2002 when religious minorities were attacked on a large scale. I briefly describe these events in Section I below. In Section II, I discuss an attempt to secure official records related to these four episodes of mass violence using India's Right to Information Act. I consider why access to information about these grave atrocities is vital. In Section III, I

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<sup>1</sup> See Asghar Ali Engineer, *COMMUNAL RIOTS AFTER INDEPENDENCE: A COMPREHENSIVE ACCOUNT* (2004).

propose that the state create public archives about them and suggest how it might do so.

## II. MASS SECTARIAN VIOLENCE: FOUR EPISODES

Below, I discuss mass sectarian violence in Nellie, central Assam, in 1983; in Delhi, the national capital, in 1984; in Bhagalpur, Bihar in 1989; and in the western state of Gujarat in 2002.

### A. Nellie, 1983

On 18 February 1983, at least 1800 Bengali Muslims, were murdered in the small Assamese town of Nellie and its surrounding villages.<sup>2</sup> Unofficial estimates put the death toll at 3000. The Nellie massacre was committed over the course of a few hours by people from neighbouring villages wielding knives and machetes. It was the single worst sectarian attack in India since independence.<sup>3</sup> The larger context of the massacre was the anti-immigrant movement consuming Assam at the time, which had led to civil disobedience, as well as violence in protest against the increased numbers of Bangladeshi Muslims, and in particular, their inclusion in electoral rolls.<sup>4</sup> Many of the direct participants in the Nellie massacre belonged to the Tiwa tribe. In subsequent years, some perpetrators said that they had been urged to attack their Muslim neighbours by the leaders of the anti-immigrant agitation,<sup>5</sup> who later formed the Asom Gana Parishad party that was voted into power after the agitation ended.

### B. Delhi, 1984

Eighteen months after the Nellie massacre, Sikhs in Delhi were brutally attacked following the assassination of Prime Minister Indira Gandhi on 31 October 1984. In the week after Mrs. Gandhi's assassination, at least 2733 Sikhs were killed by mobs led by the ruling Congress party<sup>6</sup> – unofficial estimates put the death toll at 4000.<sup>7</sup>

<sup>2</sup> My account of violence in Nellie is based on T.D. Tewary, *Report of the Commission of Inquiry on Assam Disturbances*, Guwahati: Government of Assam ("Tewary Commission report") 265-315 (1984).

<sup>3</sup> The survey of significant instances of sectarian violence in independent India by Engineer (2004) indicates that the Nellie massacre was the incident with the single-largest death toll. See Engineer, *supra* note 1.

<sup>4</sup> Sanjib Baruah, *Immigration, Ethnic Conflict, and Political Turmoil – Assam, 1979-1985*, 26 ASIAN SURVEY 1184 (Nov., 1986). See also Makiko Kimura, *Violence and Collective Identity in the Narratives on the Nellie Incident*, 4 ASIAN ETHNICITY 225 (2003).

<sup>5</sup> See Kimura at 233.

<sup>6</sup> Jaskaran Kaur, *TWENTY YEARS OF IMPUNITY: THE NOVEMBER 1984 POGROMS OF SIKHS IN INDIA* (2006).

<sup>7</sup> R.K. Ahooja, *Ahooja Committee Report* (New Delhi: Ministry of Home Affairs, Government of India, 1986).

### C. Bhagalpur, 1989

A few years later, in October and November 1989, mass violence in Bhagalpur, Bihar claimed almost 1000 lives according to official estimates.<sup>8</sup> Many parts of north India were tense at the time as the result of a campaign by Hindu-majoritarian political groups to tear down the sixteenth-century Babri mosque, believed to stand on the site where the Hindu god Ram had been born, and replace it with a temple. The immediate trigger for violence in Bhagalpur had been a clash between members of a procession carrying bricks for the proposed temple through a Muslim neighbourhood, and some residents of the area. This relatively minor incident was followed a few days later by attacks led by thousand-strong mobs in the town of Bhagalpur and villages surrounding it. In addition to killing over a thousand people, most of them Muslim, these attacks left several hundred people injured and displaced approximately 50,000 from their homes.

### D. Gujarat, 2002

Muslims were, once again, the targets of mob violence in 2002, this time in Gujarat. As in Bhagalpur in 1989, the Hindu-majoritarian movement was implicated in violence that led to over 2000 deaths in the western state of Gujarat in February 2002. On 27 February 2002, two train carriages carrying Hindu pilgrims were set on fire in the Gujarati town of Godhra, killing 58 people. This brutal violence was followed by many days of attacks on Muslims across Gujarat, led by Hindu-majoritarian groups.<sup>9</sup> Ministers in the Gujarat government as well as members of the Gujarat legislature participated in these attacks.<sup>10</sup> The police did not intervene, allowing not just looting sprees but multiple, hours-long massacres to take place.<sup>11</sup>

### E. Systematic violence, allowed by the state

Labelling these events as “riots”, as is common in India, suggests that they involved frenzied, mutual confrontations between different groups. This obscures the crucial fact that violence in Nellie, Delhi, Bhagalpur and Gujarat was systematic, organized by political organizations, and targeted at particular minorities.

<sup>8</sup> My account of violence in Bhagalpur is based on the *Report of the Commission of Inquiry to inquire into the communal disturbances at Bhagalpur, 1989* (1995), Patna: Government of Bihar; (“Bhagalpur Inquiry”); Singh, A.K. (1989) *Bhagalpur Riots in Retrospect: Report of the Special Additional District Magistrate, Law & Order, Bhagalpur; Report of the Commissioner of Bhagalpur on the Bhagalpur Riots, 1989*, Bhagalpur: Government of Bihar.

<sup>9</sup> Human Rights Watch, “*We Have No Orders to Save You*”: *State Participation and Complicity in Communal Violence in Gujarat 15-18* (2002). See also 1 Concerned Citizens Tribunal, CRIMES AGAINST HUMANITY: AN INQUIRY INTO THE CARNAGE IN GUJARAT LIST OF INCIDENTS AND EVIDENCE 37- 191.

<sup>10</sup> Human Rights Watch, *supra* note 9, at 24, 49; Concerned Citizens Tribunal, *supra* note 8, at 47.

<sup>11</sup> Human Rights Watch, *supra* note 9, at 21-27.

The Nellie massacre was encouraged, though not directly committed, by members of the All Assam Students Union, which later evolved into the Asom Gana Parishad party. Attacks in Delhi, Bhagalpur and Gujarat, were coordinated and led by political organisations, which, in Delhi and Gujarat, were closely affiliated with the political party in power. In each instance, violence escalated to the extent it did because it was tolerated by the state. A few days before 18 February 1983, a thousand-strong crowd, armed and beating drums, had gathered around Muslim villages in Nellie, closing off escape routes and ready to advance.<sup>12</sup> The police ignored residents' urgent pleas for help.<sup>13</sup> In Delhi, Bhagalpur and Gujarat too, police inaction allowed predictable, preventable violence to escalate and spread.<sup>14</sup> While government functionaries were cynically passive, some politicians led violent mobs and others encouraged violence from a distance.

In the aftermath of these episodes of mass violence, both national and state governments were apathetic about pursuing accountability.<sup>15</sup> This is, perhaps, not surprising, given the complicity of political leaders and government officials in these attacks. Facilitating onslaughts against minorities carried little cost for the political organizations involved. On the contrary, in Assam, Delhi and Gujarat, the political parties that fomented violence reaped electoral gains and cemented power.

### III. SEEKING INFORMATION

While civil society groups have highlighted government failures during and after mass sectarian violence, Indian governments have been slow to reveal and reckon with their own lapses. In an attempt to bridge the gap between official information about mass violence on the one hand and non-governmental analyses on the other, a few years ago I coordinated an attempt to access government records on the attacks in Nellie, Delhi, Bhagalpur and Gujarat.<sup>16</sup> Beginning in 2009, a team of five researchers including myself used the Right to Information Act<sup>17</sup> to seek official records on (1) criminal justice, (2) action against negligent or culpable public functionaries, and (3) relief and reparation for victims after each of these catastrophic episodes.

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<sup>12</sup> Wireless message from Officer in Charge, Nagaon Police Station to the Commandant, 5 Assam Police Battalion and Officer in Charge, Jagiroad Police Station, 14 February 1983, in Tewary Commission, *supra* note 2, Exhibit 55 at 306, para 13.155.

<sup>13</sup> *Id.*

<sup>14</sup> *Supra* note 2; *supra* note 6; *supra* note 7; *supra* note 8.

<sup>15</sup> See Kaur, *supra* note 6; Human Rights Watch, *Compounding Injustice: The Government's Failures to Address Massacres in Gujarat* (2003); Surabhi Chopra, *Nellie 1983 in ON THEIR WATCH: MASS VIOLENCE AND STATE APATHY IN INDIA – EXAMINING THE RECORD* 311-331 (Surabhi Chopra & Prita Jha eds., 2014).

<sup>16</sup> See Surabhi Chopra & Prita Jha, *supra* note 15.

<sup>17</sup> Right to Information Act, 2005, No. 22 of 2005, (India) ("RTI Act").

A quest for government records of this nature could not have been attempted before the enactment of the Right to Information (“RTI”) Act in 2005. When this landmark law came into force, it upended the entrenched status quo whereby government records had been substantially protected from public scrutiny by the colonial-era Official Secrets Act.<sup>18</sup> Under the transparency-focussed RTI Act, public authorities can withhold specified types of official information,<sup>19</sup> including, *inter alia*, records affecting diplomatic ties with other countries<sup>20</sup> or records that might hamper the investigation of a crime,<sup>21</sup> but are obligated to disclose information that falls outside those protected categories.<sup>22</sup> Individuals, in turn, have an expansive right to information under the RTI Act, and can ask the state for a wide swathe of official records without having to justify why they want this information or show that they are directly affected by it.<sup>23</sup> These provisions, particularly the freedom to request records without demonstrating a personal nexus, made it possible to approach a range of public authorities for information on mass violence.

## A. Outcomes

The research team filed 824 applications for official records. Out of these, 255, or 31% of the total, elicited some information in the first instance. 324, or 40%, were transferred to other public authorities. 245 of these, or 29%, were met with silence – or “deemed refusal” within the terms of the RTI Act.<sup>24</sup>

The RTI Act permits applicants to appeal a refusal to disclose information, with an initial appeal being considered within the relevant public authority, and if this is unsuccessful, a subsequent appeal lying with the commission on the right to information in that particular state.<sup>25</sup> The research team filed 515 first appeals against deemed and reasoned refusals. Given resource constraints, we chose to file very few second appeals, as these tend to be subject to long delays.

The RTI Act had not previously been used on this scale to examine the aftermath of mass atrocities. Consequently, the research project tested the law’s potential to illuminate the state’s response to mass violence, and, more generally, to elicit information about grave human rights violations.<sup>26</sup>

<sup>18</sup> Official Secrets Act, 1923, No. 19 of 1923 (India).

<sup>19</sup> RTI Act, *supra* note 17, § 8.

<sup>20</sup> RTI Act, *supra* note 17, § 8(1)(a).

<sup>21</sup> RTI Act, *supra* note 17, § 8(1) (h).

<sup>22</sup> RTI Act, *supra* note 17, §§ 3, 7.

<sup>23</sup> RTI Act, *supra* note 17, § 6(2).

<sup>24</sup> RTI Act, *supra* note 17, § 7(2).

<sup>25</sup> RTI Act, *supra* note 17, § 19.

<sup>26</sup> Surabhi Chopra *et. al.*, *Exercising the Right to Information in On Their Watch: Mass Violence and State Apathy in India – Examining the Record* 21-53 (Surabhi Chopra, & Prita Jha eds., 2014).

Records that are years, and even decades old, are a challenging request from the state's perspective. We found that public authorities that routinely perform citizen-facing functions were markedly better able to engage with applications for such information. District administrations and the police usually responded promptly to applications for information, even if denying the request. Other public authorities were more likely to be silent or hostile. For example, the army headquarters in Delhi asked us, contrary to the RTI Act, to justify why we wanted records related to the army's efforts to control mass violence in 1984.<sup>27</sup> Disappointingly, state commissions for minorities - institutions specifically mandated to protect minority rights - did not respond to applications seeking information about these events where the Sikh and Muslim communities had been targets of brutal violence.<sup>28</sup> The Ministry of Home Affairs deflected requests for information about mass violence by transferring them to other public authorities.<sup>29</sup>

When public authorities refused to release particular records, their reasons often betrayed a misreading of the RTI Act. Under the Act, government records that are more than twenty years old can be withheld by the state on far fewer grounds than more recent records.<sup>30</sup> Older information is, therefore, more freely "disclosable" than records of more recent vintage. However, in four instances, public authorities reversed this provision of the RTI Act, and insisted that records dating back two decades or more need not be disclosed at all.<sup>31</sup> Similarly, on two occasions, the Delhi police refused to release information related to criminal proceedings, citing the RTI Act's provision that records could be withheld if disclosure would "*impede the process of investigation or apprehension or prosecution of offenders*".<sup>32</sup> The police interpreted the RTI Act as ring-fencing anything related to criminal proceedings from disclosure. In fact, as the Delhi High Court has clarified, the police need to justify why disclosure would hamper the investigation of a crime rather than using the provision to withhold an entire category of information.<sup>33</sup>

Thus, access to official records was influenced by the capacity and attitude of public authorities. Even more salient to the chances of access was the type of information being sought. Governments balked at disclosing *any* records about disciplining and prosecuting government officials and political functionaries. Almost all the research team's applications for information on this issue were rejected or studiously ignored.<sup>34</sup>

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<sup>27</sup> *Id.* at 49.

<sup>28</sup> Surabhi Chopra *et. al.*, *supra* note 26, at 44-45.

<sup>29</sup> Surabhi Chopra *et. al.*, *supra* note 26, at 49.

<sup>30</sup> RTI Act, *supra* note 17, § 8(3).

<sup>31</sup> Surabhi Chopra *et. al.*, *supra* note 26, at 40.

<sup>32</sup> RTI Act, *supra* note 17, § 8(1)(h).

<sup>33</sup> Bhagat Singh v. Chief Information Commr., 2007 SCC OnLine Del 1607 : (2008) 146 DLT 385, at ¶ 13.

<sup>34</sup> Surabhi Chopra *et. al.*, *supra* note 26, at 47.

By contrast, the police and district administrations in Assam, Delhi, and Gujarat readily disclosed information on criminal proceedings. Information about relief and reparation for victims was also disclosed by state and national governments, although records on this issue tended to be disorganised and incomplete.

## B. Loss and destruction

While the research team accessed important information on criminal justice and reparation, other, equally significant official records on these issues remained elusive even though the relevant public authorities were willing to disclose them in principle. Some information seems to be poorly maintained as a matter of course. For example, neither courts nor governments had information on post-trial appeals in relation to crimes committed in Delhi, Bhagalpur and Gujarat.<sup>35</sup> Other information had been destroyed over the years, as a part of routine record-management. A high proportion of records relating to the Nellie massacre in 1983 and the attacks on Sikhs in Delhi in 1984 no longer existed.<sup>36</sup> By comparison, numerous and detailed records about more recent mass violence against Muslims in Gujarat in 2002 survived and were disclosed to the research team.<sup>37</sup>

The destruction of official records on mass violence harms the historical record and the scope for understanding the state's failures. While non-state information is plentiful for some episodes of mass violence, it is far scarcer for others. In 2002, a competitive electronic media covered mass violence in Gujarat as it happened. Human rights groups meticulously documented the aftermath. In comparison, much less is known about the killing of over 2000 people in Nellie in 1983. Nor have the sustained attacks on Muslims in Bhagalpur in 1989 been researched as thoroughly as mass violence in Delhi in 1984 and Gujarat in 2002. The multiple, intersecting documents generated by public authorities are a rich source of knowledge, particularly in relation to events that are not well documented by civil society. Further, examining the records generated by state processes allows us to identify where these processes fail. Understanding recurrent lapses, the points where prosecuting crimes or compensating victims goes awry, necessarily precedes developing better, less corruptible responses to mass violence.<sup>38</sup>

If information that is significant for systemic reform and public memory is lost on the one hand, on the other hand, the prospects for accountability might also be

<sup>35</sup> Surabhi Chopra & Prita Jha, *supra* note 15, Prita Jha & Surabhi Chopra, *Access to Criminal Justice*, at 278.

<sup>36</sup> Prita Jha *et. al.*, *Access to Criminal Justice in On Their Watch: Mass Violence and State Apathy in India – Examining the Record* (Surabhi Chopra, & Prita Jha eds., 2014), at 278.

<sup>37</sup> *Id.* at 48.

<sup>38</sup> Surabhi Chopra, Mass violence in India: Using the right to information to examine the state's response, Harvard South Asia Institute blog (12 June 2015), <http://harvarsai.tumblr.com/post/121350690170/mass-violence-in-india-using-the-right-to>.

harmful when official records related to mass violence are destroyed. Particularly when political parties that supported the violence are in power, redress, whether criminal, compensatory or symbolic, is likely to be elusive. Opportunities to assign responsibility, punish the guilty and rehabilitate victims might arise years after the fact. Over time, power might change hands, particular individuals might be jettisoned by parties that once shielded them from accountability, public sympathies might shift, court decisions or international pressure might force the government to act. While these developments can be campaigned for, they cannot be predicted.<sup>39</sup> It is crucial, therefore, that official records on episodes of mass violence are preserved.

### C. Preserving information

Knowledge about serious atrocities has been preserved and disseminated in many countries through the mechanism of truth commissions. While such institutions have not been established in India thus far, Indian governments have tended to set up commissions of inquiry after large-scale episodes of identity-based violence. After each of the sectarian conflagrations in Nellie in 1983, Delhi in 1984, Bhagalpur in 1989 and Gujarat in 2002, official inquiries were launched to examine what had happened.<sup>40</sup> Drawing upon these endeavours, I discuss how official inquiries could provide a potential anchor for preserving information on mass violence and making it accessible. Detailed analysis of the inquiries conducted after each episode of mass violence is beyond the scope of this article, and my observations are intended to prompt dialogue and identify questions for further scrutiny. Below, I point out the potential as well as the problems with commissions of inquiry as vehicles for sharing information about mass sectarian violence.

The commissions that examined the episodes of violence mentioned above were temporary, *ad hoc* institutions appointed under the Commissions of Inquiry Act,<sup>41</sup> which empowers both governments and legislatures at the central and state levels to establish such bodies to inquire into “any definite matter of public importance”.<sup>42</sup> While these commissions of inquiry focused on grave sectarian

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<sup>39</sup> *Id.*

<sup>40</sup> See Tewary Commission, *supra* note 2 [inquiring into pre-election violence in Assam]; G.T. Nanavati, Justice Nanavati Commission of Inquiry (1984 Anti-Sikh Riots), 9 February 2005, New Delhi: Government of India [inquiring into violence targeting the Sikh community after Prime Minister Indira Gandhi’s assassination]; Justice Ranganath Mishra Commission of Inquiry, August 1986, New Delhi: Government of Delhi [inquiring into violence targeting the Sikh community after Prime Minister Indira Gandhi’s assassination]; Bhagalpur Inquiry, *supra* note 8 [inquiring into mass violence in Bhagalpur in 1989, focusing in particular on the district administration’s performance]; G.T. Nanavati & A.H. Mehta, Report of the Commission of Inquiry, 19 November 2014, Ahmedabad: Government of Gujarat [inquiring into the Godhra attack and mass violence in Gujarat in 2002].

<sup>41</sup> Commissions of Inquiry Act, 1952, No. 50 of 1952, (India).

<sup>42</sup> *Id.* at § 3.

violence, they were not “truth-seeking” entities of the sort that have served as transitional justice mechanisms in many parts of the world. Several states transitioning from authoritarianism to democracy since the 1980s appointed truth commissions to excavate and record the abuses of past regimes, and to hear and officially acknowledge what victims of such abuse had suffered<sup>43</sup>. Unlike truth commissions, official commissions inquiring into mass violence in India have typically been mandated to examine the state’s actions rather than the experience of victims.

This does not preclude attention to the harm inflicted on communities that faced attacks, violence having been facilitated by government apathy and bias. For example, the commission inquiring into mass violence in Bhagalpur noted many significant details, such as the fact that the bodies of the dead in Logain village were buried in mass graves that the police helped to conceal,<sup>44</sup> or that four Muslims were lynched to death in Chara Baragaon while police constables ostensibly protecting them stood by and watched.<sup>45</sup>

However, a state-focused mandate has meant that commissions of inquiry have been better placed to highlight administrative failings rather than document abuse. While the Bhagalpur Commission noted important details about how violence was inflicted, it was at its most comprehensive and rigorous when it highlighted how the police were derelict and brazenly sectarian while violence unfolded.<sup>46</sup> Such cataloguing and analysis of administrative failures is a crucial contribution, and one that commissions are distinctively suited for. Unlike a trial court, which is narrowly focused on adjudicating the criminal liability of particular individuals, a commission can analyse government actions from a birds-eye perspective.

A commission of inquiry is similarly well-placed to record the experiences of victims and affected communities in a manner that adversarial criminal trials cannot accommodate. However, the commissions that inquired into mass violence in Assam, Delhi, Bhagalpur and Gujarat missed the opportunity to do so.

The relative neglect of victims’ experiences has meant that Indian commissions of inquiry have not played the role that truth commissions perform during social transitions, of recognizing the state’s responsibility for mass atrocities and acknowledging what victims have suffered. As Cohen points out, there is a powerful difference between *knowledge* - knowing about the government’s misdeeds

<sup>43</sup> See Stanley Cohen, *State Crimes of Previous Regimes: Knowledge, Accountability, and the Policing of the Past*, 20 LAW & SOCIAL INQUIRY, 7, 12-22, (1995). See also Onur Bakiner, TRUTH COMMISSIONS: MEMORY, POWER, AND LEGITIMACY, (2015).

<sup>44</sup> Bhagalpur Inquiry, *supra* note 40, paras 525-530.

<sup>45</sup> Bhagalpur Inquiry, *supra* note 40, paras 548-549.

<sup>46</sup> Bhagalpur Inquiry, *supra* note 40, paras 114, 136, 243, 570-585.

- and *acknowledgement* - where the state owns up to wrongdoing.<sup>47</sup> Formal, public acknowledgement, often after years of being silenced and discredited, can bring immense relief to victims of abuse. Truth commissions have been a means for the state to consciously reject denial (“this never happened”), diminution (“what happened was not as bad as it is made out to be”) or justification (“the victims were at fault”) of mass atrocity, and forge a narrative that accords respect and equal citizenship to groups that were persecuted in the past. Such acknowledgement helps to recalibrate the political equilibrium and foster new norms: in recognizing past abuse as wrong, the state commits itself to treating its citizens considerably better.

The Indian commissions of inquiry considered in this article did not play the role of bearing official witness to victims or confronting “*the conscious coverup and the convenient forgetting, the euphemistic renaming*”.<sup>48</sup> While examining majoritarian violence that was committed by political organizations and tied to electoral mobilisation, these commissions have focused primarily on administrative failures.

The potential for such commissions to inform and influence people is limited by other factors too. Unlike truth-seeking transitional justice mechanisms which have typically scrutinised the abuses of past regimes, Indian commissions of inquiry have often had to inquire into the actions of governments and politicians in power at the time. Under the Commissions of Inquiry Act, the government of the day directly chooses the members of a commission that is mandated to examine, *inter alia*, that same government’s failings. Commissioners thus appointed on some previous occasions have tended to downplay the involvement of senior officials and politicians. For instance, former Supreme Court justice Ranganath Mishra, who headed a commission to inquire into violence against Sikhs in 1984 notoriously disregarded important evidence and exonerated senior Congress party politicians.<sup>49</sup> He subsequently became the Chief Justice of the Supreme Court of India, and later represented the Congress in the Rajya Sabha for six years. After mass violence in Gujarat in 2002, the state government appointed a single person, Justice K.G. Shah, a former justice of the Gujarat High Court who was reportedly close to the leaders of the ruling Bharatiya Janata Party,<sup>50</sup> to inquire into what had happened. Protests led the government to appoint a second commissioner, while retaining Justice Shah in the role as well. The interim report of a commission inquiring into attacks on Christians in Kandhamal, Orissa in 2008 failed

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<sup>47</sup> Stanley Cohen, *supra* note 43, at 18.

<sup>48</sup> *Id.* at 15.

<sup>49</sup> Jaskaran Kaur, *supra* note 6, at 81-92.

<sup>50</sup> Tehelka, The Truth: Gujarat 2002, (Tehelka), <http://www.tehelka.com/video/the-truth-gujarat-2002-arvind-pandya/>; See also Manas Dasgupta, *Nanavati panel takes note of Pandya’s remarks*, The Hindu, Oct. 30, 2007, <http://www.thehindu.com/todays-paper/nanavati-panel-takes-note-of-pandyas-remarks/article1939434.ece>.

to mention the well-documented organizational role played by Hindu-majoritarian political groups.<sup>51</sup>

Acquiescent commissioners are likely to prevaricate and neglect crucial information in their final reports; they are also likely to lose the confidence of victims, and thereby forgo important testimony. During the early years of the Nanavati-Shah commission's work in Gujarat, for example, many Muslim witnesses refused to testify because they feared retaliation and found the atmosphere during proceedings to be hostile.<sup>52</sup>

Once inquiries into mass violence have concluded, their findings have remained remarkably inaccessible. The Commissions of Inquiry Act requires that the final reports of inquiries must, within six months of completion, be reported to the national parliament if a commission was established by the central government or the state assembly if the commission was established at the state level, along with the government's response to commission findings.<sup>53</sup> Once placed before the legislature, inquiry reports as well as government responses are, technically, in the public domain. In fact, however, this is not the case.

The report of the inquiry into the killing of Hindu pilgrims in Gujarat is available online,<sup>54</sup> but the state government does not seem to have made the inquiry report on violence against Muslims similarly available. During the research project discussed in Section II above, the research team found that the Parliament library only held the reports of two inquiries into mass violence in 1984.<sup>55</sup> The governments of Delhi and Bihar disclosed the final reports by commissions of inquiry in response to right to information applications. Similar applications to state assemblies and the national Ministry of Home Affairs elicited no response.<sup>56</sup> Assam's Home Department denied an application for the Tewary Commission report, but later disclosed the report in response to an application for information on the district administration's response to the Nellie massacre. This copy is very likely one of the few that survives of an inquiry that was never formally made public.

<sup>51</sup> Justice Sarat Chandra Mohapatra submits interim report on Kandhamal riot, Orissa Diary, (July 2, 2009), <http://www.orissadiary.com/currentnews.asp?id=13226>.

<sup>52</sup> Human Rights Watch, *Discouraging Dissent: Intimidation and Harassment of Witnesses, Human Rights Activists, and Lawyers Pursuing Accountability for the 2002 Communal Violence in Gujarat*, (2004), at 3.

<sup>53</sup> Commissions of Inquiry Act, *supra* note 41, at § 3(4).

<sup>54</sup> Available on the website of the Department of Home Affairs, Government of Gujarat, at <http://www.home.gujarat.gov.in/homedepartment/downloads/godharaincident.pdf>.

<sup>55</sup> Surabhi Chopra, *Holding Public Officials Accountable in On Their Watch: Mass Violence and State Apathy in India – Examining the Record* (Surabhi Chopra, & Prita Jha eds., 2014), at 305-306.

<sup>56</sup> *Id.*

While the final reports of inquiries could be secured through the RTI Act, the evidentiary material gathered during these inquiries was not similarly obtainable. Admittedly, disclosing the vast array of material considered by commissions of inquiry to an individual right-to-information applicant is likely to disproportionately burden the government. However, rather than deflecting disclosure, governments should obviate the need to apply for this information at all. The state should use the material gathered over the course of these prolonged inquiries to create archives on episodes of mass sectarian violence.

The United Nations Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence has noted that simply “warehousing” records is not the same as creating an archive.<sup>57</sup> It is worth noting that official information about mass violence in India has not even been adequately warehoused thus far, given the amount that has been lost over time. Commissions of inquiry on mass violence have served, whatever their individual flaws, as occasions to collate disparate records and gather testimony. This collection of material could provide the nucleus for public archives, to which additional information – state and non-state – could be added. As recommended by the Special Rapporteur, such archives should not simply be a depository, but an easily accessible resource designed to protect and preserve information on some of the most serious atrocities that India has experienced.

The information collected by commissions inquiring into mass violence includes, *inter alia*, government records as well as transcripts of testimony by victims, witnesses, alleged perpetrators, politicians and officials. Institutionalised access to this information would be important for researchers, educators, victims of violence, their descendants, and the public at large. Various and diffuse, these documents would complicate and contextualise inquiry reports, some of which, as discussed above, are slanted to advantage senior officials and political leaders.

Archives would not promote accountability for mass violence in and of themselves. But they would provide access to the raw material that can help to challenge political denial or revisionism about targeted violence against religious minorities. They would also be a means to ensure that the testimony recorded during temporary, time-bound official inquiries survives for the long-term. Preserving victim testimony might facilitate memorialisation, whether non-state or official, in the future.<sup>58</sup>

Some of the material gathered by commissions - transcripts of witness testimony, in particular - would no doubt raise concerns about privacy and personal safety. But a framework for addressing these concerns could be developed based upon existing right to information standards. For example, the option to request

<sup>57</sup> Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, United Nations Human Rights Council, A/HRC/24/42, at ¶ 85 (August 28, 2013).

<sup>58</sup> *Id.* at 83.

anonymity or redaction could be offered to individuals who have testified before a commission in the past. Sensitive testimony that might distress or endanger the witness if archived could be anonymised or redacted.

#### IV. CONCLUSION

The sectarian attacks in Nellie in 1983, Delhi in 1984, Bhagalpur in 1989 and Gujarat in 2002 were concentrated in space and time, but their legacy persists. Many of the individuals and communities who were targeted carry lifelong burdens of bereavement, disability, immiseration, trauma and grief. But since these events disproportionately harmed religious minorities, they are especially vulnerable to being minimised and dismissed amidst the machinations of democratic politics. The diminution of victims' suffering and the state's complicity should be resisted by creating archives that draw upon the material already gathered by flawed official inquiries. Establishing official archives would tacitly acknowledge the gravity of these episodes of mass sectarian violence. The information preserved as a result would strengthen the historical record, weaken revisionism, and perhaps even help to redress past crimes.