

COMMENTS

Induction of a massacre: the conduct and legacy of Accused no 37

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On August 29, 2012, a court in Ahmedabad ruled in a case involving 61 individuals accused of the massacre of 96 Muslims in Naroda Patiya, Gujarat, on February 28, 2002. The massacres occurred a day after a terrible fire engulfed a train near Godhra, Gujarat, in which 59 *karsevaks* (volunteer workers for a religious cause) were burnt alive, and more than 100 injured. The *karsevaks* were returning from Ayodhya where they were participating in a campaign to build a temple dedicated to Ram on a site where a mosque had stood. Subsequently, Naroda Patiya was one of many towns in Gujarat affected by riots in which thousands of individuals, mainly Muslims, were murdered, raped, looted, and displaced, their homes ransacked, their livelihoods destroyed by activists of Hindu fundamentalist organisations. For over a decade, victims of these pogroms have sought justice for their murdered kin and for their own injuries, physical and psychological.

On August 29, Dr Jyotsna Yagnik, designated judge for "Conducting Speedy Trial of Riot Cases", found 32 of the 61 accused guilty of multiple charges, including murder and criminal conspiracy. Of the 61 individuals, it is Accused no 37 (A-37), Dr Maya Surendrabhai Kodnani, whose conduct is of interest to us as she was a gynaecologist who ran a maternity home in the area. Societal roles played by physicians in the past century have been discussed, comparing the very different ideologies that have inspired them.

Excerpts from Dr Jyotsna Yagnik's 1969-page judgement best convey the horrors that unfolded on February 28, 2002 (1):

The facts of this case

(a) *The assault and the attack made by the aggressor accused was extremely brutal, gruesome, condemnable, inhuman, clearly violative of human rights and Constitutional rights of victims of this case.*

(b) *The 96 persons were killed mercilessly in a day and were reduced to grilled meat, without any stimuli or provocation on their part. Among the deceased victims, there were women, old persons, helpless kids and even crippled person.*

About 125 victims have been found to have been victims of crimes of hurt, grievous hurt, attempt to murder, etc. Among these helpless 125 persons there was even an infant aged 20 days.

(c) *The killings of 96 persons was certainly targeted killing. It is proved to be a systematic campaign...*

(d) The murders committed in this communal riot that too, of 96 Muslims in a day, cannot be termed to be usual set of murders, it is a case of race multiple murders which has marked a black dot on the secular salient feature of the Constitution of India.

(e) Throughout the day the massacre went on, but the worst part of the massacre was the gruesome and ghastly murders of 58 victims in the evening occurrence at one place itself.

(j) damages of lakhs of rupees, disturbance, damages to household and business places, deaths, injuries violent disorder, outraging modesty, rapes, gang rapes, mass torching including of women, children, crippled, old, attack on dwelling houses, shops, cabins, carts by burning and destroying, which reduced the properties to ashes.....

(k) There are certain accused who have been proved to have remained present and have participated in all the three occurrences viz. morning, noon and evening occurrences. This reveals their commitment, their priority in life, their tremendous bias and their throughout involvement in the crime which went on for the entire day.

These accused are such who have not spared a single minute of that day for any other task of their lives and that right from 9:30 a.m. to at least up to 7:30 to 8:00 p.m. they were very much on the site unceasingly and continuously doing different offences for which, they have been held guilty(1:1940)

The testimony of a prosecution witness (PW-236) describes Dr Kodnani's arrival on the scene:

PW-236:

(7.1) The witness has studied upto Std.VI, conversant with the Gujarati language, at present occupation is rickshaw driving, in the year 2002 had his own shop of mattresses, resident of Naroda Patiya, at about 8.30 or 9.00 a.m. in the morning so many people gathered on the road, the witness therefore went near Natraj Hotel, saw mob of 5 to 10 thousand persons, Mayaben (A-37) came there in Maruti Frontie with her PA (Personal Assistant), they got down from Car, by seeing her, the people who were standing there shouted the slogans of 'Jay Shri Ram', (Victory to Lord Ram!).

Mayaben (A-37) delivered a provoking speech, the gist of speech spelling her instigation to the mob is, "I have seen dead bodies of Kar Sevaks at Godhra. You Ram Bhakta – devotees of Ram should kill Muslims here, cut them, as the Babri Masjid had been demolished, the Masjid here also should be destroyed, I am with you etc., you will have no difficulty. She then left...(1:645).

Dressed in a white saree with a saffron scarf (a colour that symbolises courage) on her neck she then went in her white Maruti car to..... the S.T(State Transport) Workshop Gate. Mayaben (A-37)....was followed by a Trax Jeep. Mayaben (A-37) gave signal to the mob near Natraj and she called upon the mob (near) the Gate of S.T. Workshop by indicating to them to come. About 100 leaders cameMayaben (A-37) was discussing something with all of them and then instructed her P.A. the P.A. took out the weapons from the Trax Jeep, the weapons were sword, Bhala (spears),Trishul (tridents), revolvers etc. Under the instructions, her P.A. gave all these weapons to the leaders of the mob...(1:645).

... After Mayaben (A-37) went away, the men of the mob including the P.A. had attacked (the) Nurani (Masjid). ...Mayaben (A-37) said "Kill them. I am and will be with you always. You will always have my backing." Mayaben was there for 30-45 minutes."(1:644)

" ...on that day, A-37 came to the site twice in the morning....She was seen near the Jawannagar Khada before 12 noon....At about 2 pm she had telephoned to the fire brigade for fire call about some petrol pump in the Naroda Patia area she has taken round at the site of the offence..."(1:1889)

In the course of delivering her judgement, Judge Yagnik remarks:

(g) *The seriousness of this offence is to be assessed from the viewpoint that India is a Secular State and that such act and omission and that too, by the elected member of the Constitutional Body (Dr Maya Kodnani was the elected representative of that area to the State Assembly)design to create a situation where, the conspiracy hatched is executed in its full swing so as to see that the death toll of Muslims is risen and other offences against minority are committed. Commission of this offence is clearly a result of instigation and abetment by A-37(1:1948).*

...it stands proved beyond all reasonable doubt that the accused was present and has participated in crime on that day, she was a Kingpin of Naroda Patiya massacre and she is one of the principal conspirators.....

It cannot be forgotten that the result of the conspiracy is doing away (with) about 96 Muslims and injury to about 125 Muslims (1:1813).

... As far as A-37 and other leaders of the communal riot are concerned, ... who were admittedly the members of the Peace Committee of the Sardarnagar Police Station and Naroda Police Station, it is to be noted that they have not been found to have done any act of peace agent or pacifying agent (1:1849).

A-37:

(18.1) *This accused was the then, current M.L.A. (Member of the Legislative Assembly representing the ruling Bhartiya Janata Party, BJP, a right wing Hindu Nationalist party) of the Naroda constituency(1:1888).*

The submission of A-37 that she is a victim of politics has been pleaded for the first time without any background created in

the cross-examination of the PW and even through submission before this Court. As a matter of fact, this Court has observed in its judgment that A-37 was tremendously favoured by the then investigating agencies. All care, at the cost of the duty of I.O. (Investigating Officer) and even the interest of the victims of crime, was taken to see to it that, the involvement of A-37 does not come on the books. This fact comes in the way to believe that A-37 was ever a victim of any politics (1:1945).

Judge Yagnik then discusses the use of the death penalty as punishment and the plea of the accused for sympathetic consideration. She notes that at the end of 2009, about 139 countries had abolished the death penalty, and that a "progressive society restricts the use of the death penalty" (1:1939). Furthermore, "Article 5 of Universal Declaration Of Human Rights guides to respect human dignity and it also says that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Justice Yagnik states: "Use of death penalty undermines human dignity. Moratorium on the use of the death penalty contributes to the enhancement and progressive development of human rights."(1:1940). Finally, given the facts of the case, "not imposing death penalty can also be safely termed to be grant of the prayer of sympathetic consideration, looking to their lion share in the entire massacre at Naroda Patiya."(1:1949).

The 57-year-old Dr Kodnani was sentenced to suffer 10 years of rigorous imprisonment and then "to serve a minimum term of 18(eighteen) years in jail without remissions before consideration of her case for premature release." "For the past three years, when the trial was going on in the special court, Maya had to be present in the court every working day from 10am to 5pm. She portrayed an overtly religious picture, praying and reading the scripture in the courtroom"(2), and "cried inconsolably" in court upon hearing the verdict(3).

Maya Kodnani was born to parents who were refugees from the Tharparkar district of Sindh following the partition of British India into India and Pakistan in 1947. Her father, a teacher, settled in Deesa in Northern Gujarat where he started a Gujarati medium school of which his daughter was a student (4). Mayaben was actively associated with the Rashtriya Sevika Samiti (National Women's Volunteer Committee), the women's wing of the Rashtriya Swayam Sevak Sangh(RSS), a right wing paramilitary Hindu organisation) since her college days in Baroda. She graduated with a Bachelor's Degree in Medicine and Surgery (MBBS) and then trained for a Diploma in Obstetrics and Gynaecology (DGO). She founded the Shivam Maternity Home in Naroda which she sold only a few months ago, apparently "sensing she could be convicted in the riot case against her and it would be impossible to run the establishment from jail"(3).

Described as a good orator, Kodnani was a 'rising star' in the BJP and rose rapidly within its ranks. Elected to the Ahmedabad Municipal Corporation in 1995, she was made chairperson of the AMC's Health Committee because of her medical background. First elected to the Gujarat Legislative Assembly in 1998, winning by 75,000 votes, a margin she bettered in

December 2002 (10 months after the riots) when she won by 110,000 votes. In 2007, she won by 180,000 votes, the most substantial victory in the state(4). She sailed along, garlanded, feted and adored by a huge majority of her constituents. In 2007, she was appointed Minister of State (Junior Minister) for Women and Child Development (a more Orwellian title is difficult to conceive of), a position from which she resigned only after her arrest in February 2009.

Until then, Dr Kodnani denied having been present at Naroda Patiya. Dr Syeda Hameed was part of an all-India team of six women to visit Dr Kodnani at her home, a few days after the massacre. "The lady denied everything; she was not in Naroda Patiya that morning. She was at the hospital receiving burnt bodies of the Karsevaks from Sabarmati Express. Discounting all newspaper reports and photographs, she said "All lies, all doctored."(5) Her pre-riot reputation was such that a doctor interviewed after these massacres (6) stated:"Dr Kodnani could not have participated and directed riots. He has great respect for Dr Kodnani." She went into hiding when summoned by the Supreme Court appointed Special Investigation Team (SIT) in February 2009. Since her imprisonment in Sabarmati Jail, she has apparently offered to serve women inmates as a gynaecologist (7).

Dr Kodnani was not the only Gujarati medical professional prominent in the RSS and larger "Sangh Parivar" (the wider grouping of fundamentalist Hindu political, paramilitary and other front organisations).

Dr Jaydeep Patel, a pathologist, was general secretary of the Vishwa Hindu Parishad (VHP), a militant Hindu organisation which spread rumours about Muslims after the Godhra carnage on 27th February 2002. The VHP also spearheaded attacks against the Muslim community. Dr Patel, although expected to be charged in the Naroda Patiya massacres, awaits the verdict of another trial known as the Naroda Gam case where 11 people were killed. Dr Patel is alleged to have been in close contact via telephone with the main accused in the Naroda Patiya massacres including Dr Kodnani (8).

Dr Praveen Togadia, a cancer surgeon, then the International General Secretary of the VHP, has been cited for his role in abetting these riots with regard to another massacre in Ahmedabad - the Gulberg Society Case(9). His frequent vitriolic anti-Muslim speeches continue.

The utter disregard for human life, the aiding and abetting of murder and other horrific acts, the distribution of arms to an incensed mob; these are not acts one associates with an obstetrician whose training and practice involve one of the most joyous events in human life - the birth of a child. One cannot even imagine what Dr Kodnani did on February 28, 2002, all day long urging the mob to kill Muslims, to destroy their place of worship. Judge Yagnik has described her as the kingpin of the massacre at Naroda Patiya. While the trial has resulted in a measure of justice, the road to August 29, 2012 was far from easy. As the case report makes clear, at every step the state, its elected officials and administrative machinery failed

in their primary duty to protect the lives of citizens. Instead mob violence was tolerated, even instigated and encouraged. As soon as the riots ended, the victims and relatives of the deceased sought the assistance of the investigative and judicial arms of the state. None was forthcoming. Indeed the actions of the senior police inspector at Naroda Patiya, KK Mysorewala, were the opposite of what they should have been. Judge Yagnik repeatedly points to his dereliction of duty. However, it is not the shortcomings and bias of the Gujarat Police and judicial system that this article seeks to discuss.

Rather it is the astonishing societal climate in which Dr Mayaben Kodnani flourished professionally and politically. Her conduct, immoral, unethical and vile, is particularly appalling for a woman physician. In the Gujarat of the past two decades her actions had a social legitimacy that remains deeply troubling. For neither she nor Drs Patel and Togadia would have so publicly paraded their odious disregard for Muslim lives had they thought it likely that they would be subject to censure among their peers or ostracising by kith and kin. One of the most agonising aspects of the pogroms of 2002 is the lack of remorse, especially in Gujarat's large 'hard Hindutva' (militant, even belligerent Hindu nationalist) middle class, a class from which its professional elites emerge.

The absence of social sanction, the encouragement of bigotry, the deliberate repetition of lies that feed and further hatred, makes it unsurprising that none of the medical associations in Gujarat, or in India for that matter, raised their voices against these individuals. No professional group set up inquiries that might have revealed gross violations of medical ethics resulting in their expulsion from the group and de-recognition of their licenses. Article 6.6 in the Code of Ethics of the Medical Council of India deals with human rights and states:"The physician shall not aid or abet torture nor shall he be party to either infliction of mental or physical trauma or concealment of torture inflicted by some other persons or agency in clear violation of human rights."(10). Conscientious physicians (11) and this journal (6) raised the issue; but those institutions that have the duty to enforce basic ethical norms failed to act, at local, state and national levels.

The societal role of the medical profession in modern times has been a chequered one. Individual physicians have pursued vastly different ideals and ideologies. Prominent examples, literally from A to Z, include Presidents Salvador Allende (overthrown and killed in a US-backed coup) and Michelle Bachelet of Chile (tortured by the Pinochet dictatorship), Ernesto "Che" Guevara (assassinated by the CIA assisted by Bolivian forces), Binayak Sen (arrested under false charges for his struggle for fair treatment for Adivasis and other disenfranchised people), to Ayman al Zawahiri (current leader of Al-Qaeda).

Physicians generally belong to the status quoist section of society. Right wing ideology, when on the ascendant in difficult economic times, has found in the medical profession a solid ally. In Gujarat, curiously, this ideology was and remains ascendant in the *absence* of an economic crisis. The zeal shown by Drs

Kodnani, Patel and Togadia in pursuing bigotry is, unfortunately, not a historical aberration.

Physicians, enthusiastic supporters of the anti Semitic laws of Nazi Germany, were, shamefully, the first profession to expel Jews from their ranks (12,13). The notorious practices of doctors at various concentration camps are well known (13,14). What is less publicised is the courage of physicians like Drs Dorota Lorska, Alina Brewda and Adelaide Hautval. All three were prisoners at Auschwitz-Birkenau. Dr Hautval, the daughter of a Protestant pastor, arrested in April 1942 for trying to enter German-occupied Paris, was deported to Auschwitz because she protested the harsh treatment of her fellow Jewish prisoners by the Gestapo. At Auschwitz, she refused to participate in forced sterilisation. Dr Lorska recalls Dr Hautval saying that as they would not get out of the camp alive, "the only thing left for us to do is for us to behave, for the rest of the short time left to us, as human beings" (15). It is important to note that none of the three women doctors received additional punishment as a consequence of their principled stand.

After the attacks on the United States on September 11, 2001, many disturbing reports detail the presence of physicians at torture sessions, or their certifying that a tortured prisoner was now well enough for "enhanced interrogation techniques", or blatantly lying when stating a cause of death as "natural" or "suicide" instead of murder (16,17).

A formal adherence to oaths or codes of ethics is required of physicians, but neither the Hippocratic Oath with its popularly understood dictum of *Primum non nocere* (First do no harm) nor the World Medical Association's Declaration of 2006 (18) has resulted in universal respect for their directives. Few voices are raised decrying gross breach of professional standards; outrage is, by and large, muted.

What makes Dr Kodnani's conduct unique is her publicly aiding and abetting mass murder. Physicians participating in this manner are rare, public display exhorting such acts even rarer. I am not aware of a single such action on the part of a physician of *publicly* exhorting people to kill the members of a community, distributing arms etc. Yet, even she appears to have realised that her presence on the scene was problematic, at least legally. Hence her passionate denials about being there (5) and the enormous efforts made on her behalf to cover up her presence at Naroda Patiya on that awful day in February 2002(1:1808 to13).

Other trials related to the pogroms of 2002 continue in Gujarat, begun only after the extraordinary effort of dedicated individuals who were themselves subjected to calumny. The wheels of justice sputter along due to the intervention of the Supreme Court of India after the initial laughably lax investigative efforts of the state of Gujarat with its accepted anti-Muslim stance.

Gujarat was not always so callous and cruel in its mores. Universally associated with the name of Mohandas K Gandhi, its most distinguished son, Gujarat's first Chief Minister was

a highly accomplished and respected physician: Dr Jivraj N Mehta. Involved in and incarcerated during the struggle for India's freedom, a leading member of the Indian National Congress (19), he is considered by political observers to have been the best Chief Minister in Gujarat's 52-year existence. Jivraj Mehta was not the only renowned medical professional to participate in politics; Dr B C Roy, Chief Minister of West Bengal was another stalwart.

Earlier in 1937, with India still under British rule, on the request of the Chinese Red Army General, Zhu De, a team of five doctors - the Indian Medical Mission - went to China to treat the sick and wounded after the Japanese invasion of that country. One of the five, Dr Dwarkanath Kotnis died at the age of 32, during that mission. Madame Sun Yat-sen's tribute to Dr Kotnis jolts, especially as one reads it in the context of Dr Kodnani's behaviour: "His memory belongs not only to your people and ours but to the noble roll-call of fighters for the freedom and progress of all mankind. The future will honour him even more than the present, because it was for the future that he struggled..." (20).

Political activity by physicians then has ranged from unbelievably courageous acts to unimaginably despicable ones, raising questions that confound and perplex. The medical profession, the last of the medieval guilds, confers considerable autonomy on its members. The guild protects while laying down conditions, including ethical codes, under which it will do so (21). In Gujarat, the guild failed miserably in requiring its members to abide by these conditions. But, as Madame Sun Yat-Sen said in 1942, "it was for the future that he (Dr Kotnis) struggled" (20). Our struggle in Gujarat and, indeed everywhere, is for the future. The legacy of Accused no 37 must be a questioning of the prevailing ethos that has reigned so widely, smugly and arrogantly among the Gujarati middle class. Substantial sections of Gujarati society need to re-examine their recent histories. The graphic description of the incineration and murder of 96 persons should lead to a realisation: it could easily have been me or someone I care for; and then too, it should not happen to anyone, anywhere....

The pogroms of 2002 remain a matter of deep personal anguish and shame, especially for those of us medical professionals with present or ancestral ties to Gujarat. Can we reconstruct a Gujarat that wholeheartedly embraces its wondrously diverse heritage: Hindu, Jain, Muslim, Parsi? A Gujarat where medical professionals follow in the tradition of individuals like Dr Jivraj Mehta and where the stain of those who aided and abetted the murder of innocents is a distant memory? As was repeatedly proclaimed by those who suffered in Latin America during the dark days of many a torture-happy dictatorship "*Nunca mas*" - Never again!

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Gender bending, gender testing: reflections on the Pinki Pramanik case

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The arrest and subsequent humiliation of Indian athlete and international medal winner Pinki Pramanik has violated her right to privacy, bodily integrity, and basic human dignity. It has also raised important and often sidelined questions about gender, sports and the way the world is organised. Twenty-six-year-old Pramanik was accused by her live-in partner of repeated rape and torture, and of being a man. She was arrested on June 14, 2012. She was not granted bail for 26 days, which she spent in a male cell in a West Bengal jail, and she had to undergo three gender determination tests at different state hospitals, because the necessary facilities were not available at a single hospital. An MMS clip, showing her in the nude while undergoing one of the tests, was leaked online and went viral. The district and sessions judge, while granting Pramanik bail on July 11, held that she was physically incapable of rape, and that the petitioner who alleged rape had been in a consensual live-in relationship with Pramanik for nearly three years. Pramanik was suspended from her job as a ticket collector with the Eastern railways; the suspension

was revoked after her bail and she has now rejoined work. While speaking to the media, she alleged that, in police custody, gender tests were forcibly carried out on her after drugging her and tying her hands and feet.

In November 2012, the West Bengal police submitted a chargesheet before the district court in which, citing medical reports, they alleged that Pramanik is indeed male, and charged with rape. Later, Dr BN Kahali, who headed the medical investigation into Pramanik's gender, clarified that Pramanik suffered from a "disorder of sexual development", and could best be described as a male pseudo-hermaphrodite, which is to say that Pramanik is not female, but "cannot be termed a male". Pramanik has responded by saying she feels "like a joker in a circus" and is being driven by the police to think of suicide. According to the latest media reports (also in November 2012) Pramanik planned to file a defamation case against the police and the public prosecutor, and publicly asked West Bengal Chief Minister Mamata Bannerjee, and the union sports ministry, to intervene in her case.