

# Uncertain Justice:

A Citizens Committee Report  
on the North East Delhi Violence  
2020

Justice Madan B. Lokur  
Justice A.P. Shah  
Justice R.S. Sodhi  
Justice Anjana Prakash  
G.K. Pillai, IAS (Retd.)



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Justice Madan B. Lokur, former Judge of the Supreme Court (Chairperson)

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and former Chairman, Law Commission

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G.K. Pillai, IAS (Retd.), former Home Secretary, Government of India

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## Core Team and Contributors

### Core Team

Leads: Siddhartha, Devika Prasad  
Gitanjali Prasad  
Mangla Verma  
Payoshi Roy  
Vipul Kumar

### Contributors

Betwa Sharma  
Khushi Mittal  
Palash Srivastav  
Parijata Bhardwaj  
Saba Dave  
Zeba Sikora

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## Abbreviations

Aam Aadmi Party (AAP)

Akhil Bharatiya Vidyarthi Parishad (ABVP)

Artificial Intelligence (AI)

Bharatiya Janata Party (BJP)

Call Detail Record (CDR)

Citizenship (Amendment) Act, 2019 (CAA)

Code of Criminal Procedure, 1973 (CrPC)

Delhi Minorities Commission (DMC)

Deputy Commissioner of Police (DCP)

First Information Report (FIR)

Foreigners' Tribunal (FT)

Guru Teg Bahadur Hospital (GTB Hospital)

Indian Penal Code, 1860 (IPC)

Investigating Officer (IO)

Jamia Millia Islamia University (Jamia University)

Maharashtra Control of Organized Crime Act, 1999 (MCOCA)

Medico-legal case (MLC)

Member of the Legislative Assembly (MLA)

Ministry of Home Affairs, Government of India (MHA)

Model Code of Conduct for the Guidance of Political Parties and Candidates (MCC)

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS)

National Capital Territory (NCT)

National Population Register (NPR)

National Register of Citizens (NRC)

News Broadcasting and Digital Standards Authority (NBDSA)

Police Control Room (PCR)

Police Station (PS)

Popular Front of India (PFI)

Prevention of Terrorism Act (POTA)

Protected Witness (PW)

Rashtriya Swayamsevak Sangh (RSS)

Retired (Retd.)

SDMs (Sub-Divisional Magistrates)

Terrorist and Disruptive Activities (Prevention) Act, 1985 (TADA)

Unlawful Activities (Prevention) Act, 1967 (UAPA)

Uttar Pradesh (UP)

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# Executive Summary

North East Delhi was shaken by district-wide communal violence between February 23 and 26, 2020. 53 people were killed and hundreds injured. Homes, schools, commercial establishments, and places of worship were attacked. This report by a Citizens Committee presents issues of concern related to the violence. The composition of the Committee authoring the report is as follows:

- Justice Madan B. Lokur, former Judge of the Supreme Court (Chairperson);
- Justice A.P. Shah, former Chief Justice of the Madras and Delhi High Courts and former Chairman, Law Commission;
- Justice R.S. Sodhi, former Judge of the Delhi High Court;
- Justice Anjana Prakash, former Judge of the Patna High Court; and
- G.K. Pillai, IAS (Retd.), former Home Secretary, Government of India.

The Committee's report, organized into three parts, examines different facets of the violence from its genesis, nature, and aftermath. Part I sets the context of what was triggered by the amendments passed to the citizenship law, analyses the build-up to the violence, its trajectory, and the state's response as it unfolded. Part II assesses the role played by sections of television and social media in channeling polarized narratives before and after the violence. Part III contains a legal analysis of the Delhi Police investigations into the violence, and of larger implications of the use of the Unlawful Activities (Prevention) Act, 1967 (UAPA).

## Build-Up of Hate to Drive Conflict

Polarization between communities, particularly anti-Muslim hate, was deliberately fueled in the months preceding the violence. The Muslim community was grappling with deep fears of loss of citizenship, stemming from the combined effect of the Citizenship (Amendment) Act, 2019 (CAA), passed in December 2019, with potential exclusion through the National Register of Citizens process. By mid-December 2019, nationwide protests erupted against the law. Delhi emerged as the epicenter of the anti-CAA movement with North East Delhi as the site of multiple sit-in protests.

Against this background, the campaigning for the Delhi Assembly elections gathered momentum in January. The Bharatiya Janata Party (BJP) focused its election campaign on the CAA issue, within a divisive narrative framing the anti-CAA protests as anti-national and violent. Protesters were labelled "traitors" by candidates and party leaders, such as Kapil Mishra and Anurag Thakur, at election rallies and public demonstrations. Calls for violence against the so-called "traitors", in the form of the "*goli maaro*" (Shoot the traitors) slogan, were casually repeated, with no censure. The vilification of the protests and anti-Muslim hate was amplified by widely viewed television news channels and social media.

The Committee conducted an empirical analysis of the messaging of sections of the television media around the CAA and the protests. This focuses on episodes aired in December 2019-February 2020 of primetime shows of the six most viewed television news channels. These were Republic and Times Now (English), and Aaj Tak, Zee News, India TV, and Republic Bharat (Hindi). We also examined relevant posts on various social media platforms. The analysis reveals that the channels' reportage of events surrounding the CAA framed the issues as "Hindus versus Muslims" with prejudice and suspicion against the Muslim community. These channels concentrated on vilifying anti-CAA protests, fanning unsubstantiated conspiracy theories, and calling for their forcible shutdown.



Hindu nationalist figures such as Yati Narsinghanand and Ragini Tiwari, as well as BJP political leaders in the fray such as Kapil Mishra, further spread hate messaging among their thousands of followers through social media platforms from December 2019.

A confluence of powerful, far-reaching voices of politicians, televised news channels, and Hindu nationalist figures emerged as drivers of the hate narrative. This Committee concludes that the prevalence of hate significantly contributed to creating a climate in which a significant section of society became receptive to incitement and calls for violence against the Muslim community.

## The Face of the Violence

In response to a call for a nationwide protest, anti-CAA women protesters in the Seelampur-Jaffrabad area of North East Delhi blocked the road outside the Jaffrabad Metro Station on the night of February 22, 2020. From the morning of February 23, BJP leaders, prominently Kapil Mishra, as well as Hindu nationalist figures such as Ragini Tiwari, gave calls for mobilization and direct action against this group. At about 4 p.m. that day, Kapil Mishra delivered a speech at Maujpur Chowk close to the new anti-CAA protest site. He gave an ultimatum to the Delhi Police to “clear the roads in Jaffrabad and Chand Bagh” within 3 days, or he and his supporters would do so themselves. He was referring to the anti-CAA protests taking place in these localities. Shortly after his speech, stone pelting broke out between pro-CAA and anti-CAA groups in Maujpur and Jaffrabad. It becomes clear that the hateful content purveyed on 22-23 February was designed to incite, exhort and provoke actions of violence and these calls, thereby, appear to have acted as an immediate trigger to the break-out.

The stone pelting across the Maujpur-Jaffrabad faultline spiraled into mass violence by the morning of 24 February. Stone pelting, arson, and gun violence by mobs on both sides spread through neighborhoods across North East Delhi in the next few days. There were attacks on journalists reporting on the violence. Alleged police complicity adds another important layer to the nature of violence.

While the violence in North East Delhi first broke out against pro-CAA and anti-CAA camps, it prompted the onset of full-blown communal violence between Hindus and Muslims. The anti-Muslim hate at the root of the pre-violence build-up carried over. While mobs clashed and caused damage to each other, Muslim identity, ranging from individuals to homes, businesses, and places of worship, was targeted. This grim mix of targeted as well as generalized violence resulted in the death of 40 Muslims and 13 Hindus. This Committee concludes that the deliberate shaping of a divisive Hindu-Muslim binary, in the months preceding, finally manifested in this communally charged violence. In this attempt to alter social relations, Muslim identity and agency stand diminished. This Committee also notes the specific targeting of anti-CAA protest sites, including at Chand Bagh, Kardampuri, Jaffrabad, Mustafabad and Khajuri Khas. This suggests an effort to rein in the anti-CAA sentiment in the course of the violence.

## State Failures

All stages of the February 2020 violence – the inception, occurrence and aftermath (investigation of the violence) – are characterized by a frightening undermining of democratic values. Tragically, the communal polarization that heralded the violence has been hardened by state responses to the violence.

### Delhi Police

The Delhi Police failed to take punitive measures against hate speeches made by political leaders and others in the run-up to February 23 or on the day itself. Allegations of police assisting mobs and participating in attacks on Muslims, anti-CAA protest sites, and mosques have been documented, in eyewitness, media and affected persons’ accounts. The Committee has obtained a limited, but credible mass of information indicating abject police failures, including apparent police complicity, of varying degrees in the violence. This requires investigation through an independent process, possibly a court-monitored investigation.

### **Ministry of Home Affairs**

The response of the Government of India, namely the Ministry of Home Affairs (MHA), was wholly inadequate. Despite having command over both the Delhi Police and the central paramilitary forces, the MHA failed to take effective steps to stem the spread of communal violence. Repeated assurances on February 24 and 25 by police top brass and government officials that the situation was under control did not match the visibility of violence on the ground. Though internal alerts circulated by the Delhi Police advised increased police deployment in North East Delhi on February 23 itself, official data shows that deployment rose only on 26 February. It appears that the numbers of police personnel were not increased on 24-25 February, even though the maximum number of distress calls were received by the Police Stations in North East Delhi on these days. This Committee concludes that the Central Government's failure to respond to the violence demands a serious examination. A comprehensive, independent review of the body of known intelligence, total police and other security force strength, and sequence of deployment across affected areas during the days of violence, is urgently required.

### **Government of Delhi**

The Committee also finds that the Government of Delhi did precious little during this entire time to mediate between the communities, even with the sharp warning signs in the lead up to February 23. Recognizing that the Delhi Government's ability to control violence was impeded with the police under the Centre's political control, the Committee feels that it failed to exert the role of civic mediation and statesmanship to calm the situation. Further, the Delhi Government has failed to ensure timely and adequate relief and compensation to those affected by violence. Approval of compensation by the government and the Claims Commission is riddled with delay; where decisions have been made, there are concerns regarding the quantum of compensation not being commensurate to the harm suffered.

## **Delhi Police Investigations**

To date, the Delhi Police has registered a total of 758 First Information Reports (FIRs) pertaining to the violence. Early in the investigations, in March 2020, the Delhi Police Special Cell registered a First Information Report, FIR No. 59/2020 (FIR 59), claiming that there was a pre-planned conspiracy to instigate the violence which involved terrorist acts, and invoked the UAPA. The Committee has looked specifically at the first chargesheet filed in FIR 59 on the alleged terrorist acts.

### **Allegations of Larger Conspiracy under the UAPA FIR**

This Committee has carefully considered whether the criminal actions alleged in the first chargesheet filed in FIR 59 qualify as "terrorist" acts (see Chapter 8) and found no material in it substantiating the allegation that the "unity, integrity, security, economic security, or sovereignty of India" was threatened. Neither does the first chargesheet credibly canvass the proposition that persons advocating the repeal of the CAA intended to strike terror in the community. The Committee's analysis reflects that the material put forward by the Delhi Police in the chargesheet in FIR 59 does not meet the legal threshold to allege crimes of terrorism.

Further, the Committee finds that the foundation of the prosecution case – the allegation of an overarching premeditated conspiracy aimed at orchestrating communal riots – is based on unexplained, belated statements which are inherently unreliable in law. A comparison of the investigation in the Indian Penal Code (IPC) FIRs with the investigation into the same allegations in FIR 59 reveal a number of contradictions and inconsistencies. These further cast a shadow on the claims made in the first chargesheet. It is the Committee's view that if the core of the prosecution case bears the taint of tutoring and fabrication, this taint looms large over the entire investigation.

### **Investigations into the IPC Cases**

The analysis of the investigation into IPC cases reiterate the chronic feature of belated statements, of both police and public witnesses, with no explanation of the delay, rendering them unreliable. Trial courts while granting bail in the IPC cases have also commented on the incongruity of the prosecution narrative in cases where Muslims have been accused of joining members of the Hindu community in beating Muslims. This Committee notes that the police have neglected to investigate the role played by those who made hateful

speeches (many of which amount to the crime of hate speech) and gave calls to mobilize for discharging violent acts, in close proximity to the onset of violence.

The Committee concludes that the overall direction of the investigation appears skewed. It omits to examine the connections between the outbreak of the violence with the spate of hate speeches and calls for violence. It, incongruously, subjects anti-CAA protesters to a UAPA prosecution for allegedly committing violence which ultimately targeted Muslims, and those protesting against the CAA. Only an impartial and rigorous investigation can shed light on the truth, ensure accountability, and do justice to the victims of the violence.

### **Unjustified Use of the UAPA**

Patterns of larger use of the UAPA suggest its targeted application by the state. The law enables prolonged pre-trial custody of individuals through drawn-out investigation and exceedingly limited grounds to secure bail. UAPA accused are very often acquitted in their trials due to insufficient evidence, yet, forced to remain in custody, often for years. This ensures the legal process itself becomes *punishment*. This Committee reiterates the urgent need for a comprehensive review of the UAPA.

## **Need for a Commission of Inquiry**

This Committee finds that a Commission of Inquiry ought to be set up for an impartial inquiry to establish the whole gamut of factors pertaining to the North East Delhi violence. It is crucial that the terms of reference and the choice of the Chairperson for the proposed Commission of Inquiry assure the affected communities of its independent and effective functioning.

## **Broader Takeaways**

The Committee's examination of the violence in the North East District of Delhi has led us to discern broader implications impacting constitutional values and the health of democracy in India. The microcosm of an engineered anti-Muslim narrative leading to the violence signals the growing fusion of hate messaging in public discourse with the actual incidence of violence. There seems to be a deafening lack of institutional will to act against hateful content.

Sections of the media play a key role in propagating hateful narratives, illustrated in small part through the study in the report. Their audience of daily watching households, as well as their social media presence, ensures that the hateful narratives reach a very wide number. Clearly, any oversight exerted by the existing broadcasting oversight bodies pales in proportion to the channels' reach and leeway. For all of its benefits as an unregulated space for speech and expression, this precise quality of social media presents serious dangers as a carrier of rampaging hate speech and violent content. The need to regulate deeply harmful content on social media, while retaining the free space it offers, is one of the most urgent challenges of our times.

The clearing of the anti-CAA sit-in protests in North East Delhi cannot be overlooked as an isolated instance. The targeted use of UAPA also cannot be ignored as innocuous. It constitutes not only a gross abuse of the law, but represents a consistent trend of quelling dissent by invoking the tool of criminal law. The use of violence to silence protesters and the use of UAPA in the subsequent investigation has cast a chilling effect on the act of protesting itself. Such actions pose serious threat to the health of our democracy.

Capacity for empathetic thought and action to enable harmonious interactions, and most importantly, imagination to resolve conflict are essential attributes for a plural society to last in the long run. It is the Committee's view that this communal episode has set back the internal processes through which a multi-cultural society engenders calm and harmony, forging its plurality into a strength. Instead, an architecture of hate and pathways to violence have been strengthened. The communities stand depleted in their ability to heal and restore. The only way forward is for the state to act towards justice harbored in the conjoined practice of fraternity, equality and freedom.

# Introduction

In February 2020, widespread communal violence broke out in the North East District of Delhi. The violence left 53 people dead, well over 200 people injured, and homes, schools, commercial establishments and places of worship damaged or destroyed.

Beyond the human suffering and social toll, critical questions on the breakdown of law and order and institutional responses were raised in the public domain. The failure of the state apparatus to prevent the violence from spreading across a district of the national capital, and gaps in relief efforts was one set of concerns. Biased narratives projected by certain sections of the broadcast media were also flagged.

The Delhi Police began its investigations into the violence on the basis of approximately 751 FIRs alleging the commission of offences under the IPC ranging from murder, assault, arson, rioting, and other such offences.<sup>1</sup> In March 2020, the Delhi Police Special Cell registered an FIR, claiming that a pre-planned conspiracy instigated the violence in North East Delhi. Originally registered under provisions of the IPC and other select laws, terrorist offences under the UAPA were added to the FIR in April 2020. As the investigation has progressed, lawyers and jurists have pointed out recurring lapses and omissions, some of which have been affirmed by courts over time.

It was in this backdrop that the Constitutional Conduct Group (a public-spirited group of former civil servants) invited a committee of retired public officials to provide an objective assessment by creating a contemporary record of acts of omission and commission around the violence and its aftermath.<sup>2</sup>

## The Citizens Committee

The Committee was formed in October 2020 comprising of the following members:

- Justice Madan B. Lokur, former Judge of the Supreme Court of India (Chairperson);
- Justice A.P. Shah, former Chief Justice of the Madras and Delhi High Courts and former Chairperson, Law Commission of India;
- Justice R.S. Sodhi, former Judge of the Delhi High Court;
- Justice Anjana Prakash, former Judge of the Patna High Court;
- G.K. Pillai, IAS (Retd.), former Home Secretary, Government of India;
- Dr. Meeran Chadha Borwankar, IPS (Retd.), former Director-General, Bureau of Police Research and Development, Government of India.

Dr. Meeran Chadha Borwankar withdrew from the Committee in the final stages of its work.<sup>3</sup> The Committee's report is authored by the remaining five members.

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<sup>1</sup> Affidavit of Delhi Police in *Ajay Gautam v. GNCT of Delhi*, WP (C) 2296/2020, para 5 (Table A), July 2020, Delhi High Court.

<sup>2</sup> Please find the website of the Constitutional Conduct Group here: <https://constitutionalconduct.com>.

<sup>3</sup> For the note of dissent, please see Annexure 1 of this report.

The Committee's Terms of Reference were the following:

1. To inquire into the events that transpired before and during the riots, including the response of the state machinery in dealing with the violence, the restoration of law and order, and related matters.
2. To analyze and assess the response of the police in investigating the riots.
3. To examine the role of the mainstream and social media in spreading information, both genuine and fake, before, during and after the riots, and its impact on the events.
4. To assess the civic administration's efforts at providing relief and extending reparations to the victims of riots.

## The Report

While the violence occurred more than two years ago, immediate and larger issues at the heart of how such violence could take place and engulf an entire district still need examination. This report seeks to contribute to the understanding of the violence and the after-effects that endure. As this effort follows earlier ones in time, we were able to address other issues such as the role of the media, and comment on the quality of the police investigation into the violence. We hope this report spurs discussion on these matters.

While the analysis of the investigation is based on primary legal documents including FIRs, chargesheets, and orders passed by courts, the Committee recognizes that legal determinations are still to be settled with trials and appeals yet to be completed, and places its examination firmly within this context.

The Committee's report, organized into three parts, examines different facets of the violence from its genesis, nature, and aftermath. Part I analyses the developments that ensued following the passage of the CAA, the build-up to the violence, the factual trajectory of the violence, and the state's response as it unfolded. Part II assesses the role played by sections of television and social media in channeling polarized narratives before and after the violence. Part III contains legal analysis of the Delhi Police's investigation into the violence and of larger implications of the use of the UAPA.

This report comprises of 10 chapters.

Chapter 1 (*The Context: Recasting Citizenship*) examines the ramifications of the passage of the CAA particularly the nationwide protests that arose against the law. The responses of the police, government and the courts are also considered.

Chapter 2 (*Stoking Divisions: A Build-Up to Violence in North East Delhi*) discusses key elements of a build-up to the communal violence in Delhi in the months immediately preceding its eruption. These include the responses of both state and non-state actors to the city-wide protests against the CAA, and the nature of campaigning during the 2020 Delhi Legislative Assembly elections.

Chapter 3 (*The Trajectory of the Violence*) examines the chronology of the four days of violence, indicating its movement and significant events over its duration, and summarizing the responses of state institutions. It also flags issues of concern in the immediate aftermath.

Chapter 4 (*Relief and Compensation: Gaps in Enforcement*) describes the damage caused to life and property in the course of the violence, and the gaps in disbursement of relief and compensation to the affected persons.

Chapter 5 (*Troubling Dualities: News Media as Arbiter of Fact or Platform of Hate?*) examines the messaging of select prime-time TV news shows that featured debates on the CAA, the nationwide protests and the Delhi violence.

Chapter 6 (*Social Media as a Vehicle for Hate Speech*) provides an analysis of the use of social media platforms in the spread of hate speech in the context of the Delhi violence.

Chapter 7 (*A Comment on the Investigations into IPC Offences*) critically examines the police investigations into the IPC cases that relate to the violence.

Chapter 8 (*An Analysis of the Investigation into the Terrorist Conspiracy*) focuses on the investigation into the alleged overarching conspiracy behind the violence forming the basis of FIR 59/2020. The chapter provides an analysis of the first chargesheet filed by the Special Cell in its investigation into this FIR.

Chapter 9 (*The Application of the UAPA and Fair Trial Implications*) provides a wide-ranging analysis of the implications on fair trial guarantees, once the UAPA is applied in cases. Aspects of the UAPA prosecution in FIR 59 are also commented upon in this chapter.

Chapter 10 (*Conclusions*) summarizes the Committee's main conclusions on the build-up to the violence, its key features, accountability deficits, and reflections on broader implications.

## Methodology

A team of lawyers and researchers supported the research and writing of the Committee's report. The Committee collected and scrutinized primary material including FIRs, chargesheets, court orders, audio-visual and documentary material along with relevant media reports. We also reviewed secondary material, including reports and accounts already in the public domain, as background research.

The Committee also gathered information by recording testimonies of affected persons and individuals such as lawyers, activists, journalists and public intellectuals. These testimonies provided valuable insights on the subject and helped researchers identify the gaps in the available material.

### Background Research

The Committee has reviewed the following reports as part of its background research – *An Account of Fear and Impunity* by Youth for Human Rights Documentation; *An Investigative Briefing* by Amnesty International India (August 2020); *Delhi Riots of February 2020: Causes, Fallout, and Aftermath* by the Citizens & Lawyers Initiative (September 2020); *Delhi Riots 2020: Report from Ground Zero* by the Group of Intellectuals and Academicians; *Fact-Finding Committee on North-East Delhi Riots of February 2020* by the Delhi Minorities Commission (July 2020); *Manufacturing Evidence: How the Police is Framing and Arresting Constitutional Rights Defenders in India* by the Polis Project (August 2020); *Report of Fact Finding Committee on Riots in North-East Delhi During 23.02.2020 to 26.02.2020* by a Committee headed by Justice Ambadas Joshi; and *Shoot the Traitors: Discrimination Against Muslims under India's New Citizenship Policy* by Human Rights Watch (April 2020).

### Public Notice and Testimonies

The Committee issued a public notice, dated October 25, 2020, inviting anyone with information or material pertaining to the Delhi violence, to share it with us in as much detail as possible.<sup>4</sup> Based on a perusal of this information, the Committee invited persons for further interactions. Testimonies recorded before the Committee were done maintaining complete confidentiality.

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<sup>4</sup> Public notice issued by the Committee can be found at <https://www.citizenscommitteedelhiriot.in>.

# Part I

## Recounting The February 2020 Violence in North East Delhi

Part I consists of the following chapters:

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**1. The Context: Recasting Citizenship**

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**2. Stoking Divisions: A Build-Up to Violence in North East Delhi**

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**3. The Trajectory of Violence**

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**4. Relief and Compensation: Gaps in Enforcement**

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Part I sets the context in terms of the developments triggered by the passage of the CAA including the eruption of countrywide protests against it. Following from this, it aims to lay out a narrative of events that explain the build-up to the violence, the period of violence, and the phase of immediate relief and compensation in its aftermath. Recognizing that this could not be an exhaustive account, the events and developments presented in this section are largely based on contemporaneous news reports. Wherever possible, multiple news sources are cited to provide corroboration. This also includes videos, tweets and any relevant social media imprints. In piecing together this narrative, the intent is to provide chronological facts in tandem with identifying patterns and observations emerging from the unfolding events.

# 1. The Context: Recasting Citizenship

This chapter provides an overview of developments around the enactment of the CAA, particularly the countrywide wave of protests that erupted right after it was passed in the Parliament. While examining the divergent responses to the CAA, it is clear that it laid the ground for sectarian divisions with implications for inter-community relations. This serves as a backdrop to recognize the factors that foreshadowed the outbreak of communal violence in North East Delhi in February 2020.

## Pieces of the Citizenship Puzzle

The CAA was passed by the Parliament on December 11, 2019.<sup>5</sup> The Citizenship Act, 1955 was amended to relax citizenship requirements for Hindus, Sikhs, Buddhists, Jains, Parsis and Christians who entered India from the neighboring Muslim majority countries of Pakistan, Bangladesh and Afghanistan before December 31, 2014, “due to religious persecution or fear of religious persecution”. The CAA excludes Muslims, including persecuted Muslim minorities.

The passing of the CAA spurred other interlocking parts of the citizenship regime in India, such as the National Register of Citizens (NRC) and the National Population Register (NPR). The NRC is a register of citizens of India, living in or outside India, mandated by a 2003 amendment to the Citizenship Act, 1955.<sup>6</sup> In order to be enlisted in the NRC, every Indian resident would be required to prove their citizenship by producing prescribed official documents. Similar to the NRC, the NPR entails a bureaucratic exercise of preparing a comprehensive record (demographic and biometric information) of all residents of India, including foreign nationals. Formulated for the implementation of the NRC, the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003<sup>7</sup> (Citizenship Rules, 2003) provide for the register of Indian citizens living in India to be prepared after due verification against the NPR.<sup>8</sup> Once the lists of residents of India are prepared, officials verify to filter out “doubtful” citizens towards creating a final list of verified citizens for the NRC.

The NRC in Assam shows how the requirement to “prove” citizenship can result in the disenfranchisement of large groups of people. In 1997, under the directions of the Election Commission of India, the electoral rolls in Assam underwent significant revisions keeping January 1, 1997 as the qualifying date.<sup>9</sup> As part of this exercise, voters who failed to provide adequate proof of their citizenship were marked as “D” Voters, i.e., “Doubtful Voters”. These cases were then referred to the Foreigners Tribunals (FTs).<sup>10</sup> Those considered D voters have not been allowed to cast votes in elections held since. Rule 4(4) of the Citizenship Rules 2003, in prescribing the process to prepare the NRC, indicates that during the verification process at local levels, individuals whose citizenship is regarded as doubtful are marked for further inquiry in the Population

5 The Citizenship (Amendment) Act, 2019 can be accessed at <https://egazette.nic.in/WriteReadData/2019/214646.pdf>.

6 See Section 12 of the Citizenship (Amendment) Act, 2003, that can be accessed at [https://egazette.nic.in/WriteReadData/2004/E\\_7\\_2011\\_119.pdf](https://egazette.nic.in/WriteReadData/2004/E_7_2011_119.pdf).

7 The Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003 can be accessed at <http://nrcassam.nic.in/images/pdf/citizenship-rules.pdf>.

8 Manu Sebastian, “What Is The CAA-NPR-NRC Link? [Explainer]”, *LiveLaw*, 27 December 2019: <https://www.livelaw.in/top-stories/what-is-the-caa-npr-nrc-linkexplainer-151105>.

9 The Election Commission of India has issued instructions from time to time to the Chief Electoral Officer, Assam, for revision of the electoral rolls in Assam with reference to 1.1.1997 as the qualifying date. These instructions of the Election Commission are contained in the communications dated 7.10.1996, 4.2.1997 and 17.7.1997. See *H.R.A. Choudhury v. Election Commission of India*, 2002 (1) GLT 1.

10 Judges/Advocates are appointed as members of the FT under the Foreigners Tribunal Act, 1941 and the Foreigners Tribunal Order, 1964. The Central Government under Section 3 of the Foreigners Act, 1946, issued the Foreigners (Tribunals) Order, 1964.



Register.<sup>11</sup> D voters can apply for inclusion of their names in the updated NRC only after getting a favorable order from the FT, and after their names are removed as D voter from the electoral roll.<sup>12</sup>

Under the purported cover of the CAA, non-Muslims who are unable to produce the required documents to prove their citizenship in order to be enlisted in the NRC, can be accepted as refugees and given citizenship. Going by this logic, Muslims alone would be left with the onerous burden to prove that they are Indian citizens. While many Indian residents, made vulnerable by poverty, illiteracy, or lack of access to professional assistance, would struggle to produce the required documents, Muslims without these documents may most acutely face possible detention, or be denied all citizenship rights as they are excluded from the ambit of the CAA.<sup>13</sup> The combined application of the CAA-NRC has the potential of disproportionately affecting Muslims in India.

### **NRC Experiences in Assam**

While voices in the government have maintained that the CAA is a humanitarian law which provides extra protection to certain persecuted communities and does not affect anyone who is already an Indian citizen, Muslims in India have expressed strong fears; in part attributed to the experience of the draft state-level NRC in Assam.

In August 2019, 19 lakh individuals were excluded from the list of citizens, with Muslims affected in significant numbers.<sup>14</sup> Those excluded from the NRC could approach FTs to appeal against exclusion. But in many cases, people were given sudden notices to appear for “re-verification” of their documents within a day and had to travel up to 300 km or more to make these appearances.<sup>15</sup> Those who were socio-economically vulnerable, or otherwise disadvantaged, struggled to produce the required documents to prove their citizenship.<sup>16</sup> The most disadvantaged included those who were poor and landless, single women, or those who did not have access to property papers, or birth registration certificates.<sup>17</sup> Media stories from Assam reported people ending their lives fearing possible loss of citizenship and detention after exclusion from the list.<sup>18</sup>

11 Rule 4(4) states the following:

“During the verification process, particulars of such individuals, whose Citizenship is doubtful, shall be entered by the Local Registrar with appropriate remark in the Population Register for further enquiry and in case of doubtful Citizenship, the individual or the family shall be informed in a specified proforma immediately after the verification process is over.”

12 See <http://nrcassam.nic.in/faq09.html>.

13 PTI, “CAA, NRC may affect status of India’s Muslim minority: Congressional Research Service”, *The Hindu*, 27 December 2019: <https://www.thehindu.com/news/international/caa-nrc-may-affect-status-of-indias-muslim-minority-congressional-research-service/article30409109.ece>; Kaushik Deka, “Everything you wanted to know about the CAA and NRC”, *India Today*, 23 December 2019: <https://www.indiatoday.in/india-today-insight/story/everything-you-wanted-to-know-about-the-cao-and-nrc-1630771-2019-12-23>.

14 Sushanta Talukdar, “Final NRC list: List of Exclusion”, *Frontline*, 27 September 2019: <https://frontline.thehindu.com/the-nation/article29407333.ece>.

15 Gaurav Das, “Accidents, Injuries, Panic: Sudden NRC Notices Push Assamese to Brink of Desperation”, *The Wire*, 7 August 2019: <https://thewire.in/rights/assam-nrc-reverification-prateek-hajela>.

16 Ashlin Mathew, “NRC process is especially discriminatory towards women”, *National Herald*, 9 September 2019: <https://www.nationalheraldindia.com/india/nrc-process-is-especially-discriminatory-towards-women>; PTI, “SC order only hope for disabled man in Assam left out of NRC”, *Business Standard*, 8 July 2019: [https://www.business-standard.com/article/pti-stories/sc-order-only-hope-for-disabled-man-in-assam-left-out-of-nrc-119070800929\\_1.html](https://www.business-standard.com/article/pti-stories/sc-order-only-hope-for-disabled-man-in-assam-left-out-of-nrc-119070800929_1.html); Ipsita Chakravarty, “Why Assam’s NRC failed to address the social and economic anxieties it was to resolve for good”, *Scroll.in*, 31 August 2019: <https://scroll.in/article/971789/why-assams-nrc-failed-to-address-the-social-and-economic-anxieties-it-was-to-resolve-for-good>. Further, the list of documents admissible to prove citizenship can be found at <http://nrcassam.nic.in/admin-documents.html>.

17 PTI, “Women From Other States Married in Assam Excluded from NRC: Mukul Sangma”, *NDTV*, 10 September 2019: <https://www.ndtv.com/india-news/women-from-other-states-married-in-assam-excluded-from-nrc-mukul-sangma-2098856>; Arunabh Saikia, “In Assam, many women, children fail to make NRC even as their family members are counted as citizens”, *Scroll.in*, 31 August 2019: <https://scroll.in/article/935823/in-assam-many-women-children-fail-to-make-nrc-even-as-their-family-members-are-counted-as-citizens>; Sangeeta Barooah Pisharoty, “Women Without Parents: An NRC Ground Report”, *The Wire*, 13 September 2019: <https://thewire.in/rights/women-without-parents-an-nrc-ground-report>.

18 Arunabh Saikia, “Death by Citizenship: They made it to NRC, but were dropped later – tagged as suspected foreigners”, *Scroll.in*, 17 July 2019: <https://scroll.in/article/930730/death-by-citizenship-they-made-it-to-nrc-but-were-dropped-later-tagged-as-suspected-foreigners>; Subhir Bhaumik, “Assam NRC: Are India’s ‘unwanted people’ being driven to suicide?”, *BBC*, 28 June 2019: <https://www.bbc.com/news/world-asia-india-48754802>.

The FTs currently take matters on a referral basis from the Border Police (a unit of the Assam Police), Election Commission, or the State Government, and decide if a person referred to them is a foreigner or not.<sup>19</sup> Those declared as *foreigners* are essentially stateless. In 2020, it was estimated that nearly 1,000 people were being held as undocumented migrants in Assam's six detention centers under deplorable conditions, with 10 inmates dying between 2019-2020.<sup>20</sup> In the absence of any policy governing detention, this system has been characterized as arbitrary and violative of international law standards.<sup>21</sup>

### Early Rhetoric

In the run-up to the passing of the CAA, the ruling party's rhetoric around instruments of citizenship was divisive and inflammatory. The BJP openly cast the NRC as a framework for identifying “infiltrators” to finally expel them from the country. In April 2019, during the campaign for the general elections, the Union Home Minister, Amit Shah, stated that the government would first bring the CAA, through which refugees will be given citizenship, followed by a nationwide NRC.<sup>22</sup> He further declared that “infiltrators” would not be spared. On December 2, 2019, the Home Minister once again claimed at an election rally in Jharkhand that “the NRC will be implemented across the country and all infiltrators identified and expelled before the 2024 polls”.<sup>23</sup>

## Widespread Anti-CAA Protests Across the Country

In December 2019 itself, nationwide protests erupted against the CAA. Protests first began across Assam immediately after the Amendment Bill was cleared by the Union Cabinet for introduction in the Parliament on December 4, 2019.<sup>24</sup> The police responded by firing on protesters violating the curfew in Gauhati.<sup>25</sup>

After reports of violence against students protesting the CAA in the Jamia Millia Islamia University (Jamia University) in Delhi, and the Aligarh Muslim University in Uttar Pradesh (UP) on December 15, 2019, widespread protests started across the country. On December 19, 2019, a nation-wide bandh was called by political parties to oppose the CAA.<sup>26</sup> There were over 600 documented anti-CAA protests across the country which saw the active participation of a diverse range of individuals, particularly Muslim women.<sup>27</sup> Protests

19 Talha Abdul Rahman, 2020, “Identifying the Outsider: An Assessment of Foreigner Tribunals in the Indian State of Assam”, *Statelessness and Citizenship Review* 2(1), pg. 131: <https://statelessnessandcitizenshipreview.com/index.php/journal/article/view/141>.

20 Nazim Siddique, 2020, “Inside Assam's Detention Camps: How the Current Citizenship Crisis Disenfranchises Indians”, *Economic and Political Weekly* 15(7): <https://www.epw.in/engage/article/inside-assams-detention-camps-how-current>; PTI, “Govt lodged 3,331 people in Assam detention centres, 10 died last year”, *Business Standard*, 17 March 2020: [https://www.business-standard.com/article/pti-stories/10-inmates-of-detention-centres-in-assam-died-in-last-one-year-govt-120031700816\\_1.html](https://www.business-standard.com/article/pti-stories/10-inmates-of-detention-centres-in-assam-died-in-last-one-year-govt-120031700816_1.html).

21 Mohsin Alam Bhatt and Aashish Yadav, “The NRC in Assam doesn't just violate human rights of millions – it also breaks international law”, *Scroll.in*, 7 July 2021: <https://scroll.in/article/983130/the-nrc-in-assam-doesnt-just-violate-human-rights-it-also-breaks-international-law>.

22 Bharatiya Janata Party, “CAB will be applicable in the entire country and not just confined to West Bengal: Shri Amit Shah”, 23 April 2019: [https://www.youtube.com/watch?v=Z\\_\\_6E5hPbHg](https://www.youtube.com/watch?v=Z__6E5hPbHg).

23 Express Web Desk, “Amit Shah sets pan-India NRC deadline: Will drive out illegal immigrants before 2024”, *The Indian Express*, 2 December 2019: <https://indianexpress.com/article/india/pan-india-nrc-by-2024-will-drive-illegal-immigrants-out-of-country-amit-shah-6146844>.

24 PTI, “Assam goes up in flames with violent anti-CAB protests; Modi govt pushes ahead with bill”, *Mint*, 11 December 2019: <https://www.livemint.com/news/india/assam-goes-up-in-flames-with-violent-anti-cab-protests-modi-govt-pushes-ahead-with-bill-11576078934783.html>.

25 PTI, “Anti-CAB stir: People defy curfew, police open fire as Assam”, *The Economic Times*, 12 December 2019: <https://economictimes.indiatimes.com/news/politics-and-nation/anti-cab-protests-in-assam-police-opens-fire-on-protestors/articleshow/72487251.cms>.

26 PTI, “Left parties to organize joint nationwide protest against Citizenship Bill on Dec 19”, *The Economic Times*, 12 December 2019: <https://economictimes.indiatimes.com/news/politics-and-nation/left-parties-to-organise-joint-nationwide-protest-against-citizenship-bill-on-dec-19/articleshow/72490625.cms>.

27 This website gives an overview: <https://protestmonitor.factchecker.in>; Ritu Menon, “Anti-CAA protests by Muslim women are about where, how and why you belong”, *The Indian Express*, 4 February 2020: <https://indianexpress.com/article/opinion/columns/shaheen-bagh-anti-caa-protest-mother-india-6249503>.

at Shaheen Bagh in Delhi became a popular symbol and inspired many others.<sup>28</sup> With notable exceptions in the early days, the anti-CAA protests were largely peaceful.

### Use of Force by Police at Protest Sites

There were many reports of police brutality against anti-CAA protesters in UP, Karnataka, and Delhi. In UP alone, 22 people were killed during the protests within two days.<sup>29</sup> There were reports of gross excesses by the police in making arrests, raiding homes and shooting people across both rural areas and cities.<sup>30</sup> In early December, protests in Assam saw incidents of violence where five people were killed in police firing, including one boy aged 17; in Mangalore, Karnataka, two people were killed in police firing when a proclamation under Section 144, the Code of Criminal Procedure, 1973 (CrPC) was apparently violated.<sup>31</sup>

Sedition cases were filed against many anti-CAA protesters, including university students.<sup>32</sup> There was widespread imposition of Section 144 in Gujarat,<sup>33</sup> Karnataka,<sup>34</sup> UP,<sup>35</sup> Andhra Pradesh,<sup>36</sup> Madhya Pradesh,<sup>37</sup> Uttarakhand,<sup>38</sup> Haryana,<sup>39</sup> West Bengal,<sup>40</sup> and Delhi.<sup>41</sup>

A few High Courts passed orders against the use of force and other actions by the police against anti-CAA protesters. The Karnataka High Court quashed the imposition of Section 144, CrPC (for the period December 19 to 21, 2019), calling it “illegal”.<sup>42</sup> A Muslim petitioner from Beed in Maharashtra asked the Aurangabad bench of the Bombay High Court to allow him and others to conduct a sit-in protest, the permission for which was denied by the District Magistrate. A two-judge bench ruled that the Order by the District Magistrate and police prohibiting the protest was illegal, and further, that people who are protesting peacefully against

28 Anuj Kumar, “Women playing prominent role in anti-CAA, NRC protests”, *The Hindu*, 9 February 2020: <https://www.thehindu.com/news/national/other-states/women-playing-prominent-role-in-anti-cao-nrc-protests/article30777618.ece>.

29 Express News Service, “22 people died in violence during anti-CAA protests: UP govt to HC”, *The Indian Express*, 19 February 2020: <https://indianexpress.com/article/cities/lucknow/22-people-died-in-violence-during-anti-cao-protests-up-govt-to-hc-6275092>.

30 Express Web Desk, “UP sees most deaths and violence in anti-CAA protests: The stories we know so far”, *The Indian Express*, 27 December 2019: <https://indianexpress.com/article/india/uttar-pradesh-citizenship-law-protests-yogi-adityanath-6185483>.

31 The Wire Staff, “These Are the 25 People Killed During Anti-Citizenship Amendment Act Protests”, *The Wire*, 23 December 2019: <https://thewire.in/rights/anti-cao-protest-deaths>.

32 Akash Sriram, “10 things you need to know about the CAA protests in Delhi”, *Deccan Herald*, 25 February 2020: <https://www.deccanherald.com/national/national-politics/10-things-you-need-to-know-about-the-cao-protests-in-delhi-807989.html>.

33 Express News Service, “CAA protests: IIM-A professors, 3 others challenge continued imposition of Section 144”, *The Indian Express*, 27 December 2019: <https://indianexpress.com/article/cities/ahmedabad/cao-protests-iim-a-professors-3-others-challenge-continued-imposition-of-section-144-6186879>.

34 Sharan Poovanna, “Section 144 imposed in Bengaluru, other parts of Karnataka to disallow protests against CAA, NRC”, *Mint*, 18 December 2019: <https://www.livemint.com/news/india/section-144-imposed-in-bengaluru-other-parts-of-karnataka-to-disallow-protests-against-cao-nrc-11576688875291.html>.

35 Omar Rashid, “Section 144 enforced in all of U.P. ahead of CAA protest”, *The Hindu*, 20 December 2019: <https://www.thehindu.com/news/national/other-states/section-144-enforced-in-all-of-up-ahead-of-cao-protest/article30343108.ece>.

36 Staff Reporter, “Police extends Sec. 144 in Vijayawada up to Feb. 29”, *The Hindu*, 14 January 2020: <https://www.thehindu.com/news/national/andhra-pradesh/police-extends-sec-144-in-vijayawada-up-to-feb-29/article30569991.ece>.

37 ANI, “MP: Sec 144 imposed in Gohalpur, Miloniganj, Hanumanatal and Adhartal”, *ANI*, 20 December 2019: <https://www.aninews.in/news/national/general-news/mp-sec-144-imposed-in-gohalpur-miloniganj-hanumanatal-and-adhartal20191220205149>.

38 TNN, “Section 144 imposed in Haridwar”, *The Times of India*, 22 December 2019: <https://timesofindia.indiatimes.com/city/dehradun/section-144-imposed-in-haridwar/articleshow/72918467.cms>.

39 TNN, “Section 144 in Karnal over fears of CAA protests” *The Times of India*, 21 December 2019: <https://timesofindia.indiatimes.com/city/gurgaon/sec-144-in-karnal-over-fears-of-cao-protests/articleshow/72910050.cms>.

40 Tanmay Chatterjee, “In a first, Bengal govt enforces Section 144 to stop BJP’s pro-CAA rallies”, *Hindustan Times*, 14 January 2020: <https://www.hindustantimes.com/india-news/in-a-first-bengal-govt-enforces-section-144-to-stop-bjp-s-pro-cao-rallies/story-iW1oNOySiGTunexlyDf4K.html>.

41 Scroll Staff, “Delhi violence: Section 144 in Shaheen Bagh; NHRC forms fact-finding team to probe clashes”, *Scroll.in*, 1 March 2020: <https://scroll.in/latest/954783/delhi-violence-section-144-in-shaheen-bagh-nhrc-forms-fact-finding-team-to-probe-clashes>.

42 *Sowmya R. Reddy v. State of Karnataka*, 2020 SCC OnLine Kar 1527, paras 29, 33.

a law cannot be called traitors or anti-national.<sup>43</sup> The Allahabad High Court took *suo moto* cognizance of police excesses in responding to anti-CAA protests in UP and ordered the Lucknow district administration to remove the controversial “name and shame” hoardings of those arrested during the protests. The Court stated that these violated people's right to privacy that is protected under Article 21 of the Constitution.<sup>44</sup>

## Political Divergence on the CAA

The CAA was severely criticized by the Opposition. 20 political parties came together to issue a resolution against the CAA on January 13, 2020.<sup>45</sup> Seven State Governments – Chhattisgarh, Kerala, Madhya Pradesh, Punjab, Rajasthan, Telangana, and West Bengal – passed resolutions against the CAA in January-February 2020. In March 2020, the Delhi Legislative Assembly passed a resolution urging the withdrawal of the NPR and NRC.<sup>46</sup> Illustrative excerpts from State Governments' resolutions are reproduced as follows:

- The resolution of the Kerala Legislature said that “since the Citizenship Amendment Act is against the secular view of the Constitution, it violates the basic structure of the Constitution.”<sup>47</sup>
- The resolution of the Punjab Legislative Assembly stated that “it is divisive and stands for everything opposed to a free and fair democracy, which must enshrine equality for all. Alongside the religion-based discrimination in granting citizenship, it is apprehended that the CAA is also likely to endanger the religious and cultural identity of some sections of our people.”<sup>48</sup>
- While moving the resolution in the Rajasthan Assembly, Parliamentary Affairs Minister Shanti Dhariwal said that “the CAA is an onslaught on the secular structure of the Constitution.”<sup>49</sup>
- Similarly, according to the resolution of the Telangana Legislative Assembly, “there have been concerted attempts to tinker with the inclusive and non-religious nature of Indian citizenship through the Citizenship Amendment Act, 2019, the National Population Register and the National Register of Citizens. Besides violating principles of equality, non-discrimination, secularism, this concerted attempt will also endanger the lives of vulnerable groups who do not possess adequate documentary proof of citizenship.”<sup>50</sup>
- The resolution of the West Bengal Legislative Assembly said that in the CAA “religion has been used as a yardstick to measure eligibility to apply for Indian citizenship...the ruling party in the Centre has been driving a wedge among the people using religion [thus] damaging human rights.”<sup>51</sup>

Other State Governments including Andhra Pradesh, Bihar, Maharashtra and Odisha also indicated their reluctance to implement the CAA-NRC.<sup>52</sup> The Tamil Nadu Assembly passed a resolution asking the Central

43 *Iftexhar Zakee Shaikh v. State of Maharashtra*, 2020 SCC OnLine Bom 244, para 9.

44 Order dated 9.3.2020, *In-Re Banners Placed On Road Side In The City Of Lucknow*, PIL No. 532/2020, Allahabad High Court.

45 Express Web Desk, “Withdraw CAA, stop NRC, NPR: 20 Opposition parties pass resolution”, *The Indian Express*, 13 January 2020: <https://indianexpress.com/article/india/after-mamata-now-bsp-chief-mayawati-to-skip-cong-led-opposition-meet-6213624>.

46 Pretika Khanna, “Delhi assembly passes resolution against NPR in present form”, *Mint*, 14 March 2020: <https://www.livemint.com/news/india/delhi-assembly-passes-resolution-against-npr-and-nrc-11584108452099.html>.

47 A copy of the resolution in Malayalam on the official website can be found at [www.niyamasabha.org/codes/14kla/session\\_17/New%20folder/resolution-31-12-19.pdf](http://www.niyamasabha.org/codes/14kla/session_17/New%20folder/resolution-31-12-19.pdf).

48 PTI, “Punjab Assembly passes resolution against CAA by voice vote”, *The Times of India*, 17 January 2020: <https://timesofindia.indiatimes.com/india/punjab-assembly-moves-resolution-against-caa/articleshow/73326176.cms>.

49 Mohammed Iqbal, “Rajasthan Assembly passes resolution against CAA”, *The Hindu*, 25 January 2020: <https://www.thehindu.com/news/national/other-states/rajasthan-assembly-passes-resolution-against-caa/article30651563.ece>.

50 A copy of this resolution on the official website can be found at [https://legislation.telanganalegislature.org.in//PreviewPage.tsl?filePath=basePath&fileName=ResolutionOrdinance/Files/Eng\\_Resolution16\\_78.pdf](https://legislation.telanganalegislature.org.in//PreviewPage.tsl?filePath=basePath&fileName=ResolutionOrdinance/Files/Eng_Resolution16_78.pdf).

51 Shiv Sahay Singh, “West Bengal Assembly passes resolution against CAA”, *The Hindu*, 27 January 2020: <https://www.thehindu.com/news/national/other-states/west-bengal-govt-tables-anti-cao-resolution-in-assembly/article30664646.ece>.

52 FPJ Web Desk, “From Bengal to Punjab: 10 states which have refused to implement CAA-NRC”, *The Free Press Journal*, 24 December 2019: <https://www.freepressjournal.in/india/from-bengal-to-punjab-10-states-which-have-refused-to-implement-cao-nrc>.

Government to repeal the CAA because it was a “betrayal” of the Sri Lankan Tamil refugees.<sup>53</sup> In fact, the law excludes quite a few other minority groups such as minority Tamils from Sri Lanka, ethnic Nepalis from Bhutan, and a host of Muslim minorities like the Rohingyas from Myanmar, the Hazaras from Afghanistan, and the Shias and Ahmadias from Pakistan.

The Government of Kerala moved the Supreme Court challenging the constitutionality of the CAA.<sup>54</sup> According to the petition filed, the CAA is “discriminatory” and “a colorable legislation; in as much as there is a constitutional prohibition to making the said legislation in violation of the secular nature of the Constitution.”<sup>55</sup> Meanwhile, in January 2020, the Gujarat Assembly passed a resolution in support of the CAA.<sup>56</sup>

## Wider Reactions

Different groups within civil society responded through public writings, speeches, and ultimately, with widespread street protests, to express their fears about the CAA. When the Citizenship (Amendment) Bill, 2019 was initially tabled, 625 civil society members wrote a letter demanding its withdrawal, warning that its “blatant exclusion of a community” was divisive and discriminatory, and that it would “damage, irreparably, the nature of the Indian republic.”<sup>57</sup> The wider arguments included the perspective that the CAA is unconstitutional as it discriminates on the basis of religion, and that there is no rational basis for providing protection to certain groups and excluding others. After the passing of the Act, many letters of protest and condemnation were issued by public intellectuals, such as the one signed by approximately 2000 scientists and scholars working across Indian and foreign universities and research institutions.<sup>58</sup>

The international community also responded to the passing of the CAA. The Office of the United Nations High Commissioner for Human Rights issued a public statement characterizing the new law as “fundamentally discriminatory” and incompatible with India’s international human rights obligations.<sup>59</sup> It filed an intervention in the Supreme Court in petitions related to the CAA.<sup>60</sup> The Organization of Islamic Cooperation declared that it was “increasingly concerned” about the CAA for apparently discriminating against Indian Muslims.<sup>61</sup> The US Commission on International Religious Freedom (an independent, bipartisan US federal government commission that monitors the right to freedom of religion or belief across the world) raised early concerns about the law using religion as a pathway to citizenship to be against

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53 PTI, “Tamil Nadu govt passes resolution against CAA, says law betrayed Sri Lankan refugees”, *The Print*, 8 September 2021: <https://theprint.in/india/tamil-nadu-govt-passes-resolution-against-caa-says-law-betrayed-sri-lankan-refugees/730278>.

54 PTI, “Kerala government moves Supreme Court challenging Citizenship Amendment Act”, *The Economic Times*, 14 January 2020: <https://economictimes.indiatimes.com/news/politics-and-nation/kerala-government-moves-supreme-court-challenging-citizenship-amendment-act/articleshow/73239727.cms>.

55 Petition filed by the State of Kerala can be accessed at [https://www.livelaw.in/pdf\\_upload/pdf\\_upload-369068.pdf](https://www.livelaw.in/pdf_upload/pdf_upload-369068.pdf).

56 TNN, “Gujarat Assembly: Pro-CAA resolution passed”, *The Times of India*, 11 January 2020: <https://timesofindia.indiatimes.com/city/ahmedabad/pro-cao-resolution-passed/articleshow/73196492.cms>.

57 Scroll Staff, “Citizenship Bill: Writers and scholars warn of ‘untold suffering’ and irreparable damage to India”, *Scroll.in*, 10 December 2019: <https://scroll.in/latest/946409/citizenship-bill-writers-and-scholars-warn-of-untold-suffering-and-irreparable-damage-to-india>.

58 A copy of the statement can be accessed at <https://docs.google.com/document/d/1dmuimPt4jESfWqqdz361N4aQuoJeotiuyoy9p9nVp4w/edit>.

59 UN News, “New citizenship law in India ‘fundamentally discriminatory’: UN human rights office”, *UN News*, 13 December 2019: <https://news.un.org/en/story/2019/12/1053511>.

60 Elizabeth Roche, “UN High Commissioner seeks SC intervention in Citizenship Amendment Act”, *Mint*, 3 March 2020: <https://www.livemint.com/politics/news/un-high-commissioner-seeks-sc-intervention-in-citizenship-amendment-act-11583226043265.html>.

61 PTI, “OIC expresses concern over CAA; says ‘closely’ following developments”, *The Economic Times*, 23 December 2019: <https://economictimes.indiatimes.com/news/politics-and-nation/oic-expresses-concern-over-cao-says-closely-following-developments/articleshow/72931689.cms>.

the core tenet of “religious pluralism”, and describing it as a “dangerous turn in the wrong direction”.<sup>62</sup> 54 lawmakers of the European Parliament tabled a resolution criticizing the discriminatory nature of the CAA, which finally was not adopted.<sup>63</sup>

On the other hand, former Solicitor General, Harish Salve published an article arguing that the CAA is not discriminatory.<sup>64</sup> 154 prominent citizens also wrote to the President supporting the CAA, NRC, and NPR.<sup>65</sup>

In August 2022 over 160 petitions challenging the constitutional validity of the CAA were pending before the Supreme Court from January 22, 2020.<sup>66</sup>

## Evolving Response of the Central Government

In the weeks following the passing of the CAA, it appeared that the Central Government lacked clarity on the relationship between the CAA, NRC and NPR. Confusion also reigned over how NPR data would be used for the CAA process, with the Law Minister contradicting the Home Minister, saying that the NPR data “may or may not be used for the NRC”.<sup>67</sup> Faced with the widespread anti-CAA protests, some mixed responses emerged at the highest levels of political leadership. On December 23, 2019, Prime Minister, Narendra Modi distanced his government from a pan-India NRC, claiming that no discussions were held on the subject as yet. Speaking at a rally in New Delhi, he assured that the Muslim community in India have nothing to fear from either the CAA or NRC.<sup>68</sup> Other prominent figures of the Central Government responded by equating protesting against the CAA with criminalized or anti-national activity. At a rally in January 2020, the Home Minister said, “I want to say it again that the government is not going back on the CAA. Those who want to protest may continue doing so...if you chant slogans against Bharat Mata, I will put you behind bars.”<sup>69</sup> The Finance Minister alleged that the protests were aimed at “undermining the elected government” and “disturb(ing) the stability of the country”.<sup>70</sup>

Members of the ruling party vilified those protesting against the CAA through statements such as one by the BJP President in West Bengal in which he called the protesters “parasites” and

62 Prithvi Iyer, “Analyzing global response to the controversial Citizenship Amendment Act”, *ORF*, 26 December 2019: <https://www.orfonline.org/expert-speak/analyzing-global-response-to-the-controversial-citizenship-amendment-act-59529>; USCIRF, “USCIRF Raises Serious Concerns and Eyes Sanctions Recommendations for Citizenship (Amendment) Bill in India, Which Passed Lower House Today”, *United States Commission on International Religious Freedom*, 9 December 2019: <https://www.uscirf.gov/news-room/press-releases-statements/uscirf-raises-serious-concerns-and-eyes-sanctions>; PTI, “US commission seeks sanctions against Amit Shah if citizenship bill passed”, *Hindustan Times*, 10 December 2019: <https://www.hindustantimes.com/india-news/citizenship-bill-is-dangerous-turn-says-us-commission-on-religious-freedom/story-HuYL7O7KQgyQ4qusZkHeEM.html>.

63 Text of the European Parliament draft resolution on the CAA (“B9-007/2020”) can be accessed at [https://www.europarl.europa.eu/doceo/document/B-9-2020-0079\\_EN.html](https://www.europarl.europa.eu/doceo/document/B-9-2020-0079_EN.html).

64 Harish Salve, “CAA is necessary: Why the many arguments about its being unconstitutional don't hold water”, *The Times of India*, 5 March 2020: <https://timesofindia.indiatimes.com/blogs/toi-edit-page/caa-is-necessary-why-the-many-arguments-about-its-being-unconstitutional-dont-hold-water>.

65 PTI, “154 prominent citizens write to President in support of CAA, NPR, NRC”, *The Times of India*, 17 February 2020: <https://timesofindia.indiatimes.com/india/154-prominent-citizens-support-cao-npr-nrc-write-to-president/articleshow/74176834.cms>.

66 Debayan Roy, “CAA is a ‘benign’ law, scope for judicial review is limited, Modi govt tells SC”, *The Print*, 17 March 2021: <https://theprint.in/~ /caa-is-a-benign-law-scope-for-judicial-review-is-limited-modi-govt-tells-sc/382501>.

67 The Wire Staff, “Law Minister Contradicts Amit Shah, Says NPR Data ‘May or May Not be Used’ for NRC”, *The Wire*, 29 December 2019: <https://thewire.in/government/ravi-shankar-prasad-npr-nrc-data-cao>.

68 Liz Mathew and Abhinav Rajput, “PM Narendra Modi: No talk of NRC at all, lies being spread about detention centres”, *The Indian Express*, 23 December 2019: <https://indianexpress.com/article/india/pm-narendra-modi-citizenship-amendment-law-nrc-bjp-campaign-delhi-6179940>.

69 The Wire Staff, “Centre Will Not Go Back on CAA, Those Protesting Can Continue: Amit Shah”, *The Wire*, 21 January 2020: <https://thewire.in/government/amit-shah-citizenship-amendment-act-protests>.

70 P Vaidyanathan Iyer and Raj Kumar Jha, “Nirmala Sitharaman interview: ‘Fight us in House, attract smaller parties, keep us under watch...but Cong moving further to fringe’”, *The Indian Express*, 30 September 2020: <https://indianexpress.com/article/india/nirmala-sitharaman-indian-express-interview-covid-farm-bills-economy-gdp-6622513>.

“devils”.<sup>71</sup> While other party members distanced themselves from the statement, on January 12, 2020, the West Bengal BJP President said that “anti-CAA protesters were shot like dogs [by the police] in BJP-ruled states”.<sup>72</sup> Suresh Angadi, the late Union Minister of State for Railways, said, “I have told the district administration and railway authorities concerned that if anybody destroys public property, they can be shot at sight.”<sup>73</sup> As of April 2022, the Ministry of Home Affairs is still in the process of framing Rules to the CAA.<sup>74</sup>

## Conclusion

The CAA's passing led to socio-political volatility across the country. There was a public outpouring of strong sentiments against the law on the streets. Political parties and some State Governments also took measures to express their opposition to the law. The CAA was perceived by the Muslim community and some other sections of society as a tool to restrict citizenship on the basis of religious identity. Large sections of the population were anxious about what the future would hold. There was a lack of a pre-legislative process, coupled with absence of dialogue even when the law was met with unprecedented protests. With the Supreme Court having left the question of legality of the CAA pending, the question itself took on a highly fractious life of its own.

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71 ANI, “Intellectuals opposing Citizenship Act are ‘devils’, ‘parasites’, says Dilip Ghosh”, *The New Indian Express*, 18 January 2020: <https://www.newindianexpress.com/nation/2020/jan/18/intellectuals-opposing-citizenship-act-are-devils-parasites-says-dilip-ghosh-2091213.html>.

72 TNN, “CAA agitators ‘shot like dogs’, says Dilip Ghosh, sparks row”, *The Times of India*, 14 January 2020: <https://timesofindia.indiatimes.com/india/caa-agitators-shot-like-dogs-says-dilip-ghosh-sparks-row/articleshow/73236094.cms>.

73 Jimmy Jacob, ed., “Junior Railway Minister Says “Shoot At Sight” Amid Citizenship Law Protests”, *NDTV*, 17 December 2019: <https://www.ndtv.com/india-news/if-anyone-destroys-public-property-shoot-them-at-sight-union-minister-2150379>.

74 The Wire Staff, “Union Home Ministry Asks for Another Six Months to Frame CAA Rules”, *The Wire*, 9 April 2022: <https://thewire.in/government/union-home-ministry-asks-for-another-six-months-to-frame-caa-rules>.

## 2. Stoking Divisions: A Build-Up to Violence in North East Delhi

This chapter examines key developments in Delhi in the period that immediately preceded the outbreak of violence in the North East District, that is from December 2019 to February 2020. These include the rise of protests in Delhi against the CAA-NRC, responses of both political and non-political actors to these protests, and the tenor of the campaigning in the 2020 Delhi Assembly elections. This chapter records these developments and other possible drivers of the violence, and analyses if early signals of a distinctly communal syntax emerged in this period.

### Protests in Delhi

Multiple protests against the CAA-NRC began to take place in Delhi from December 13, 2019. The city was the site of continuous protests for a few months, of which the earliest were street marches.

#### Early Protest Marches

On December 13, 2019, a rally to the Parliament was called, to oppose the passage of the CAA-NRC. Hundreds of students from Jamia University and residents of Jamia Nagar joined. Clashes were reported when the police stopped the protesters at the University's Gate No. 3 from advancing. The police reportedly used force against the protesters, by beating them with lathis and using tear gas to disperse them. Protesters also engaged in stone pelting. Around 60 students, dozens of police personnel, and many journalists suffered injuries. Several students were detained and released after a few hours.<sup>75</sup> Later, the University gates were ordered shut. The Delhi Metro Rail Corporation shut down Janpath and Patel Chowk Metro Stations following a police advisory. The next day, Jamia University announced that semester exams were postponed.

On December 15, 2019, another protest march of over a thousand people, including students of Jamia University and residents from Jamia Nagar, was on its way to Jantar Mantar. Police deployed tear gas to disperse the crowd.<sup>76</sup> Stones were thrown by some persons from the crowd, and two passenger buses and some motorcycles were set ablaze near the University.<sup>77</sup> Police personnel resorted to using their batons, forcing the students to return to the campus. As per testimonies of Jamia University students and CCTV video clips released later, the police entered the campus and, for over two hours vandalized the campus and assaulted students.<sup>78</sup> The police also hurled several rounds of tear gas shells inside the library and mosque

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75 Sania Ahmad, "Citizenship Amendment Act protest: Delhi Police, protesters clash at Jamia", *India Today*, 13 December 2019: <https://www.indiatoday.in/india/story/citizenship-amendment-bill-cab-protest-delhi-police-jamia-students-1628126-2019-12-13>.

76 Sidharth Ravi, "Anti-Citizenship Act protests: violence hits Delhi, over 50 injured", *The Hindu*, 28 November 2021: <https://www.thehindu.com/news/national/police-enter-jamia-millia-islamia-campus-in-delhi-as-anti-citizenship-act-protest-turns-violent/article30312133.ece>; Sukrita Baruah and Sourav Roy Barman, "Jamia under siege, students are target", *The Indian Express*, 16 December 2019: <https://indianexpress.com/article/cities/delhi/jamia-millia-islamia-university-under-siege-students-are-target-6168896>.

77 Ravi, 28 November 2021, Note 76; Mirror Now, "Delhi: Anti-CAA protest turns violent as 3 buses burnt in Jamia Nagar", *Economic Times*, 15 December 2019, <https://economictimes.indiatimes.com/news/politics-and-nation/delhi-anti-caa-protesters-set-fire-on-buses-jamia-millia-islamia-students-blamed/vedioshow/72683068.cms>.

78 Sruthisagar Yamunan, "Delhi Police were 'uncontrollable' as they unleashed violence at Jamia Millia Islamia, students say", *Scroll.in*, 16 December 2019: <https://scroll.in/article/946933/delhi-police-were-uncontrollable-as-they-unleashed-violence-at-jamia-millia-islamia-students-say>. Fact finding reports as well as media channels also reported that three shots were fired by the Delhi Police during the crackdown, which was first denied by them. Subsequently videos emerged that showed Delhi Police firing the shots. The police officials later stated that they would investigate the videos. Mahender Singh Manral, "Delhi Police denied it, but internal probe finds 2 of their personnel fired during Jamia protests", *The Indian Express*, 5 January 2020: <https://indianexpress.com/article/india/citizenship-act-protest-jamia-university-delhi-police-firing-6200029>.



situated inside the campus. About 200 students were injured.<sup>79</sup> Student testimonies recorded that the police made pejorative, communal remarks like, “recite the *kalmia*” (last words), and “go to Pakistan”, while rounding them up.<sup>80</sup>

On December 16, 2019, a protest against the CAA was organized by students of the Arts Faculty of Delhi University. Protesters alleged that members of the Akhil Bharatiya Vidyarthi Parishad (ABVP), the student wing of the BJP, attacked them, while the Delhi Police either looked on or joined in. No action was initiated even after videos of office bearers of the ABVP assaulting students surfaced on social media.<sup>81</sup>

On December 17, clashes broke out between the anti-CAA protesters and the police in North East Delhi's Seelampur-Jaffrabad area. The protests began at around 1 p.m., with the protesters marching from Seelampur towards Jaffrabad. By the time the demonstration reached the Jaffrabad main road, it had close to 3,000 people.<sup>82</sup> Traffic was halted on the 66-Foot-Road from Seelampur to Jaffrabad. Violence reportedly broke out when the police tried to disperse the protest march. Several motorcycles were torched, buses were damaged, stones were pelted at police personnel, and a police booth was vandalized.<sup>83</sup> The police responded with batons and fired tear gas shells on the crowd.<sup>84</sup> 21 people, including 12 policemen, were injured in the violence.<sup>85</sup> By December 19, the number of arrests made by the police in relation to the Seelampur protests had reached 21.<sup>86</sup>

On December 20, a large crowd peacefully demonstrated against the CAA-NRC in the area around the Delhi Gate. It was reported that a few people from within the gathering pelted stones at the police contingent. The police responded with batons and water cannons.<sup>87</sup> A car was set on fire in front of the office of Deputy Commissioner of Police (DCP), Central Zone.<sup>88</sup> 46 people were injured and more than 40 people, including some minors, were detained by the police.<sup>89</sup> It was reported that lawyers, journalists, and doctors who reached Daryaganj following reports of violence, were not allowed to assist the injured, or those who needed legal help.<sup>90</sup> Lawyers were allowed to meet those detained only after the Chief Metropolitan Magistrate (Central

79 Express Web Desk, “Jamia V-C says police atrocities against students unacceptable, seeks high-level probe”, *The Indian Express*, 16 December 2019: <https://indianexpress.com/article/cities/delhi/jamia-millia-islamia-vice-chancellor-najma-akhtar-protests-citizenship-law-6169636>.

80 Campaign Against Witch-hunt of Anti-CAA Activists, 2019, *The Night of the Broken Glass: Testimonies from Jamia Millia Islamia*, pg. 28, 33, <https://pdfcoffee.com/the-night-of-the-broken-glass-testimonies-from-jamia-millia-islamia-pdf-free.html>.

81 Kabir Upmanyu, “Jamia Aftermath: Protests at DU, Students Allege Violence by ABVP”, *The Quint*, 16 December 2019: <https://www.thequint.com/news/education/delhi-university-students-protest-against-jamia-millia-violence-police-abvp>; Aranya Shankar, “ABVP in a bind as ‘harassment’ videos by members at Delhi University go viral”, *The Indian Express*, 19 December 2019: <https://indianexpress.com/article/cities/delhi/abvp-in-a-bind-as-harassment-videos-by-members-go-viral-6173963>.

82 Shemin Joy, “CAA: Protesters clash with police in Delhi's Seelampur”, *Deccan Herald*, 17 December 2019: <https://www.deccanherald.com/national/caa-protesters-clash-with-police-in-delhis-seelampur-786292.html>.

83 Ed. by Deepshika Ghosh, “Violence in East Delhi Over Citizenship Act, Stones Thrown, Tear Gas: 10 Facts”, *NDTV*, 17 December 2019, <https://www.ndtv.com/india-news/police-lathicharge-crowd-fire-tear-gas-in-east-delhis-seelampur-during-citizenship-act-protest-2150188>.

84 Ghosh, 17 December 2019, Note 83.

85 The Hindu Net Desk, “CAA protests updates | 21 people injured in Seelampur violence: police”, *The Hindu*, 17 December 2019: <https://www.thehindu.com/news/national/citizenship-amendment-act-protest-hartal-live-updates-december-17-2019/article30326650.ece>; Arvind Ojha, “Anti-CAA stir: Violence returns to Delhi as Seelampur turns warzone”, *India Today*, 17 December 2019: <https://www.indiatoday.in/india/story/seelampur-massive-protest-delhi-1629019-2019-12-17>.

86 PTI, “12 More Arrests In Connection With Violence In Northeast Delhi”, *NDTV*, 19 December 2019: <https://www.ndtv.com/delhi-news/12-more-arrests-in-connection-with-violence-in-northeast-delhi-2151231>.

87 Karn Pratap Singh and Anonna Dutt, “3 minors among 50 detained, 46 injured during CAA protests in Delhi”, *Hindustan Times*, 21 December 2019: <https://www.hindustantimes.com/delhi-news/violent-clashes-in-daryaganj-leave-46-injured/story-7u8U1s9DjiNZz6UacMDCbM.html>.

88 India Today Web Desk, “8 minors among 40 detained after violence near Delhi Gate in Daryaganj”, *India Today*, 20 December 2019: <https://www.indiatoday.in/india/story/delhi-gate-daryaganj-citizenship-amendment-act-protest-violence-car-fire-police-1630163-2019-12-20>.

89 Singh and Dutt, 21 December 2019, Note 87.

90 The Wire Staff, “At Delhi Gate, Police Crackdown and Detention of Minors Triggered Large Protest”, *The Wire*, 20 December 2019: <https://thewire.in/rights/delhi-gate-daryaganj-police-water-cannons-lathis-cao-protest>.

Delhi) passed an Order at night, directing the Daryaganj Station House Officer to permit those detained to meet their lawyers, ensure medical treatment to those injured, and release minors detained at the Police Station, calling it a flagrant violation of law.<sup>91</sup>

### Protest Sit-Ins

From late December 2019, sit-in protests became the predominant form of protest in Delhi. On December 15, a group of women began an indefinite sit-in, blocking a part of the Shaheen Bagh-Kalindi Kunj highway, demanding scrapping of the CAA. Women from the predominantly Muslim neighborhood came in batches to be at the site and participate in the sit-in protest. The protest site was also largely run and managed by the local women.<sup>92</sup> With passage of time, the Shaheen Bagh protest site became the epicenter of the anti-CAA protests in Delhi. It saw a constant stream of visitors and supporters including intellectuals, artists, activists, and other public figures.<sup>93</sup>

While the protesters occupied one side of a major highway with a concrete divider in the middle, the organizers of the protest alleged that the police blocked the other side and several nearby roads.<sup>94</sup> The public inconvenience caused became a subject matter of litigation in the Supreme Court.<sup>95</sup> As the Shaheen Bagh protest gained prominence, the entire area was put under heavy police deployment.<sup>96</sup> The protest continued despite the violence in the district in February. The site was cleared on March 24, 2020, once the Covid-19 lockdown was imposed in Delhi.<sup>97</sup>

The Shaheen Bagh protest caught the imagination of the Muslim community and others opposed to the CAA-NRC. North East Delhi emerged as a district where several sit-ins were organized in the areas of Brijpuri, Kardampuri, Bhajanpura, Noor-e-Ilahi, Chand Bagh and Jaffrabad.<sup>98</sup>

## Demonstrations against the Anti-CAA Protests

As the protests against the CAA spread, demonstrations in favor of the citizenship amendment also emerged. On December 17, 2019, the ABVP organized a pro-CAA rally at the Arts Faculty of Delhi University.<sup>99</sup> On December 20, 2019, Kapil Mishra, the BJP candidate from the Model Town constituency in the upcoming

91 Live Law News Network, "Anti-CAA Protests: Detention Of Minors In Police Station Illegal, Orders Magistrate In Delhi; Police Asked To Allow Detainees To Meet Lawyers, Provide Medical Aid", *LiveLaw*, 21 December 2019: <https://www.livelaw.in/news-updates/anti-caa-protests-detention-of-minors-in-police-station-illegal-orders-magistrate-in-delhi-daryaganj-lawyers-meet-150991>.

92 Ziya Us Salam, "Shaheen Bagh protestors: Showing the way", *Frontline*, 24 April 2020: <https://frontline.thehindu.com/the-nation/article31249472.ece>; Express Web Desk, "Shaheen Bagh's 101-day protest: Timeline of sit-in against CAA", *The Indian Express*, 24 March 2020: <https://indianexpress.com/article/cities/delhi/shaheen-bagh-protests-cleared-timeline-caa-delhi-coronavirus-6328911>.

93 PTI, "Unfazed by cold, 200 women stage sit-in at Shaheen Bagh, police seek to end protest", *India Today*, 26 December 2019: <https://www.indiatoday.in/india/story/unfazed-by-cold-200-women-stage-sit-in-at-shaheen-bagh-police-seek-to-end-protest-1631797-2019-12-26>.

94 Legal Correspondent, "Police barricaded many roads with no link to Shaheen Bagh protests, says former CIC", *The Hindu*, 23 February 2020: <https://www.thehindu.com/news/national/police-barricaded-many-roads-with-no-link-to-shaheen-bagh-protests-says-former-cic/article30895866.ece>; Vijayta Lalwani, "The road that opened near Shaheen Bagh had been blocked by Delhi police, not protestors", *Scroll.in*, 24 February 2020: <https://scroll.in/article/954072/the-road-that-opened-near-shaheen-bagh-had-been-blocked-by-delhi-police>.

95 A. Vaidyanathan, "'Cat Out Of Bag': Top Court To Hear Shaheen Bagh Case After Delhi Polls", *NDTV*, 7 February 2020: <https://www.ndtv.com/india-news/petition-to-remove-shaheen-bagh-protesters-to-be-heard-on-monday-after-delhi-election-says-supreme-c-2176390>; also see *Amit Sahni (Shaheen Bagh, In Re) v. State*, (2020) 10 SCC 439.

96 HT Correspondent, "Delhi Police deploy large force in Shaheen Bagh as precautionary measure", *Hindustan Times*, 1 March 2020: <https://www.hindustantimes.com/india-news/security-increased-section-144-imposed-in-shaheen-bagh/story-hkekaXND5oCrL5ZrgT35SL.html>.

97 Express Web Desk, 24 March 2020, Note 92.

98 Ronak Chhabra, "In Photos: Shaheen Bagh Is Everywhere", *NewsClick*, 21 January 2020: <https://www.newslick.in/In-Photos-Shaheen-Bagh-Everywhere>; IANS, "Delhi: Anti-CAA protests going on in over 20 areas", *Lokmat Times*, 3 February 2020: <https://www.lokmatimes.com/national/delhi-anti-caa-protests-going-on-in-over-20-areas>.

99 Staff Reporter, "CAA protests: Delhi University students express solidarity", *The Hindu*, 17 December 2019: <https://www.thehindu.com/news/cities/Delhi/caa-protests-delhi-university-students-express-solidarity/article30332375.ece>.

Assembly elections in Delhi, led a march in central Delhi's Connaught Place shouting, "*desh ke gaddaron ko, goli maaro saalon ko*" (shoot the traitors).<sup>100</sup>

Two days later, on December 22, Anupam Pandey, BJP President for Sonia Vihar Ward in North East Delhi, went live on Facebook, leading a march shouting the same slogan "*desh ke gaddaron ko, goli maaro saalon ko*" (shoot the traitors).<sup>101</sup>

On December 24, 2019, Kapil Mishra filmed himself live from Karawal Nagar, in North East Delhi, where he admonished the public for not resisting the anti-CAA protests and said, "Is your conscience dead?" He asked, "will your eyes open up when the fire has reached your homes?" He then referred to the anti-CAA protesters, "Don't mistake Karawal Nagar for Seelampur or Jamia...from here on, if a crowd gives any slogans, then it will get the answer in a language which we have learnt from our parents."<sup>102</sup>

Another rally was organized on December 25, 2019, at Jantar Mantar, by an organization called Vishwa Sanatan Sangh. Yati Narsinghanand Saraswati, a prominent Hindutva leader in West UP and Delhi, gave a speech from the stage and later interacted with journalists, making the following comments:

I appeal to all you young people, these Muslims who keep coming out [on the streets] they should know what will happen to them the day we come out. And I would like to tell Narendra Modi and Amit Shah, please don't worry, we are all with you. You have brought the CAA, now bring the National Register of Citizens and after that put a stop to the population of these *katuas*. If these swine increase their numbers, they will spread filth, so to save this country from filth and dirt, please bring a law to stop their population, we will support you. And all of you, you fighters for dharma, each one of you lions is more than enough for 1,25,000 pigs. And if [the Muslims] are seeing dreams of taking over India, then tell them that we will gouge their eyes out. This country was ours, is ours and will remain ours.

...Those we call Muslims in our current era were called demons in earlier eras.

...I am once again appealing to Hindus, today the time has come, if even today you don't stand up then you won't survive. I want to tell Hindus that this is the final battle, if you lose this battle then nothing will remain.

These people [Anti CAA Protesters] are enemies of this country, they should be put in jail. And if they do not reform even after being jailed, they should be sentenced to death. These people [the Muslims] are *jihadis* who want to spread filth in the country, these are *jihadis* who want to destroy the country, these are *jihadis* who want to take over our resources, these are *jihadis* who want to kill us all, these are *jihadis* who want to make prostitutes of our sisters and daughters. Such people have to be destroyed from their roots and this is our basic religious duty...After partition, the *jihadis* Gandhi and Nehru kept these traitors in the country. This is India's biggest misfortune. It was not their choice, it was our weakness, we should have driven them out...Hindus will have to understand, these are not our people, they are *jihadis* and we will have to finish them off, this is our religion, this is patriotism.

The whole world has seen what China is doing with the Muslims. The President of China has said Islam is a mental illness and that we won't let our country fall prey to this disease. Our country will save itself by following China's pattern. There is no other way.<sup>103</sup>

100 Scroll Staff, "Goli maaro saalo ko: BJP's Kapil Mishra posts video of his 'peaceful' march supporting the CAA", *Scroll.in*, 21 December 2019: <https://scroll.in/video/947491/goli-maaro-saalo-ko-bjps-kapil-mishra-posts-video-of-his-peaceful-march-supporting-the-caa>.

101 Sagar, "Delhi Violence Unmasked | Part One", *The Caravan*, 1 March 2021: <https://caravanmagazine.in/politics/part-one-how-rss-bjp-members-invoked-hindu-identity-to-mobilise-hindutva-mobs-at-maujpur>.

102 Sagar, "Delhi Violence Unmasked | Part Three", *The Caravan*, 1 March 2021: <https://caravanmagazine.in/politics/how-bjp-and-youth-wing-bjym-used-delhi-elections-to-mobilise-hindutva-mobs>.

103 The Wire Staff, "Delhi 2020 | The Real Conspiracy, Episode 2: The Anti-Muslim Cleric Who Called for Final War", *The Wire*, 3 March 2021: <https://thewire.in/communalism/delhi-riots-2020-the-real-conspiracy-episode-2>.

## Hate as a Driver of Conflict

In context of these developments, several factors signal growing tensions. The pro-CAA demonstrations based themselves on slogans that could be seen as inciting violence in calling for shooting bullets while branding anti-CAA protesters as “traitors”, “terrorists”, “rioters”, and “*jihadis*”.<sup>104</sup> The speeches of political and Hindu nationalists characterized the anti-CAA protesters as being predominantly Muslim, equating Indian Muslims protesting against the CAA with enemies and violent trouble makers.<sup>105</sup>

The police response to the two groups was inconsistent. The first few days of the protests against the CAA saw police action and use of force directed against protesters and protest sites. This ranged from the denial of permissions to organize protests,<sup>106</sup> allegations of police firing,<sup>107</sup> assaults and beatings,<sup>108</sup> and vandalism of a university campus.<sup>109</sup> Prohibitory measures such as Section 144, CrPC were repeatedly imposed to stop anti-CAA protesters from gathering.<sup>110</sup> Internet shutdowns were also reported from parts of Delhi,<sup>111</sup> and limits were placed on public transportation to prevent people from congregating at the protest sites.<sup>112</sup> It is of note here that the Supreme Court has held that the “power under Section 144, CrPC cannot be used to suppress legitimate expression of opinion or grievance or exercise of any democratic rights.”<sup>113</sup>

The Delhi Police, however, did not interfere with demonstrators or ruling party leaders in support of the CAA, even as many of these demonstrations based themselves on slogans which advocated violence.

The tone and spread of these slogans indicate the sharp rise in hateful content by this time. Sections 153A and 153B of the IPC are regarded as the legal provisions that criminalize hate speech. While these provisions do not use the term hate speech, they go some way towards prohibiting speech that prejudicially targets a group or community on the basis of a marker of identity. For instance, Section 153A, IPC prohibits words or other actions that promote enmity and disharmony between different groups on several grounds.

104 Akshita Jain, “Pro-CAA Rallies Trigger Widespread Anger With Incendiary Slogans”, *Huffington Post*, 23 December 2019: [https://www.huffpost.com/archive/in/entry/anger-slogans-pro-citizenship-amendment-act-rallies\\_in\\_5e005f3ae4b05b08bab79f4f](https://www.huffpost.com/archive/in/entry/anger-slogans-pro-citizenship-amendment-act-rallies_in_5e005f3ae4b05b08bab79f4f).

105 The Wire Staff, 3 March 2021, Note 103.

106 PTI, “Delhi Police Denies Permission to AISA, Swaraj Abhiyan for Anti-CAA March in Delhi”, *News18*, 18 December 2019: <https://www.news18.com/news/india/delhi-police-denies-permission-to-aisa-swaraj-abhiyan-for-anti-kaa-march-in-delhi-2428879.html>.

107 Rohini Chatterji, “Did Delhi Police Fire At Jamia Millia Islamia Students? A New Video Suggests So”, *Huffington Post*, 18 December 2019: [https://www.huffpost.com/archive/in/entry/kaa-delhi-police-firing-jamia-millia-islamia-students\\_in\\_5dfaeb09e4b01834791b1e58](https://www.huffpost.com/archive/in/entry/kaa-delhi-police-firing-jamia-millia-islamia-students_in_5dfaeb09e4b01834791b1e58).

108 Haley Willis and Caroline Kim, “India’s Police Response to Protests was Swift and Violent, Videos Show”, *The New York Times*, 17 December 2019: <https://www.nytimes.com/video/world/asia/10000006877279/india-protests-police.html>.

109 Willis and Kim, 17 December 2019, Note 108; Newsroom, “CCTV Video From Jamia Millia Islamia Appears To Show Cops Assaulting Students In Library”, *Huffington Post*, 16 February 2020: [https://www.huffingtonpost.in/entry/cctv-video-from-jamia-millia-islamia-appears-to-show-cops-assaulting-students-in-library\\_in\\_5e48dfe0c5b64433c6177647](https://www.huffingtonpost.in/entry/cctv-video-from-jamia-millia-islamia-appears-to-show-cops-assaulting-students-in-library_in_5e48dfe0c5b64433c6177647).

110 Soutik Biswas, “Citizenship Act protests: How a colonial-era law is being used in India”, *BBC*, 20 December 2019: <https://www.bbc.com/news/world-asia-india-50849909>.

111 Ankit Lal, “When The Internet Was Cut Off In Delhi During CAA Protests”, *NDTV*, 19 December 2019: <https://www.ndtv.com/opinion/when-the-internet-was-cut-off-in-delhi-during-kaa-protests-2151464>.

112 TNN, “Delhi: 19 metro stations shut, commuters suffer”, *The Times of India*, 21 December 2019: <https://timesofindia.indiatimes.com/city/delhi/delhi-19-metro-stations-shut-commuters-suffer/articleshow/72910880.cms>.

113 *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637, paras 126, 148.2.

## Selected text of Section 153A, IPC

153A. Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.—

(1) Whoever—

(a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, or

(b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquillity, or

(c) organizes any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community,] shall be punished with imprisonment which may extend to three years, or with fine, or with both. Offence committed in place of worship, etc.—

(2) Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.

The words used in these speeches and demonstrations appear to be meeting the ingredients set out in Section 153A (a) and (b) as “spoken words” attempting to promote, on grounds of religion and community, disharmony between Hindus and Muslims, likely to disturb public tranquility. Additionally, the slogans introduced by political and other leaders were being widely adopted and spread by people on the ground. Yet, no criminal complaints were registered by the Delhi Police.

## Delhi Elections 2020: Tenor of Campaigning

On January 6, 2020, the Election Commission of India announced the schedule for the elections to the State Legislative Assembly of Delhi. The elections were scheduled to be held on February 8, 2020, and the results were to be declared on February 11.<sup>114</sup> The provisions of the Model Code of Conduct for the Guidance of Political Parties and Candidates (MCC) issued by the Election Commission, came into force when the elections were announced.<sup>115</sup>

<sup>114</sup> Schedule of General Election to the Legislative Assembly of NCT of Delhi, 2020: <https://eci.gov.in/files/file/11567-schedule-of-general-election-to-the-legislative-assembly-of-nct-of-delhi-2020>.

<sup>115</sup> Election Commission of India, Circular No. 437/6/1/ECI/INST/FUNCT/MCC/2020, *Immediate Action to be taken for enforcement of Model Code of Conduct*, 6 January 2020: <https://eci.gov.in/files/file/11575-immediate-action-to-be-taken-for-enforcement-of-model-code-of-conduct>.

The MCC is a set of principles and guidelines issued by the Election Commission of India.<sup>116</sup> It prohibits political parties and candidates from “appealing to caste or communal feelings for securing votes” and indulging in any activity that may “aggravate existing differences or create mutual hatred or cause tension between different castes and communities, religious or linguistic.”<sup>117</sup> Similar provisions are found in the Representation of the People Act, 1951.<sup>118</sup>

### Campaign Speeches and Statements

The contest over the CAA-NRC leveraged significant attention as part of the election campaign in Delhi. On January 7, 2020, the BJP announced to its cadres in district level meetings that mobilizing people in support of the CAA was a key part of the election agenda for the party.<sup>119</sup>

On December 31, 2019, Anupam Pandey, President of the BJP's Sonia Vihar Mandal, a ward in North East Delhi, addressed a rally in which he called the anti-CAA protesters “*deshdrohis*” (traitors to the nation). In a livestream of the rally, Pandey can be heard telling the crowd, “I want to tell you something: if there is anyone who talks for Hindus it is only the BJP.. If the next chief minister is from BJP, then these traitors who are sitting on roads, the ones burning buses, we would at least get rid of them.”<sup>120</sup>

On January 22, 2020, Manoj Kashyap, the BJP candidate from Shahjahanpur constituency in UP, referred to the protests in an election rally, saying, “When such situation is being created this way, the true sons of India must stand up...The brave men of India have to stand. The patriotic warriors of India have to stand. The ones who can protect their mothers and sisters can certainly be ready like Hanuman to burn somebody else's Lanka.”<sup>121</sup>

On January 23, 2020, Kapil Mishra posted the following tweets:

- *India vs. Pakistan, 8<sup>th</sup> February, Delhi. 8 February ko Dilli ki sadko par Hindustan aur Pakistan mukabla hoga.*<sup>122</sup>

(India versus Pakistan, 8 February, Delhi. On 8 February, there will be a contest between Hindustan and Pakistan on the streets of Delhi.)

- *Delhi mein chhote chhote Pakistan bane.*<sup>123</sup>

(Small Pakistans have come up in Delhi.)

- *Shaheen Bagh mein Pak ki entry.*<sup>124</sup>

(Pakistan's entry in Shaheen Bagh.)

- *AAP aur Congress ne Shaheen Bagh jaise mini-Pakistan khade kiye hai, jawab mein 8 February ko Hindustan khada hoga. Jab jab deshdrohi bharat mein Pakistan khada karenge tab tab desh bhakton ka Hindustan khada hoga.*<sup>125</sup>

(AAP and Congress have supported Shaheen Bagh like mini-Pakistans, in response Hindustan will rise on 8 February. Whenever traitors will give rise to Pakistans in Bharat, alongside patriots' Hindustan will rise.)

116 View the MCC at this link: <https://eci.gov.in/mcc>.

117 Rules 1(1) and 1(3), General Conduct, Model Code of Conduct for the Guidance of Political Parties and Candidates.

118 Section 123(3A), the Representation of the People Act, 1951 prohibits activities by candidates that promote feelings of enmity and hatred between citizens on grounds of religion, race, caste, community or language. Section 125 of the Act makes it an offence punishable with imprisonment for a term which may extend to three years, or with fine, or both.

119 Abhinav Rajput, “BJP to fight Delhi polls on Modi name, CAA agenda”, *The Indian Express*, 6 January 2020: <https://indianexpress.com/article/india/bjp-to-fight-delhi-polls-on-modi-name-caa-agenda-6201481>.

120 Sagar, 1 March 2021, Note 102.

121 Sagar, 1 March 2021, Note 102.

122 Kapil Mishra, [https://mobile.twitter.com/KapilMishra\\_IND/status/1220213605359992833](https://mobile.twitter.com/KapilMishra_IND/status/1220213605359992833), 23 January 2020.

123 This tweet was taken down, the link is unavailable.

124 Kapil Mishra, [https://twitter.com/KapilMishra\\_IND/status/1220237373532848128](https://twitter.com/KapilMishra_IND/status/1220237373532848128), 23 January 2020.

125 Kapil Mishra, [https://twitter.com/KapilMishra\\_IND/status/1220275695399526401](https://twitter.com/KapilMishra_IND/status/1220275695399526401), 23 January 2020.

On January 27, 2020, in an election rally held in the Rithala Assembly constituency, Anurag Thakur (then Union Minister of State for Finance and Corporate Affairs) raised the slogan *desh ke gaddaron ko* and urged the crowd to complete it with “*goli maaro saalon ko*” (Shoot the traitors).<sup>126</sup>

In a televised interview, Parvesh Sahib Singh, BJP Member of Parliament from the West Delhi Lok Sabha Constituency, made derogatory references to Muslim men particularly in relation to the Shaheen Bagh protests. Speaking to ANI on January 28, 2020, he stated:

The people of Delhi know that the fire that raged in Kashmir a few years ago, where the daughters and sisters of Kashmiri Pandits were raped...caught on in UP, Hyderabad, Kerala, the same fire is raging in a corner in Delhi. Lakhs of people gather there. This fire can reach the residences of Delhi anytime. People of Delhi will have to decide wisely. These people will enter your houses, rape your sisters and daughters, kill them. There's time today, Modi ji and Amit Shah won't come to save you tomorrow.<sup>127</sup>

On the same day, in another speech at an election event in the VIKASPURI Assembly constituency, Parvesh Sahib Singh said, “This is not just another election. It is an election to decide the unity of a nation. If the BJP comes to power on February 11, you will not find a single protester within an hour. And within a month, we will not spare a single mosque built on government land.”<sup>128</sup>

On January 29, Tarun Chugh, National Secretary of the BJP, in two successive tweets equated the Shaheen Bagh protesters with the Islamic State of Iraq and Syria (ISIS) cells spreading terror and fear. His first tweet in Hindi translated to English states, “*desh ke gaddaron ko, goli maaro saalon ko* (shoot the traitors) is not wrong. We will not let anybody break India's integrity. Shaheen Bagh means *Shaitan* (the Devil's) Bagh. They are adopting the same module as ISIS which had used women and children. The ideas of Hafiz Saeed will not be tolerated in India.”<sup>129</sup> In his second tweet posted in English he stated, “We will not let Delhi become Syria and allow them to run an ISIS-like module here, where women and kids are used. They are trying to create fear in the minds of the people of Delhi by blocking the main route. We will not let this happen. (We will not let Delhi burn) #ShaheenBaghKaSach (the truth about Shaheen Bagh).”<sup>130</sup>

Yogi Adityanath, Chief Minister of UP, addressed a widely attended election rally in Delhi on February 2, 2020. He said support to the Shaheen Bagh protests was akin to spreading “unrest and anarchy... (Arvind) Kejriwal and his *mandali* (group) are trying to fan unrest and anarchy by tacitly supporting the Shaheen Bagh protests. These protests are nothing but a way for some sections of people to show their objections against the scrapping of Article 370 and the construction of Lord Ram's grand temple in Ayodhya.” He asked voters to install a BJP government in Delhi, which would promote all religions, but added that where “*boli*” (words) doesn't work, “*goli*” (bullet) does.<sup>131</sup>

As illustrated above, much of the campaigning by BJP leaders focused on the anti-CAA protests in Delhi, particularly the Shaheen Bagh sit-in, with protesters described as “terrorists”, “traitors” and “*jihadis*”, working against the interests of the country. The tenor of the campaign can be characterized as sectarian and built

126 Scroll Staff, “Watch: Union minister Anurag Thakur leads ‘goli maaro saalon ko’ slogans at rally”, *Scroll.in*, 27 January 2020: <https://scroll.in/video/951289/watch-anurag-thakur-minister-of-state-for-finance-lead-goli-maaro-saalon-ko-slogans-at-rally>.

127 ANI, <https://twitter.com/ANI/status/1222011145168609281>, 28 January 2020; Rohini Chatterji, “Hate Speech: Shaheen Bagh Protesters Will Rape, Kill Your Sisters, Says BJP MP Parvesh Verma”, *Huffington Post*, 28 January 2020, [https://www.huffpost.com/archive/in/entry/shaheen-bagh-parvesh-verma-delhi-election-2020\\_in\\_5e2fb918c5b6ce51a4eac9bd](https://www.huffpost.com/archive/in/entry/shaheen-bagh-parvesh-verma-delhi-election-2020_in_5e2fb918c5b6ce51a4eac9bd).

128 Sukirti Dwivedi, “‘They Will Rape, Kill’: Delhi BJP MP's Shocker On Shaheen Bagh Protesters”, *NDTV*, 28 January 2020: <https://www.ndtv.com/india-news/delhi-election-2020-parvesh-sahib-singh-verma-says-no-shaheen-bagh-protesters-mosques-on-state-land-2170674>.

129 Newsroom Staff, “Shaheen Bagh means Shaitan Bagh: BJP's Tarun Chugh”, *Newsroom Post*, 30 January 2020: <https://newsroompost.com/india/shaheen-bagh-means-shaitan-bagh-bjps-tarun-chugh/502144.html>.

130 Newsroom Staff, 30 January 2020, Note 129.

131 Neelam Pandey and Regina Mihindukulasuriya, “Shaheen Bagh, biryani, bullets, Pakistan — what Yogi Adityanath said at Delhi rallies”, *The Print*, 2 February 2020: <https://theprint.in/politics/shaheen-bagh-biryani-bullets-pakistan-what-yogi-adityanath-said-at-delhi-rallies/358759>.

on what amounts to hate speech. Some television news channels amplified this narrative.<sup>132</sup> It is concerning that political leaders relied on communal speeches against Muslims to try to galvanize support among Hindu voters.

### Shooting Attempts on Anti-CAA Protesters

The slogan “*desh ke gaddaron ko, goli maaro saalon ko*” was first given by Kapil Mishra on December 20, 2019,<sup>133</sup> and was later repeated by other leaders of the BJP. As mentioned, Anurag Thakur raised the slogan in a political rally on January 27, 2020.<sup>134</sup>

Two days later, a 17-year-old male shot bullets at anti-CAA protesters outside the Jamia University and injured one student.<sup>135</sup> In the video of the incident, the young man can be seen walking and waving a gun as he shouts, “*yeh lo azadi*” (here, take your freedom), “*desh mein jo rehna hoga, Vande Mataram kehna hoga*” (If you want to stay in the country, you have to say Vande Mataram) and “*Dilli Police zindabad*”, before he fired towards protesters.<sup>136</sup> A newspaper report states that while his Facebook profile and the locals in his village claim that he was associated with the Bajrang Dal, the outfit distanced itself from him.<sup>137</sup> Another report stated that he expressed his intentions on Facebook, and was posting videos of the protest at Jamia, signaling that he was following it closely, until his attack.<sup>138</sup>

On February 1, 2020, a man fired bullets in the air at the Shaheen Bagh protest. There were no reported injuries and the accused was taken into custody. Videos from the site showed him saying, “*Hamare desh mein sirf Hinduon ki chalegi aur kisi ki nahi*” (in our country only Hindus will prevail).<sup>139</sup> A media report stated that eyewitnesses to the event said the following:

We suddenly heard gunshots. This person was shouting *Jai Shri Ram*. He had a semi-automatic pistol and he fired two rounds. The police were standing just behind him. When his gun jammed, he ran. He tried to fire again, then tossed the gun into the bushes and tried to escape. Some of us and the police caught him, the police dragged him away.<sup>140</sup>

On February 2, 2020, a third incident of firing was reported from the Jamia Nagar area of Delhi. Two unidentified persons on a scooter fired bullets outside Gate No. 5 of Jamia University late in the night. No one was injured in the attack.<sup>141</sup>

132 An analysis of the messaging of select television news channels is provided in Chapter 5.

133 Scroll Staff, 21 December 2019, Note 100; TNN, “Slogan only against those inciting violence: Kapil Mishra”, *The Times of India*, 22 December 2019: <https://timesofindia.indiatimes.com/city/delhi/slogan-only-against-those-inciting-violence-kapil-mishra/articleshow/72921302.cms>.

134 Scroll Staff, 27 January 2020, Note 126.

135 The Wire Staff, “Man Fires Gun at Protestors at Jamia, Shouts ‘Yeh Lo Aazadi’”, *The Wire*, 30 January 2020: <https://thewire.in/rights/jamia-millia-islamia-gun-incident>.

136 Aranya Shankar, Jignasa Sinha and Somya Lakhani, “Jamia student shot at as 20 Delhi cops watch, Proctor says MoS Anurag Thakur is to blame”, *The Indian Express*, 31 January 2020: <https://indianexpress.com/article/india/jamia-student-shot-at-as-20-cops-watch-proctor-says-mos-thakur-is-to-blame-6243470>.

137 Amil Bhatnagar, “Jamia protest shooting: ‘He followed protests, said need to fight for Hindu community’”, *The Indian Express*, 31 January 2020: <https://indianexpress.com/article/cities/delhi/jamia-protest-shooting-he-followed-protests-said-need-to-fight-for-hindu-community-6243414>.

138 Amitava Chakraborty and Sourav Roy Barman, “From Jamia shooter Facebook page: ‘Shaheen Bagh... khatam, Deepika Padukone will be beaten’”, *The Indian Express*, 31 January 2020: <https://indianexpress.com/article/india/jamia-protest-shooting-facebook-page-shaheen-bagh-6243473>.

139 Scroll Staff, “Delhi: Gunman opens fire in Shaheen Bagh, two days after Jamia shooting”, *Scroll.in*, 1 February 2020: <https://scroll.in/latest/951841/delhi-gunman-opens-fire-in-shaheen-bagh-days-after-jamia-shooting>.

140 Saurabh Shukla, “Firing At Shaheen Bagh, Delhi's Second In 3 Days At An Anti-CAA Protest”, *NDTV*, 1 February 2020: <https://www.ndtv.com/india-news/firing-at-delhi-shaheen-bagh-no-reports-of-injuries-so-far-2173268>.

141 Meryl Sebastian, “Delhi: Firing Outside Jamia University Is Third Shooting Incident In 4 Days”, *Huffington Post*, 2 February 2020: [https://www.huffpost.com/archive/in/entry/delhi-firing-outside-jamia-university-is-third-shooting-incident-in-4-days\\_in\\_5e378a2cc5b69a19a4b19579](https://www.huffpost.com/archive/in/entry/delhi-firing-outside-jamia-university-is-third-shooting-incident-in-4-days_in_5e378a2cc5b69a19a4b19579).



## Response of the Election Commission

Instances of action taken by the Election Commission of India to offensive speeches and tweets by political leaders during the Delhi election campaign are summarized below:<sup>142</sup>

### 1. KAPIL MISHRA, BJP

**Tweets under contention:** Tweets posted on January 23, 2020:

“8 February ko dilli ki sadko par Hindustan aur Pakistan ka mukabla hoga.”<sup>143</sup> (On 8 February, there will be a contest between Hindustan and Pakistan on the streets of Delhi.)

“Delhi mein chhote chhote Pakistan bane” (Small Pakistans have come up in Delhi)

“Shaheen Bagh mein Pak ki entry”<sup>144</sup> (Pakistan's entry in Shaheen Bagh)

“AAP aur Congress ne Shaheen Bagh jaise mini-Pakistan khade kiye hai, jawab mein 8 February ko Hindustan khada hoga. Jab jab deshdrohi bharat mein Pakistan khada karenge tab tab desh bhakton ka Hindustan khada hoga.”<sup>145</sup> (AAP and Congress have supported Shaheen Bagh like mini-Pakistan, in response Hindustan will rise on 8 February. Whenever traitors will give rise to Pakistans in Bharat, alongside patriots' Hindustan will rise.)

**Response of the Election Commission:** On January 25, 2020, the Election Commission held the tweets to be in violation of the MCC for inciting hatred between communities. Kapil Mishra was accordingly barred from holding any public meetings, public processions, rallies, roadshows, interviews, and utterances to the media for a period of 48 hours.<sup>146</sup>

### 2. ANURAG THAKUR, the then Union Minister of State for Finance and Corporate Affairs (BJP)

**Speech under contention:** Speech on January 27, 2020:

In an election rally in Rithala Assembly constituency in Delhi, he raised the slogan, “Desh ke gaddaron ko” and urged the crowd to complete the slogan with “goli maaro saalon ko”.<sup>147</sup>

**Response of the Election Commission:** On January 29, 2020, the Election Commission held Anurag Thakur to be in violation of provisions of the MCC and ordered his removal as a BJP star campaigner.<sup>148</sup>

On January 30, 2020, the Commission held that the statement made by Anurag Thakur violated provisions of the MCC and Sections 123(3A) and 125 of the Representation of the People Act, 1951. It barred him from holding any public meetings, public processions, rallies, roadshows, interviews, and utterances to the media for a period of 72 hours.<sup>149</sup>

142 Please note that while the Election Commission took action against numerous political leaders for a range of MCC violations during the 2020 Delhi election campaign period, the entries in the table above are directly relevant to the subject of this report.

143 Kapil Mishra, [https://twitter.com/KapilMishra\\_IND/status/1220213605359992833](https://twitter.com/KapilMishra_IND/status/1220213605359992833), 23 January 2020.

144 Kapil Mishra, [https://twitter.com/KapilMishra\\_IND/status/1220237373532848128](https://twitter.com/KapilMishra_IND/status/1220237373532848128), 23 January 2020.

145 Kapil Mishra, [https://twitter.com/KapilMishra\\_IND/status/1220275695399526401](https://twitter.com/KapilMishra_IND/status/1220275695399526401), 23 January 2020.

146 Election Commission of India, No. 437/DL-LA/2020/-NS/-II, Commission's order barring Kapil Mishra, from public speech, propaganda, 25 January 2020: <https://eci.gov.in/files/file/11719-general-election-to-the-legislative-assembly-of-nct-of-delhi2020-commissions-order-barring-sh-kapil-mishra-from-public-speech-propaganda-etc-regarding/> and file:///E:/Downloads/Gag%20Order\_Sh.%20Kapil%20Mishra%20(2).pdf.

147 Scroll Staff, 27 January 2020, Note 126.

148 Election Commission of India, No. 437/DL-LA/4/2020/N.S.-II, Order regarding removal of Anurag Thakur and Parvesh Sahib Singh from the list of Star Campaigners of BJP, 29.1.2020, <https://eci.gov.in/files/file/11751-order-regarding-removal-of-sh-anurag-thakur-and-sh-parvesh-sahib-singh-from-the-list-of-star-campaigners-of-bjp>.

149 Election Commission of India, No. 437/DL-LA/2020/-NS-II, Commission's order to Anurag Thakur, BJP, 20 January 2020, <https://eci.gov.in/files/file/11745-commissions-order-to-sh-anurag-thakur-bharatiya-janata-party>.

### 3. PARVESH SAHIB SINGH, MP, West Delhi, BJP

**Speeches under contention:** Speech on January 28, 2020, at a campaign event in Vikaspuri:

“This is not just another election. It is an election to decide the unity of a nation. If the BJP comes to power on February 11, you will not find a single protester within an hour. And within a month, we will not spare a single mosque built on government land.”<sup>150</sup>

Speaking to ANI on January 28, 2020, he stated:

“The people of Delhi know that the fire that raged in Kashmir a few years ago, where the daughters and sisters of Kashmiri Pandits were raped...caught on in UP, Hyderabad, Kerala, the same fire is raging in a corner in Delhi. Lakhs of people gather there. This fire can reach the residences of Delhi anytime. People of Delhi will have to decide wisely. These people will enter your houses, rape your sisters and daughters, kill them. There's time today, Modi ji and Amit Shah won't come to save you tomorrow.”<sup>151</sup>

**Responses of the Election Commission:** On January 29, 2020, the Commission held Parvesh Sahib Singh in violation of provisions of the MCC and ordered his removal as a BJP star campaigner.<sup>152</sup>

On January 30, 2020, it held that the statements made by Parvesh Sahib Singh violated provisions of the MCC and Sections 123(3A) and 125 of the Representation of the People Act, 1951. He was barred from holding any public meetings, public processions, rallies, roadshows, interviews, and make utterances to the media for a period of 96 hours.<sup>153</sup>

Responding to a repeat offence by Parvesh Sahib Singh, on February 5, 2020 the Commission prohibited him from holding any public meeting or rallies for a period of 24 hours. It held that the statement by Parvesh Sahib Singh casting vitriolic aspersions on Arvind Kejriwal amounted to violation of Clause (2) of Part 1 of the MCC.<sup>154</sup>

### 4. YOGI ADITYANATH, Chief Minister, UP (BJP)

**(a) Speech under contention:** Speech on February 1, 2020 at a rally in Karawal Nagar:

“Earlier it was that Congress that used to feed biryani in Kashmir, now it is Kejriwal who is doing the same in Shaheen Bagh, everyone today has a new fetish of feeding biryani. Pakistani ministers are also making appeals for Kejriwal, one can imagine why that is happening.”<sup>155</sup>

**Response of the Election Commission:** On February 6, 2020, the day the MCC was declared in force in Delhi and campaigning ceased,<sup>156</sup> the Commission issued a notice to Yogi Adityanath, holding that his statement

150 Dwivedi, 28 January 2020, Note 128.

151 ANI, <https://twitter.com/ANI/status/1222011145168609281>, 28 January 2020; Chatterji, 28 January 2020, Note 127.

152 Election Commission of India, No. 437/DL-LA/4/2020/N.S.-II, Order regarding removal of Anurag Thakur and Parvesh Sahib Singh from the list of Star Campaigners of BJP, 29.1.2020, <https://eci.gov.in/files/file/11751-order-regarding-removal-of-sh-anurag-thakur-and-sh-parvesh-sahib-singh-from-the-list-of-star-campaigners-of-bjp>.

153 Election Commission of India, No. 437/DL-LA/2020/-NS-II, Commission's order to Parvesh Sahib Singh, BJP, 30.1.2020, <https://eci.gov.in/files/file/11747-commissions-order-to-sh-parvesh-sahib-singh-bharatiya-janata-party>.

154 Election Commission of India, No. 437/DL-LA/2020/-NS-II, Commission's order to Parvesh Sahib Singh, Bharatiya Janata Party, 5.2.2020, <https://eci.gov.in/files/file/11803-commissions-order-to-sh-parvesh-sahib-singh-bharatiya-janata-party>.

155 Aishwarya Paliwal, “After campaign ends, EC sends notice to Yogi Adityanath over ‘Kejriwal feeding Shaheen Bagh biryani’ comment”, *India Today*, 6 February 2020: <https://www.indiatoday.in/elections/delhi-assembly-polls-2020/story/after-campaign-ends-ec-sends-notice-to-yogi-adityanath-over-kejriwal-feeding-shaheen-bagh-biryani-comment-1643971-2020-02-06>.

156 Paliwal, 6 February 2020, Note 155.

violates the provision of the MCC related to criticism of other parties and workers based on unverified allegations.<sup>157</sup>

**(b) Speech under contention:** Speech at the Badarpur Assembly constituency on February 2, 2020:

“(Arvind) Kejriwal and his mandali (group) are trying to fan unrest and anarchy by tacitly supporting the Shaheen Bagh protests. These protests are nothing but a way for some sections of people to show their objections against the scrapping of Article 370 and the construction of Lord Ram’s grand temple in Ayodhya.”

“We are not the ones who obstruct anyone’s festival or faith. Everyone should be able to celebrate their festivals, but within the law. But if someone shoots a gun at followers of Shiva, or indulges in rioting, and doesn’t listen to words, then he will listen to “goli” (bullet).”<sup>158</sup>

**Response of the Election Commission:** No known action taken by the Commission.

In a few instances, the Election Commission issued gag orders against political leaders. The Election Commission held that these speeches were not only objectionable, but also had the potential to incite hatred and aggravate differences between religious communities, thus violating provisions of the MCC and the Representation of the People Act, 1951. Among others, the slogan, “*desh ke gaddaron ko*”, was specifically cited by the Election Commission. However, the Commission stopped short of ordering registration of FIRs against these political leaders for hate speech. With the Commission failing to initiate criminal prosecution, the malaise of hate speech infusing electoral campaigning is likely to spread further. Further, as highlighted above, while the Election Commission took limited action against some leaders, it failed to act in other instances.

## The Week before the Breakout of Violence

The Delhi election results were declared on February 11, 2020. The Aam Aadmi Party (AAP) won in 62 out of the 70 assembly constituencies with the remaining eight won by the BJP.<sup>159</sup> The period immediately following the Delhi elections was marked by the continuing vilification of the Shaheen Bagh protesters in the media.

On February 22, Chandrashekhar Azad, leader of the Bhim Army, called for a nation-wide shutdown to take place the next day (February 23), to advocate for reservations in jobs and promotions. Groups protesting the citizenship law also supported the call.<sup>160</sup> In solidarity, women protesting in the Seelampur-Jaffrabad area blocked the road outside the Jaffrabad Metro Station on the night of February 22.<sup>161</sup> In turn, this led to mobilization against this protest site, with immediate consequences.

## Conclusion

The period from December 2019 to February 2020 witnessed events and developments which signaled a growing and incessant vilification of the anti-CAA protesters and, thus of the anti-CAA sentiment as a whole,

157 Election Commission of India, No. 437/DL-LA/11/2020-NS-II, Notice to Yogi Adityanath, Chief Minister of UP, 6.2.2020, <https://eci.gov.in/files/file/11815-notice-to-sh-yogi-adityanath-chief-minister-of-up>.

158 Pandey and Mihindukulasuriya, 2 February 2020, Note 131.

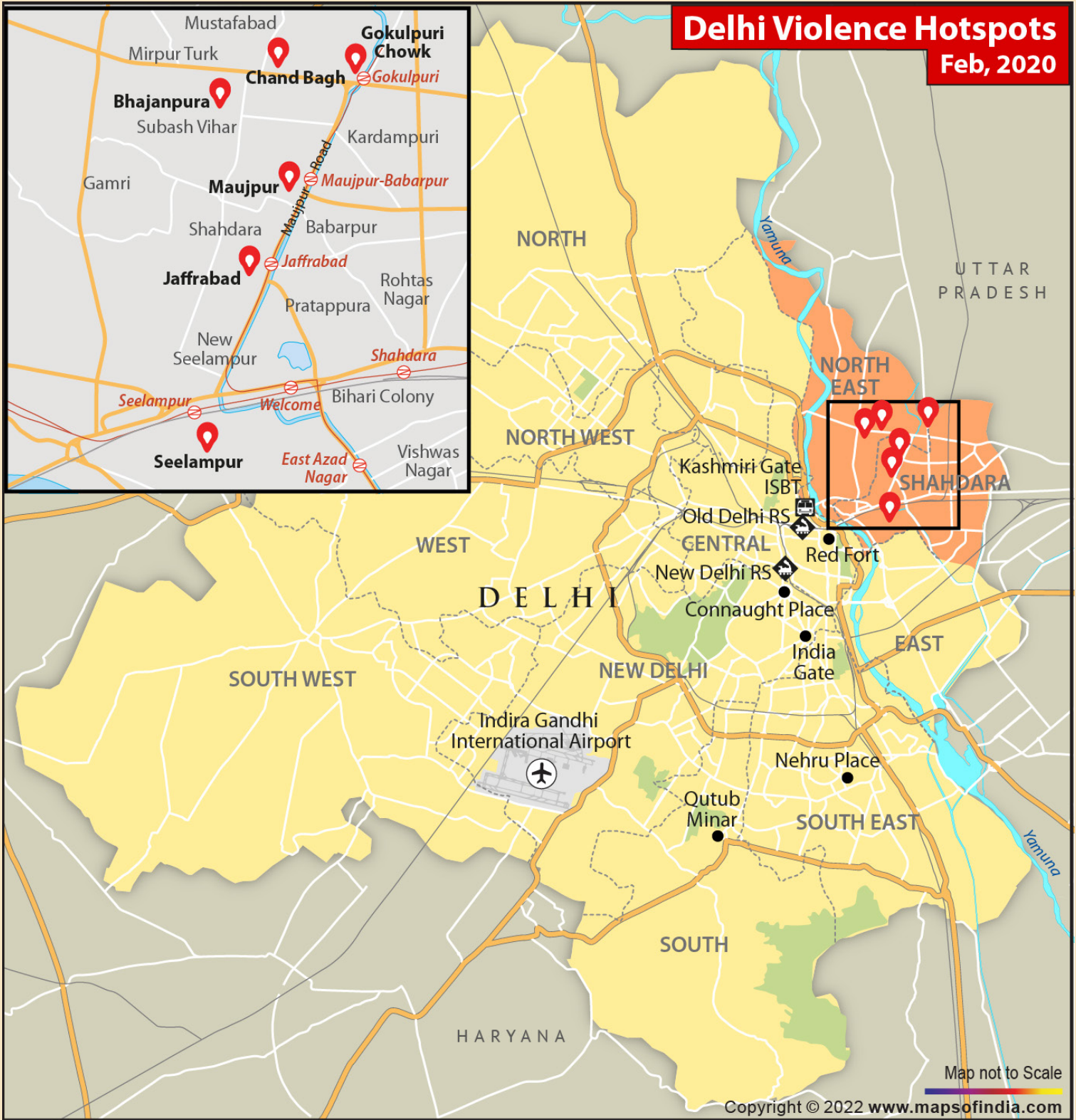
159 Express Web Desk, “Delhi Election Results 2020 Highlights: AAP emerges victorious, opposition hails it as defeat of ‘hate politics’”, *The Indian Express*, 12 February 2020: <https://indianexpress.com/article/india/delhi-assembly-election-results-2020-live-updates-aap-bjp-congress-arvind-kejriwal-6260387>.

160 Qazi Faraz Ahmad, “Bharat Bandh Today: Bhim Army Chief’s Call for Shutdown Gets Support in UP, Bihar & Delhi”, *News18*, 23 February 2020: [https://www.news18.com/news/india/bharat-bandh-today-support-pours-in-for-bhim-armys-shutdown-to-save-reservation-protest-against-cao-nrc-npr-2511565.html](https://www.news18.com/news/india/bharat-bandh-today-support-pours-in-for-bhim-armys-shutdown-to-save-reservation-protest-against-caa-nrc-npr-2511565.html).

161 The Quint, “Anti-CAA Protestors Block Seelampur-Jaffrabad road, Cops Deployed”, *The Quint*, 23 February 2020: <https://www.thequint.com/news/india/anti-cao-protestors-block-seelampur-jaffrabad-road-police-deployed-bhim-army-chandrashekhar-azad>.

by both state and non-state actors. This was amplified in the BJP's campaigning for the 2020 Assembly elections. Public hate speeches, a divisive Hindu-Muslim narrative, violence against anti-CAA protesters, and partisan institutional responses emerged as connected features of this period. Oversight institutions such as the courts and Election Commission did not intervene resolutely to prevent or halt the spread of hateful content at the heart of the polarizing narrative. It can be argued that these factors facilitated the build-up of an enabling environment for violence, shaped by hate and deteriorating community relations. These patterns are a crucial link between the contestation against the CAA and the communal violence that followed.

# Delhi Violence Hotspots Feb, 2020



## 3. The Trajectory of Violence

February 23, 2020 marked the beginning of four days of devastating communal violence in Delhi's North East District. This chapter provides a description of the violent incidents over this period and indicates the movement of violence contextualizing a geographical trajectory. It also summarizes significant events and the responses of state institutions as the violence unfolded.

This is not an exhaustive account. The intent is to provide an overview of what took place each day towards a cumulative narrative of the four days. The events and facts presented are sourced entirely from contemporaneous news stories of the relevant events. To the extent possible, multiple news sources are listed to corroborate each event. This includes videos wherever available, tweets and published eyewitness accounts of journalists reporting from the ground, or other social media imprints (such as Facebook posts or livestream videos).

The description of events in this chapter is based on reporting that took place during this time period. This documentation by journalists, done at considerable personal peril, has enabled some consistent description and understanding of the violence in the public domain. Where there are gaps, this reflects the evolving state of information. The Committee recognizes that these facts are still to be legally settled, with trials yet to conclude in most cases, and places its examination within this context. The figures on deaths quoted for each day are limited to what was known on that day and may not represent the actual death toll for the given day.

### Description of the Violence over the Four Days

#### **Sunday, February 23: The Breakout**

February 23, 2020 is the day when communal violence broke out in North East Delhi. The following significant events provide context to the outbreak of violence.

#### **The Context: A New Anti-CAA Sit-in at Jaffrabad**

On February 22, a group of women anti-CAA protesters moved from a sit-in protest at Seelampur to block the Seelampur-Jaffrabad main road, just outside the Jaffrabad Metro Station.<sup>162</sup> This was in response to the nationwide strike called by Bhim Army leader Chandrashekhar Azad to take place on February 23.

#### **Violent Mobilization to Unseat the Jaffrabad Sit-in**

A steady counter mobilization arose on the morning of February 23, pitched as a faceoff against the new protest site. BJP leader Kapil Mishra tweeted a video at 9:16 a.m., showing the protest site at Jaffrabad. In his tweet, he said, "A stage is now being set up in Jaffrabad. One more area where Indian law does not operate anymore. Modi ji was right. Shaheen Bagh is just an experiment, one by one be prepared to lose roads, lanes, markets and residential colonies stay mum till they reach your door."<sup>163</sup> At 1:22 p.m., Mishra put out a call on Twitter to his supporters to gather at Maujpur Chowk (next to the Maujpur-Babarpur Metro Station) at 3 p.m. Maujpur Chowk is located close to the anti-CAA protest site at the Jaffrabad main road. In this tweet, Mishra appealed to his supporters, "*Aaj theek teen baje, Jaffrabad ke jawaab mein, Jaffrabad ke theek saamne, Maujpur Chowk ki red light par, CAA ke samarthan mein, danke ki chot par hum log sadak par utrenge, aap sabhi aamantrit hain.*"<sup>164</sup> (Today at 3 p.m., in an answer to Jaffrabad, right in front of Jaffrabad, at Maujpur Chowk red light, we will hit the streets in support of CAA. You are all invited.)

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<sup>162</sup> The Quint, 23 February 2020, Note 161.

<sup>163</sup> Kapil Mishra, [https://twitter.com/KapilMishra\\_IND/status/1231425003100524544](https://twitter.com/KapilMishra_IND/status/1231425003100524544), 23 February 2020.

<sup>164</sup> Kapil Mishra, [https://twitter.com/KapilMishra\\_IND/status/1231487062756515840?s=20](https://twitter.com/KapilMishra_IND/status/1231487062756515840?s=20), 23 February 2020.

Throughout 23 February, many other leaders affiliated with the BJP and Hindu nationalist groups broadcasted live on their Facebook pages to mobilize supporters to gather at Maujpur Chowk. These videos were later uploaded on their personal Facebook pages where they would have been widely viewed.<sup>165</sup>

### Broadcasts in the Early Hours

Sanjeev Sharma, a state executive in the BJP's Rohini Mandal, addressed a meeting on Facebook Live at 8:21 a.m., in which he asked his viewers to block roads leading to anti-CAA protest sites so as to prevent food and rations from reaching them. He said in his video, "All you have to do is to block these roads, in support of NPR, CAA, NRC, which are used by them to get their rations, their biryani and everything else. You have to stop letting those things reach their protest sites. Let's all get out of our homes." He continues, "We had been quiet so far. But now we will have to come out of our homes and stop them. Else, they will break into our homes. *Jai Shri Ram. Bharat Mata Ki Jai!*"<sup>166</sup>

Anupam Pandey, a ward-level president in the BJP's Delhi unit appealed to "Hindu brothers" to reach Maujpur Chowk in large numbers. In a Facebook post at 10:46 a.m., Pandey wrote, "Sit in your homes till they block roads to our homes. Shame on 100 crore people!" In his fourth post that day, at 12:24 p.m., Pandey wrote, "We will not let Jaffrabad become Shaheen Bagh...We will come out in support of CAA and Delhi Police. At 3 p.m. at Maujpur Chowk."<sup>167</sup>

Anjali Varma, who affiliates with BJP Delhi on her Facebook page, posted the following message on Facebook at 11:27 a.m., "*Grihayudhh ki karo tayyari, tab sudhrence mulle topi dhaari.*"<sup>168</sup> (Prepare for the civil war, only then will the skull cap-wearing Mullahs learn.)

Ragini Tiwari, who identifies herself as a Hindutva leader, was posting live videos from Maujpur Chowk itself. In a Facebook Live video, she said, "*Bahut hua sanatan par vaar, ab nahi sahenge vaar. Sanataniyo baahar aao. Maaro ya maar daalo. Baad mein dekhi jayegi. Bahut hua. Ab jiska khoon na khaula, khoon nahi wo paani hai.*"<sup>169</sup> (Enough attacks on *Sanatan*. We won't tolerate such attacks anymore. *Sanatanis*, come out. Die or kill. Rest shall be seen later. If your blood hasn't boiled even now, it's not blood but it is water.)

Later during the day, Kapil Mishra addressed the crowd that had gathered at Maujpur Chowk. In the presence of Ved Prakash Surya, the then DCP for North East District, Kapil Mishra addressed the gathering and said:

*Dilli mein aag lagi rahe. Ye yahi chahte hain. Isiliye unhone raaste band kiye. Isiliye dange jaisa mahaul bana rahe hain. Humari tarafse ek bhi patthar nahi chala hai. DCP sahab humare saamne khade hain. Main aap sab ke behalf par ye baat keh raha hun Trump ke jaane tak toh hum shanti se ja rahe hain, lekin uske baad hum aapki bhi nahi sunenge agar raaste nahi khaali hue toh. Theek hai? Trump ke jaane tak, aap Jaffrabad aur Chand Bagh khaali karva deejyie. Aapse vinti kar rahe hain. Uske baad humein road par aana padega.*<sup>170</sup> (Delhi should keep burning. This is what they want. This is why they have blocked the roads. That's why a riot-like situation has been created. From our side not a single stone has been pelted. DCP is standing in front of us. On behalf of all of you, I am saying that till the time Trump goes back, we are going to go forward peacefully. But after that we will not even listen to the Police if roads are

165 Sagar, 1 March 2021, Note 101.

166 Sanjeev Sharma, <https://www.facebook.com/100006134828023/videos/2605385106342625>, 23 February 2020; Sagar, "Delhi Violence Unmasked | Part Two", *The Caravan*, 1 March 2021: <https://caravanmagazine.in/politics/part-two-how-modi-speeches-fomented-hate-aided-hindutva-mobilisation-against-anti-caa-protesters>.

167 Sagar, 1 March 2021, Note 101. The Facebook live video is no longer available for viewing.

168 Anjali Verma, [https://www.facebook.com/permalink.php?story\\_fbid=233868020973236&id=100030501194533](https://www.facebook.com/permalink.php?story_fbid=233868020973236&id=100030501194533), 22 February 2020; Sagar, 1 March 2021, Note 101.

169 Aditya Menon and Aishwarya Iyer, "Kaat Do, Said Ragini Tiwari, 'Eyewitnesses' Saw Her Firing Bullets", *The Quint*, 30 June 2020: <https://www.thequint.com/news/politics/delhi-violence-probe-riots-ragini-tiwari-hindutva-bjp-muslims>.

170 Staff, "Only 3 days...: BJP Leader's Threat to Disobey Delhi Cops amid CAA Protests", *Hindustan Times*, 24 February 2020: <https://www.youtube.com/watch?v=c64KynJC1X8>; Sukriti Dwivedi and Shylaja Varma, "We'll Be Peaceful Till Trump Leaves, BJP Leader Kapil Mishra Warns Delhi Police", *NDTV*, 24 February 2020: <https://www.ndtv.com/delhi-news/bjp-leader-kapil-mishras-3-day-ultimatum-to-delhi-police-to-clear-anti-caa-protest-jaffrabad-2184627>.

not cleared. Is that correct? By the time Trump goes, we request the Police to clear out Jaffrabad and Chand Bagh. We are requesting you. After that, we will have to come on the roads.)

Kapil Mishra left the spot at around 4:30 p.m. and uploaded his speech on his social media page. He tweeted the following in Hindi along with a video of him speaking:

*Dilli Police ko teen din ka ultimatum. Jafrabad aur Chand Bagh ki sadkein khali karwaiye. Iske baad hamein mat samjhaiyega. Hum aapki bhi nahi sunenge. Sirf teen din.* (Delhi Police is given an ultimatum of three days. Empty out the roads in Jafrabad and Chand Bagh. After that don't explain anything to us. We will not listen to you. Only three days.)<sup>171</sup>

Akash Verma, a North East Delhi district executive in the Naveen Shahdara unit of the Bharatiya Janata Yuva Morcha (the BJP's youth wing) toured Maujpur Chowk at this time. In a live broadcast on Facebook, he can be heard humming along to slogans by Hindu mobs, “*Modiji, tum latth bajao, hum tumhare saath hain; lambe-lambe latth bajao, hum tumhare sath hain.*”<sup>172</sup> (Modiji, you beat them with sticks, we are with you. Beat them with long sticks, we are with you.) He also asked his viewers to join him at Maujpur Chowk in large numbers. His video clocked about 40,000 viewers.

During this livestream, Verma showed a wagon filled with stones being unloaded. He says, “See this, the stones have reached the roads.” A voice from the mob can be heard shouting, “*Vijay Park ke mullo ke liye yahin girao.*” (Drop them here for the Muslims of Vijay Park.) Vijay Park is a Muslim dominated neighborhood in the area. As the wagon dropped all the stones to the ground, the mob, including Verma, cheered *Jai Shri Ram*. Verma appeals to his viewers to further mobilize on the next day, February 24 – “Friends, by morning, we must gather in large numbers. We must show our strength, the strength that we have.” He shifted his camera to a man who was blowing a conch and said, “The conch is being blown. This is our Hindu unity.”<sup>173</sup>

The language of these Facebook Live broadcasts reveals concerted efforts by political figures of the BJP and other Hindu nationalist groups to mobilize supporters for Kapil Mishra's call to Maujpur Chowk. Notably, the messaging shows the intent to galvanise a sense of Hindu identity to unite against the anti-CAA protests. This was all in the context of the Hindu-Muslim binary that was being stoked since the rise of the protests and during the Delhi election campaign. As evident from the language, some of these broadcasts were a clear incitement to violence. Maujpur Chowk is repeatedly depicted as the epicenter.

### Onset of Communal Violence

By the afternoon of February 23, general communal strife had taken root. Violence against Muslims had begun in terms that had little to do with the immediate flashpoint of the CAA.

Ground reports indicate that barely one hour after Kapil Mishra's speech at Maujpur Chowk, stone pelting broke out between pro-CAA groups and anti-CAA protesters in Maujpur and Jaffrabad.<sup>174</sup> As stone pelting erupted from both sides, more people gathered and violence spread towards Babarpur. In one example, a resident of Vijay Park revealed that a mob guarding the Babarpur junction with sticks had been asking every passer-by whether they are Muslim or Hindu, and some were forced to strip to reveal their religious identity. Another account from Maujpur similarly described targeted acts on Sunday night, “This is a mixed colony. We saw our own neighbors throwing stones at us. On Sunday night, men were being pulled out of autos

171 TNN, “Delhi violence: Police sat on six intel warnings to step up security”, *The Times of India*, 27 February 2020, <https://timesofindia.indiatimes.com/city/delhi/police-sat-on-six-intel-warnings-to-step-up-security/articleshow/74326525.cms>.

172 Sagar, 1 March 2020, Note 101. Akash Verma's Facebook page was no longer available for viewing.

173 Sagar, 1 March 2020, Note 101. Akash Verma's Facebook page was no longer available for viewing.

174 Munish Chandra Pandey, “5, including cop, killed in clashes: How violence unfolded in northeast Delhi”, *India Today*, 25 February 2020: <https://www.indiatoday.in/india/story/delhi-violence-clashes-how-unfolded-northeast-sequence-1649674-2020-02-25>.



and Hindu households were collecting stones.<sup>175</sup> Violence further spread towards Karawal Nagar and Chand Bagh.<sup>176</sup> Police fired tear gas and conducted lathi-charge to control the mobs.<sup>177</sup>

### Delhi Police's Internal Alerts

The Special Branch and the Intelligence units of the Delhi Police anticipated violence coinciding with Kapil Mishra's Maujpur Chowk call. They sent "at least six" alerts on February 23, through wireless radio messages, to North East District and the police leadership.<sup>178</sup> The first alert advised increasing deployment and police presence in the area after Kapil Mishra tweeted his call to supporters to assemble at Maujpur Chowk. Additional alerts were sent after stone pelting began in Maujpur and mobs were seen mobilizing.

### Summary of the Day

From the morning of February 23, there were efforts, maximized through the use of social media platforms, by Hindu nationalist figures to mobilize pro-CAA supporters at Maujpur Chowk for Kapil Mishra's afternoon speech. This involved repeated appeals to unite on the basis of Hindu identity, layered with rhetoric to protect the CAA. The day's developments reveal that violence broke out in Maujpur and Jaffrabad following Mishra's speech. In this midst, openly communal clashes began with the emergence of armed Hindu mobs. It appears that the police failed to take adequate preventive measures to contain this mobilization of mobs and the accompanying violence.

### Monday, February 24: Communal Violence Engulfs North East Delhi

February 24, 2020 marks the day when the violence that originated at the Maujpur-Jaffrabad fault line spread throughout the neighborhoods of North East Delhi.

### Continued Mobilization at Jaffrabad-Maujpur Sites

On the morning of February 24, the anti-CAA sit-in protest on the main road by the Jaffrabad Metro Station had increased to more than 100 protesters. They were shielded by local young men and women as well as police barricades.<sup>179</sup> It appears that protesters at Jaffrabad were apprehensive of attacks on the protest site and felt the need to be on guard, while carrying on with the protest.<sup>180</sup>

About a kilometer away, on a stretch of Maujpur Chowk, pro-CAA supporters had mobilized through the night in a counter-demonstration, with the stated aim to remain until the Jaffrabad sit-in was cleared out.<sup>181</sup> Figures such as Ragini Tiwari and Anjali Verma continued to gather supporters to the Maujpur Chowk site through the night. Anjali Verma went live on Facebook at 5:35 a.m. on February 24, at Maujpur Chowk where she had spent the night. Video footage shows Ragini Tiwari exhorting about a dozen men to shout, "Modiji, lambe latth bajao, hum tumhare sath hain; jarurat padi toh humme bula lo, hum tumhare sath hain."<sup>182</sup> (Modiji,

175 Somya Lakshami and Anand Mohan J, "Days after BJP's Kapil Mishra warning, how violence erupted across the divide", *The Indian Express*, 25 February 2020: <https://indianexpress.com/article/cities/delhi/delhi-maujpur-babar-pur-violence-kapil-mishra-warning-6284978/>; Sagar, "Hindu supremacist mobs orchestrate violence against Muslims where BJP won in Delhi elections", *The Caravan*, 25 February 2020: <https://caravanmagazine.in/religion/delhi-violence-north-east-maujpur-jaffrabad-babar-pur-muslims-hindu>; Shaheen Ahmed and Sagar, "Scenes From Muslim Gullies", *The Caravan*, 25 February 2020: <https://caravanmagazine.in/politics/hindu-mobs-terrorise-vijay-park-residents-northeast-delhi>.

176 Pandey, 25 February 2020, Note 174; Express Web Desk, "Shoot-at-sight order issued in some areas, toll climbs to 13", *The Indian Express*, 26 February 2020: <https://indianexpress.com/article/cities/delhi/northeast-delhi-cao-protests-maujpur-babar-pur-jaffrabad-live-updates-6284098>.

177 Pandey, 25 February 2020, Note 174.

178 TNN, 27 February 2020, Note 171.

179 Anam Ajmal, "Nobody speaks for us, say women at Jafrabad sit-in", *The Times of India*, 25 February 2020: <https://timesofindia.indiatimes.com/city/delhi/nobody-speaks-for-us-say-women-at-jafrabad-sit-in/articleshow/74291814.cms>; Vijayta Lalwani, "First person: I watched a mob set a shop on fire in Delhi, chanting 'Jai Shri Ram'", *Scroll.in*, 25 February 2020: <https://scroll.in/article/954219/first-person-i-watched-a-mob-set-a-shop-on-fire-in-delhi-while-chanting-jai-shri-ram>.

180 Ajmal, 25 February 2020, Note 179; Lalwani, 25 February 2020 Note 179; Naomi Barton, "An Eyewitness Account From Jafrabad", *The Wire*, 25 February 2020: <https://thewire.in/communalism/ground-report-war-zone-in-north-east-delhi>.

181 Ajmal, 25 February 2020, Note 179; Lalwani, 25 February 2020, Note 179.

182 Anjali Varma, <https://www.facebook.com/100030501194533/videos/234388930921145>, 24 February 2020; Sagar, 1 March 2020, Note 101.

beat them with long sticks, we are with you; if needed then call us, we are with you.) Tiwari went on to say, “*Bharat mein yadi rehna hai to, Jai Shri Ram kehna hoga.*”<sup>183</sup> (If you want to live in India, you have to chant *Jai Shri Ram.*) Following this, Verma addressed her viewers, “We have been at Maujpur the whole night. We didn’t leave. I am invoking all Hindu brothers to reach here. *Aaj bahut bada tandav karna hai.*”<sup>184</sup> (We have to create a huge ruckus here.) Verma ended her Facebook Live saying, “Now that the Hindu has awakened, we shall not retreat. Let it not become Pakistan.”<sup>185</sup> This video clocked over 49,000 views.

### Violence at Jaffrabad-Maujpur

According to reporters on the ground, people were openly carrying materials improvised as weapons – bamboo sticks, curtain rods, cricket wickets, hockey sticks, iron rods – and chanting slogans like “*desh ke gaddaron ko, goli maaro saalon ko*” (shoot the traitors), and “*kisko chahiye azadi, hum de denge azadi*” (whomever wants freedom, we will give them freedom), at Maujpur Chowk on February 24.<sup>186</sup>

There was stone pelting and clashes between the two sides throughout the day on the stretch of road between the Jaffrabad protest and the Maujpur Chowk gathering. There was widespread arson of vehicles and shops in Maujpur. It appeared that the police were outnumbered. They used tear gas shells to break up the mobs.<sup>187</sup>

On the afternoon of February 24, a journalist walking towards Maujpur Chowk witnessed a mattress shop burning, “barely 100 meters from the site of the CAA demonstration”.<sup>188</sup> A group of men were standing by and chanting “*Jai Shri Ram*” and “*Bharat Mata Ki Jai*”. They told reporters not to record photos or videos. Police close by did not respond. The journalist recounts that about 30 minutes later, she saw the men set a second shop (next to the mattress shop) on fire. At this point, the police charged at them with batons, and the men ran to Maujpur Chowk.<sup>189</sup> As per one report from the ground, about 80 percent of shops in Maujpur were vandalized.<sup>190</sup>

A man, later identified as a resident of Mustafabad, was seen pointing a pistol at a policeman and shooting bullets in the air at Maujpur’s 66-Foot-Road in the midst of the Maujpur-Jaffrabad clashes.<sup>191</sup> Videos of this individual wielding the pistol went viral. No one was hurt and he was later arrested by the police.<sup>192</sup>

### Attacks on Journalists

Journalists reporting on the violence from the streets of North East Delhi on February 24 were physically attacked, intimidated, and heckled by mobs. Several journalists described how mobs demanded to know

183 Anjali Varma, <https://www.facebook.com/100030501194533/videos/234388930921145>, 24 February 2020; Sagar, 1 March 2020, Note 101.

184 Anjali Varma, <https://www.facebook.com/100030501194533/videos/234388930921145>, 24 February 2020; Sagar, 1 March 2020, Note 101.

185 Anjali Varma, <https://www.facebook.com/100030501194533/videos/234388930921145/>, 24 February 2020; Sagar, 1 March 2020, Note 101.

186 Ajmal, 25 February 2020, Note 179; Barton, 25 February 2020, Note 180.

187 Tanushree Pandey, <https://twitter.com/TanushreePande/status/1231894081053347840>, 24 February 2020; Tanushree Pandey, <https://twitter.com/TanushreePande/status/1231898685543460864>, 24 February 2020; India Today Web Desk, “Clashes between pro and anti CAA protestors kill 5”, *India Today*, 24 February 2020: <https://www.indiatoday.in/india/story/delhi-police-head-constable-dies-maujpur-violence-caa-jaffrabad-live-updates-1649511-2020-02-24>; Devjyot Ghoshal, “One killed, dozens injured in Delhi clashes as Trump visits”, *Reuters*, 24 February 2020: <https://www.reuters.com/article/india-citizenship-protests-idINKCN2oIoVP>.

188 Lalwani, 25 February 2020 Note 179.

189 Lalwani, 25 February 2020 Note 179; Vijayta Lalwani, <https://twitter.com/VijaytaL/status/1231889959755374593>, 24 February 2020.

190 India Today Web Desk, 24 February 2020, Note 187.

191 Saurabh Trivedi, <https://twitter.com/saurabh3vedi/status/1231872207556575245>, 24 February 2020 and Express Web Desk, “Delhi riots: ‘pistol man’ Shahrukh Khan who pointed gun at cop held in Sharnli”, *The Indian Express*, 3 March 2020: <https://indianexpress.com/article/cities/delhi/delhi-violence-shahrukh-khan-who-opened-fire-in-maujpur-arrested-6296974>.

192 Aishwarya Iyer, “Shahrukh Pathan: The Person Behind the Iconic Image of Northeast Delhi Riots”, *The Quint*, 10 August 2020: <https://www.thequint.com/news/india/shahrukh-pathan-the-man-from-the-delhi-riots-who-pointed-a-gun-at-the-policeman>.

their religion, tried to take and destroy their phones or cameras, and threatened them to stop reporting. The following journalists described the attacks they faced on February 24:

- Parvina Purkayastha, a senior correspondent with Times Now, tweeted that she was surrounded by a group of five-six pro-CAA supporters as she reported from Maujpur Metro Station. They threatened to beat her with wooden sticks. She had to plead with them to let her go.<sup>193</sup>
- Sreya Chatterjee, formerly with News X, tweeted that a pro-CAA mob in Maujpur threatened to beat the group of journalists she was with, and demanded that they stop their reporting. They reportedly said, “*Hinduon ki ladayi hai, humara saath dijiye, record mat kijiye, hum fass jayenge* (This is the fight of the Hindus, support us and don't record this, we will get in trouble).”<sup>194</sup>
- Anindya Chattopadhyay, the Times of India photo-journalist, shared that when he stepped out of the Maujpur Metro Station just past noon, he was “taken by surprise” when a Hindu Sena member suddenly approached him, offering to put a *tilak* on his forehead, saying it would make his work “easier”.<sup>195</sup> When Chattopadhyay tried to photograph a burning building, he was surrounded by men armed with *lathis* and rods who tried to snatch his camera. His colleague, Sakshi Chand, stepped in, and the men went away. Later, a group of men followed him and threatened to pull down his pants to see if he was Hindu or Muslim. He had to beg them to let him go.<sup>196</sup>
- In his first-person account, Shivnarayan Rajpurohit with the Indian Express narrates that he was assaulted multiple times by pro-CAA supporters at West Karawal Nagar on February 24.<sup>197</sup> A man “inspected” his phone, burned his notebook, and said “you can't report from here”. Another group armed with batons and rods accused him of taking photos of the violence and demanded he hand over his phone. When he showed reluctance, a young man beat him twice with a rod. Onlookers implored to him, “what's more precious to you? Your phone or life?” He handed over his phone to the cheering mob. After slight respite, another mob followed him, and a man smashed his glasses and slapped him for “reporting from a Hindu dominated area”. They checked his press card and on seeing his name, still wanted “more proof” that he was a “real” Hindu. They told him to “run for his life” with the threat that another crowd was coming for him. He managed to escape.
- Tanushree Pandey of India Today tweeted that she was terrified as she was held down by her shoulders by 10 men in the Maujpur area, saying, “*camera band karle warna gaad denge yahin pe*”<sup>198</sup> (turn off the camera or we will bury it).

193 Parvina Purkayastha, <https://twitter.com/Parvo5/status/1231960498465275904>, 24 February 2020; Kairvy Grewal, “Hinduon ki ladai hai...record mat kijiye” journalists under attack in Delhi violence”, *The Print*, 25 February 2020: <https://theprint.in/india/hinduon-ki-ladai-hai-record-mat-kijiye-journalists-under-attack-in-delhi-violence/370758>; Ayan Sharma, “Unprecedented attack on the press: over a dozen reporters attacked, intimidated during Delhi riots”, *NewsLaundry*, 26 February 2020: <https://www.newsLaundry.com/2020/02/26/unprecedented-attack-on-the-press-over-a-dozen-reporters-attacked-intimidated-during-delhi-riots>.

194 Grewal, 25 February 2020, Note 193; Sharma, 26 February 2020, Note 193; Sreya, [https://twitter.com/Sreya\\_Chatterjee/status/1231935568977780738](https://twitter.com/Sreya_Chatterjee/status/1231935568977780738), 24 February 2020.

195 Anindya Chattopadhyay, “Are you a Hindu or Muslim?: TOI photojournalist recounts the Maujpur horror”, *The Times of India*, 25 February 2020: <https://timesofindia.indiatimes.com/city/delhi/are-you-hindu-or-muslim-toi-photojournalist-recounts-maujpur-horror/articleshow/74291844.cms>.

196 Chattopadhyay, 25 February 2020, Note 195.

197 Shivnarayan Rajpurohit, “Hindu ho? Bach gaye’ Express journalist’s account from Karawal Nagar”, *The Indian Express*, 26 February 2020: <https://indianexpress.com/article/cities/delhi/delhi-violence-indian-express-journalist-assaulted-caa-protest-6286843>; Sharma, 26 February 2020, Note 193.

198 Tanushree Pandey, <https://twitter.com/TanushreePande/status/1231916334784475137>, 26 February 2020.

- Vijayta Lalwani of Scroll described how “a middle-aged man with a saffron *tikka*” asked reporters to stop filming the arson in Maujpur.<sup>199</sup> “*Bade dinon ke baad Hindu jaaga hai*”<sup>200</sup> (Hindus have woken up after long), he said, identifying himself as a CAA supporter.
- A photo-journalist with the Caravan shared his view that “nobody from either side wants to see the media”. He recounted his experience with other photo-journalists, of being surrounded and “about to be beat up” by a Muslim group, around Maujpur Chowk, when the group noticed they were carrying cameras. It was only when he assured them that he was a Muslim and the others were his friends, that they could leave.<sup>201</sup>

### Violence around Chand Bagh Protest Site

The Chand Bagh area, and its anti-CAA protest site, experienced serious violence and clashes on February 24. As per reports, in the morning, the police conducted lathi-charge against the anti-CAA protesters, after which the protesters blocked the main road of the Chand Bagh protest site. From here, the police lathi-charged the protesters again, but the former was outnumbered and surrounded by the protesters.<sup>202</sup> A video of the scene shows the protesters hurling stones at the police who look cornered.<sup>203</sup>

By the afternoon of February 24, residents of Chand Bagh recount that a Hindu mob attacked the protest site with policemen “actively supporting” them.<sup>204</sup> Journalists at the scene corroborate that they saw the police with the mob. The mob began by stone pelting with chants of *Jai Shri Ram*, and setting fire to a petrol pump and to the cars parked near it.<sup>205</sup> Witness also heard shots fired, including from the top of Mohan Nursing Home (opposite to the protest site). Many protesters and bystanders were injured by bullets.<sup>206</sup> The mob identified Muslim shops and households to attack, while chanting *Jai Shri Ram*.<sup>207</sup> Muslims organized themselves to retaliate against the mob, throwing back the stones being hurled at them. Eventually, protesters and the mob pelted stones at each other, this spread from the protest site to the locality’s streets.<sup>208</sup>

A journalist witnessing the stone pelting and firing stated, “the police was moving with the mob, pelting stones with them.”<sup>209</sup> The mob was greater in number than the police at the site. By 7 p.m., the eyewitness journalist recounts that the mob controlled the area, and that “They burnt the protest site...all of Chand Bagh was on fire.”<sup>210</sup>

A Muslim resident of Chand Bagh, who had gone for prayers on the morning of February 24, was caught and beaten by a mob armed with sticks and rods, until he lost consciousness.<sup>211</sup> The assault was photographed

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199 Lalwani, 25 February 2020, Note 179.

200 Lalwani, 25 February 2020, Note 179.

201 The Caravan, “Media barred, police attacked protesters: Two photojournalists recount the Delhi violence”, *The Caravan*, 25 February 2020: <https://caravanmagazine.in/conflict/media-barred-delhi-police-attacked-protesters-two-photojournalists-recount-the-delhi-violence>.

202 The Caravan, 25 February 2020, Note 201.

203 Aishwarya Iyer, <https://twitter.com/iyersaishwarya/status/1275272398766399488>, 23 June 2020.

204 Ajoy Ashirwad Mahaprashasta, “Ground Report: How the Riots Unfolded in Delhi’s Chand Bagh”, *The Wire*, 28 February 2020: <https://thewire.in/communalism/delhi-riots-chand-bagh-arson-mazaar>.

205 The Caravan, 25 February 2020, Note 201.

206 The Caravan, 25 February 2020, Note 201; Mahaprashasta, 28 February 2020, Note 204.

207 Mahaprashasta, 28 February 2020, Note 204.

208 The Caravan, 25 February 2020, Note 201; Mahaprashasta, 28 February 2020, Note 204.

209 The Caravan, 25 February 2020, Note 201.

210 The Caravan, 25 February 2020, Note 201.

211 Anand Mohan J, “Can’t bear to look at my photo, says man at centre of vicious assault caught on camera”, *The Indian Express*, 24 September 2020: <https://indianexpress.com/article/cities/delhi/cant-bear-to-look-at-my-photograph-man-at-centre-of-vicious-assault-caught-on-camera-6286904>.

on camera. In an interview, he says he was clearly targeted by the mob due to markers identifying him as a Muslim – his skull cap, beard and *salwar kameez*.<sup>212</sup> He suffered injuries to his head and limbs.<sup>213</sup>

### Death of Head Constable Ratan Lal

Ratan Lal, a Head Constable in Delhi Police, was part of a police party attempting to prevent a crowd from forming at the Chand Bagh protest site. As the situation escalated, reports indicate that the police party was attacked.<sup>214</sup> Ratan Lal was gravely injured and died on February 24. His post-mortem report indicated that he suffered 21 injuries on his body and was attacked with rods and shot at.<sup>215</sup> It was reported as per the autopsy report that he died of a bullet injury.<sup>216</sup>

### Attack on Kardampuri Protest Site

On the morning of February 24, a mob of about 500 people arrived and began stone pelting at the anti-CAA protesters at the Kardampuri anti-CAA protest site.<sup>217</sup> Eyewitnesses said they chanted *Jai Shri Ram* and “*maaro, maaro, saalon ko*” (kill, kill, the bastards) and wore saffron *kurtas*, or had their faces covered with saffron cloth. They also recounted that the police present did not stop the mob, but fired tear gas shells into the tent housing the sit-in protest.<sup>218</sup> Following this, gun shots were heard. The mob burned the protest site and destroyed the stage.<sup>219</sup>

### Muslim Men assaulted by the Police and Eventual Death of Faizan

In Kardampuri, on February 24, a glaring incident of police brutality against five young Muslim men was reported, resulting in the death of one of them, Faizan. As news of the violence at the Kardampuri protest site spread around the neighborhood, three of the five men – Faizan, Wasim and Rafiq – left their homes to search for their mothers, who were at the protest site. It appears that they were rounded up by the police, along with Mohammad Farhan and Kausar Ali.<sup>220</sup> A video of the police assault went viral. The clip shows the men lying slumped on the street, being beaten by the policemen who order them to sing the national anthem and *vande mataram*, while other policemen capture this on video. The men can be heard begging for mercy, pleading that they are Indians too.<sup>221</sup> While the extent of their injuries cannot be seen in the video, the men were seriously injured at this point.<sup>222</sup> The fact-checking website Alt News, has since verified the authenticity of the video and that it was shot on February 24 in the Jaffrabad area.<sup>223</sup>

Following this, the five men were taken to Guru Teg Bahadur (GTB) Hospital but were reportedly given only perfunctory medical treatment. Three of them – Faizan, Rafiq and Wasim – were then taken into police custody at Jyoti Nagar Police Station despite Faizan's medico-legal report stating he needed urgent further

212 Arfa Khanum Sherwani, “Watch | I Will Go Back to Live in Chand Bagh, Says Man Whose Brutal Beating was Caught on Camera”, *The Wire*, 1 March 2020: <https://thewire.in/communalism/watch-they-attacked-me-for-my-beard-cap-says-man-whose-brutal-beating-was-caught-on-camera>.

213 Reuters Pictures, <https://twitter.com/reuterspictures/status/1232767205957390337?lang=en>, 27 February 2020.

214 Neeta Sharma and Chandrashekar Srinivasan, “Delhi Cop Who Died In CAA Clashes Was Shot Dead, Autopsy Reveals”, *NDTV*, 26 February 2020: <https://www.ndtv.com/india-news/delhi-cop-who-died-in-caa-clashes-was-shot-dead-autopsy-reveals-2185435>.

215 Aishwarya Iyer, “Inside Police Charge Sheet Into HC Ratan Lal's Death”, *The Quint*, 23 June 2020: <https://www.thequint.com/news/india/dhi-riots-ratan-lal-head-constable-delhi-police-charge-sheet>.

216 Sharma and Srinivasan, 26 February 2020, Note 214.

217 Ipsita Chakravarty and Shrutisagar Yamunan, “Once Trump leaves, Muslims will not be safe: Violent Hindutva crowds roam North East Delhi”, *Scroll.in*, 25 February 2020: <https://scroll.in/article/954318/once-trump-leaves-muslims-will-not-be-safe-hindu-crowds-in-north-east-delhi>.

218 Chakravarty and Yamunan, 25 February 2020, Note 217.

219 Chakravarty and Yamunan, 25 February 2020, Note 217.

220 Radhika Bordia, “Month after the video of Delhi Police assault sparked outrage, four survivors have no hope for justice”, *Scroll.in*, 28 February 2020: <https://scroll.in/article/957517/month-after-video-of-delhi-police-assault-sparked-outrage-four-survivors-have-no-hope-for-justice>.

221 Bordia, 28 February 2020, Note 220.

222 Bordia, 28 February 2020, Note 220.

223 Jignesh Patel, “Video verification: Delhi cops beating injured men, forcing them to sing national anthem”, *Alt News*, 25 February 2020: <https://www.altnews.in/video-verification-delhi-cops-beating-injured-men-forcing-them-to-sing-national-anthem>.

treatment.<sup>224</sup> Eyewitnesses at the Police Station said the men were debilitated to the extent they could not walk without assistance and Faizan was constantly vomiting.<sup>225</sup> Kismatun, Faizan's mother, was finally able to take Faizan home on the night of February 25.<sup>226</sup> Alarmed at his severely injured condition, Kismatun tried to access medical treatment for Faizan the next day, February 26, but she encountered bureaucratic difficulties.<sup>227</sup> Faizan died in Lok Nayak Jayaprakash Narayan hospital on the night of February 26.

In an interview given by Faizan's mother soon after his death, she stated that her son's body had turned blue and he had stiches on his head when he was released from the Police Station on the night of February 25.<sup>228</sup> She alleged, "The policemen had put batons inside his throat and he could not swallow or eat when we got him home. Even his fingers were swollen and broken."

One of the other victims in the video with Faizan, Kaushar Ali, had stepped out to look for his children when police allegedly took him in and assaulted him.<sup>229</sup> In an interview after the incident, he narrated how he was forced to sing the national anthem, beaten with batons, and how he remained on the road for about half an hour.<sup>230</sup> Subsequently, the same police officials who beat him also took him to the hospital. His hands and legs were fractured, and he had injuries on his head and abdomen.<sup>231</sup>

### Violence at Karawal Nagar, Mustafabad, Khajuri Khas, Ghonda, Gamri, and Yamuna Vihar

Heavy stone pelting was reported at Karawal Nagar on the afternoon of February 24, with no police presence.<sup>232</sup> At around 7 p.m., a journalist in Mustafabad described constant tear gas shells being lobbed by the police.<sup>233</sup> In Khajuri Khas, a video posted by a journalist who was on the scene on the afternoon of February 24 shows a shop burning, and police pelting stones along with the mob.<sup>234</sup>

Mobs clashed in Yamuna Vihar, with eyewitnesses reporting heavy stone pelting between the two sides by the afternoon on February 24.<sup>235</sup> It was reported that many vehicles were burned and metal barricades swept aside.<sup>236</sup> At least one Muslim man and a burqa-clad woman were seen being beaten with iron rods.<sup>237</sup> While the Delhi Police was outnumbered, there are videos of police personnel supporting the Hindu mob. In a video by a reporter on the ground which he tweeted, policemen in riot gear can be seen running in step

224 Para 4.5 of the Petition filed in *Kismatun v. State of NCT of Delhi*, WP (Crl.) No. 2195/2020 pending before the Delhi High Court.

225 Anumeha Yadav, "Ground Report: Delhi Police Actions Caused Death of Man In Infamous National Anthem Video", *Huffington Post*, 1 March 2020: [https://www.huffpost.com/archive/in/entry/delhi-riots-police-national-anthem-video-faizan\\_in\\_5e5bb8e1c5b6010221126276](https://www.huffpost.com/archive/in/entry/delhi-riots-police-national-anthem-video-faizan_in_5e5bb8e1c5b6010221126276).

226 Anumeha Yadav, "Four Months After Viral Video Of Policemen Beating Man To Death, FIR Says No Suspects", *Huffington Post*, 19 June 2020: [https://www.huffpost.com/archive/in/entry/delhi-riots-fir-no-suspects-national-anthem-video-faizan\\_in\\_5eeb6444c5b61c08257bccd3](https://www.huffpost.com/archive/in/entry/delhi-riots-fir-no-suspects-national-anthem-video-faizan_in_5eeb6444c5b61c08257bccd3).

227 Bordia, 28 February 2020, Note 220.

228 Yadav, 1 March 2020, Note 225.

229 Brut, "Kausar Alo: The Survivor From The Delhi Riot Viral Clip", *Brut*, 9 March 2020: <https://www.brut.media/in/news/kausar-ali-the-survivor-from-the-delhi-riot-viral-clip-814da80c-a338-4872-b501-8ac9e9ee1b69>.

230 Mojo Story, "Kausar Ali was seen in the Viral Anthem Video. Today he asks: 'Will I get Justice?'", *Mojo Story*, 13 March 2020: <https://www.youtube.com/watch?v=zUeD686sGFY>.

231 Mojo Story, 13 March 2020, Note 230.

232 Jasjeev Gandhiok, <https://twitter.com/JasjeevSinghTOI/status/1231881699069325313>, 24 February 2020; Staff, "Violence Erupts Over CAA Across NE Delhi, Section 144 Imposed", *The Quint*, 25 February 2020: <https://www.thequint.com/news/politics/jaffrabad-maujpur-cao-protests-communal-violence-kapil-mishra>.

233 The Caravan, 25 February 2020, Note 201.

234 Jasjeev Gandhiok, <https://twitter.com/JasjeevSinghTOI/status/1231883378732892160>, 24 February 2020; *The Quint*, 25 February 2020, Note 232.

235 Devjyot Ghoshal, <https://twitter.com/DevjyotGhoshal/status/1231875372423110656>, 24 February 2020; *The Indian Express*, <https://twitter.com/IndianExpress/status/1231876743239045120>, 24 February 2020.

236 Devjyot Ghoshal, 24 February 2020, Note 187.

237 Devjyot Ghoshal, <https://twitter.com/DevjyotGhoshal/status/1231968008999825413>, 24 February 2020; Neha Arora, [https://twitter.com/neha\\_5/status/1231948573224382464](https://twitter.com/neha_5/status/1231948573224382464), 24 February 2020.

with a group hurling stones; one policeman waves them on ahead.<sup>238</sup> The journalist tweeted, “one policeman shouted to protesters backing the law” that “go ahead and throw stones.”<sup>239</sup> The police did not respond as a mob vandalized a store with a Muslim name, burnt vehicles.<sup>240</sup> Weapons were being improvised through materials readily available; young boys drained fuel from motorcycles to make petrol bombs, and mobs from both sides used paving stones and construction material.<sup>241</sup>

In Hindu dominated Gamri Extension, with about 100 Muslim households and one mosque, the violence began on the night of February 24 when a few Muslims were passing through the locality to offer special prayers. As they neared Khajuri Khas, a Hindu mob attacked them with stones and lathis. They hid in Gamri’s Aziziya Masjid the whole night, and escaped at dawn with the help of local Muslim residents.<sup>242</sup>

#### Attacks on Schools and Businesses in Shiv Vihar

In the mixed neighborhood of Shiv Vihar, extensive arson took place. Three shops were set afire – Anil Sweet Corner, Anil Pastry, and a workhouse for the two shops where Dilbar Negi was killed. An employee, Sharad Kumar, recounted, “A mob from the nearby Aqsa Masjid surrounded us from the afternoon of February 24 and then burned everything down in the next four to five hours with petrol bombs and acid bottles. They caused damage of more than a crore to the shops, as each shop had materials worth Rs. 40-50 lakh each.” Sharad Kumar continued, “A Muslim mob from the adjoining Mustafabad area kept coming back to throw stones and petrol until this morning after which, we recovered mutilated bodies of workers who were trapped in a nearby building and workshops.”<sup>243</sup>

In Shiv Vihar, two schools (DRP Public School and Rajdhani Public School) which shared a boundary wall, were set on fire and looted. The administrative head of DRP school, a Hindu, filed a complaint against the owner of Rajdhani Public School, a Muslim, accusing him of facilitating rioting mobs to use his school as a base to attack DRP school.<sup>244</sup> Both owners called the police repeatedly to no avail.<sup>245</sup> Dharmesh Sharma, head of DRP school, said it took the police *three days* to respond while the fire brigade was reportedly attacked and could not arrive and the “school kept burning for about 24 hours.”<sup>246</sup>

#### Attacks on a Petrol Pump and a Coaching Institute in Bhajanpura

A petrol pump in Bhajanpura was gutted after being set on fire by a Muslim mob.<sup>247</sup> Mahendra Pal was at the petrol pump when the attack took place, “Rioters from the other side of the road broke the railing between the road and came charging towards the petrol pump. They were chanting slogans of *azaadi* (freedom) and were carrying petrol bombs, sticks and weapons.”<sup>248</sup>

238 Devjyot Ghoshal, <https://twitter.com/DevjyotGhoshal/status/1231977129367048192>, 24 February 2020.

239 Devjyot Ghoshal, 24 February 2020, Note 238.

240 Devjyot Ghoshal, <https://twitter.com/DevjyotGhoshal/status/1231977041722916864>, 24 February 2020.

241 Devjyot Ghoshal, <https://twitter.com/DevjyotGhoshal/status/1231979576915628039>, 24 February 2020.

242 Aarefa Johari, “An 85-year-old woman was burnt to death in her home in Delhi’s Gamri extension”, *Scroll.in*, 26 February 2020: <https://scroll.in/article/954422/an-85-year-old-woman-was-burnt-to-death-in-her-home-in-delhis-gamri-extension>.

243 Fatima Khan and Samyak Pandey, “Anger towards ‘other side’ echoes in Hindu dominated areas of riot-hit Northeast Delhi”, *The Print*, 27 February 2020: <https://theprint.in/india/anger-towards-other-side-echoes-in-hindu-dominated-areas-of-riot-hit-northeast-delhi/372502>; TNN, “Breakthrough in Delhi riot’s probe: One held for killing sweet shop staffer”, *The Times of India*, 8 March 2020: <https://timesofindia.indiatimes.com/city/delhi/breakthrough-in-riots-probe-one-held-for-killing-sweet-shop-staffer/articleshow/74533490.cms>.

244 Saurabh Trivedi, “School owner charged with attempt to murder, rioting”, *The Hindu*, 4 June 2020: <https://www.thehindu.com/news/cities/Delhi/school-owner-charged-with-attempt-to-murder-rioting/article31743203.ece>.

245 Saurabh Shukla, Sukriti Dwivedi, and Swati Bhasin, “Mob Slide Down Ropes, Burnt Delhi School, Used It As Base For Attacks”, *NDTV*, 28 February 2020: <https://www.ndtv.com/delhi-news/delhi-violence-mob-slid-down-ropes-burnt-delhi-school-used-it-as-launchpad-for-attacks-2187047>.

246 Shukla, Dwivedi, and Bhasin, 28 February 2020, Note 245.

247 NBT Dilli, <https://twitter.com/NBTDilli/status/1231884180860080129>, 24 February 2020; *The Quint*, 25 February 2020, Note 232; India Today Web Desk, 24 February 2020, Note 187; Chirag Gothi, “Rioters set petrol pump on fire in Northeast Delhi’s Bhajanpura”, *India Today*, 24 February 2020: <https://www.indiatoday.in/india/story/bhajanpura-petrol-pump-fire-1649533-2020-02-24>.

248 PTI, “Burnt Vehicles and Petrol Tanks Are All That Remain in Bhajanpura Petrol Pump”, *News18*, 27 February 2020: <https://www.news18.com/news/india/delhi-violence-burnt-vehicles-and-petrol-tanks-are-all-that-remain-in-bhajanpura-petrol-pump-2518323.html>.

This mob moved on to a coaching institute, called Horizon Academy, on the same road as the petrol pump. Students and staff of Horizon Academy owned by Navneet Gupta, were trapped inside as the mob damaged its windowpanes, and tried but failed to break down its front door. Unable to burn down the building, they set fire to motorcycles parked at the front of the Academy. A few policemen were also reportedly trapped inside with the staff and students.<sup>249</sup>

### Burning of Tyre Market and Attack on Mosque in Gokulpuri

A tyre market made up of about 224 shops owned by Muslims in Gokulpuri was burned over two days, beginning on February 24. Shop owners said their cash registers were looted.<sup>250</sup> The police at the scene claimed it was an *electrical fire*.<sup>251</sup> Several fire tenders were required to douse the fire.<sup>252</sup> No casualties were reported.

A mob attacked the Jamia Arabia Madinatul Uloom Masjid in Gokulpuri twice, beginning in the evening and returning at night.<sup>253</sup> A Muslim resident said a mob of about 30 people chanting *Jai Shri Ram* and “get out Muslims,” set fire to the mosque, which was built in 1978.<sup>254</sup>

### Response of Delhi Police

Ved Prakash Surya, the then DCP North East Delhi, told the press on the afternoon of February 24 that “the situation is under control” as they had spoken to “both sides”.<sup>255</sup> Prohibitory orders under Section 144, CrPC were imposed in North East Delhi in the late afternoon on February 24.<sup>256</sup> In the evening, Joint Police Commissioner (Eastern Range) reported that police were posted at vulnerable areas like Jaffrabad, Seelampur, Maujpur, Bhajanpura, Chand Bagh, Mustafabad, and others.<sup>257</sup> Sometime after 9 p.m. on February 24, a larger police party arrived at the scene of violence between the Maujpur-Jaffrabad sites. Special Commissioner of Police (Law and Order) came with a contingent of personnel from the Rapid Action Force<sup>258</sup> and Delhi Police to ask both sides for calm on account of President Trump's impending visit.<sup>259</sup> Security forces carried out flag marches in Maujpur to deter clashes.<sup>260</sup>

249 Pratul Sharma and Namrata Biji Ahuja, “Capital wounds”, *The Week*, 7 March 2020: <https://www.theweek.in/theweek/current/2020/03/06/capital-wounds.html>; Shiv Sunny, “You will be trapped, charred in 15 min: Tales of horror from Delhi's Ground Zero”, *Hindustan Times*, 27 February 2020: <https://www.hindustantimes.com/delhi-news/delhi-violence-tales-of-horror-from-ground-zero/story-6bAJqQXDFz4lBFiTLdo6SL.html>.

250 Furquan Ameen, “Gutted tyre market has a story to tell”, *The Telegraph*, 5 March 2020: <https://www.telegraphindia.com/india/gutted-tyre-market-has-a-story-to-tell/cid/1751279>.

251 Naomi Barton, “At Gokulpuri Tyre Market, Fire Rages as Hindutva Activists Shout Slogans”, *The Wire*, 25 February 2020: <https://thewire.in/communalism/gokulpuri-tyre-market-fire-jai-shree-ram>.

252 ANI, <https://twitter.com/ANI/status/1232025627269558273>, 25 February 2020.

253 Betwa Sharma, “4 Burnt Mosques In 48 Hours Show Delhi Riots Are About Religion, Not CAA”, *Huffington Post*, 27 February 2020: [https://www.huffpost.com/archive/in/entry/delhi-riots-burnt-mosques-religion-caa\\_in\\_5e576054c5b66622ed76b1f4](https://www.huffpost.com/archive/in/entry/delhi-riots-burnt-mosques-religion-caa_in_5e576054c5b66622ed76b1f4).

254 Sharma, 27 February 2020, Note 253.

255 India Today Web Desk, “Very distressing: Arvind Kejriwal tweets on Delhi violence, urges Amit Shah to take action”, *India Today*, 24 February 2020: <https://www.indiatoday.in/india/story/very-distressing-arvind-kejriwal-tweets-on-delhi-violence-urges-amit-shah-to-take-action-1649515-2020-02-24>.

256 Delhi Police, <https://mobile.twitter.com/DelhiPolice/status/1231914986596782081>, 24 February 2020; India Today Web Desk, 24 February 2020, Note 187; ANI, <https://mobile.twitter.com/ANI/status/1231898738458710016>, 24 February 2020.

257 ANI, <https://mobile.twitter.com/ANI/status/1231925905758416896>, 24 February 2020; India Today Web Desk, 24 February 2020, Note 187.

258 The Rapid Action Force is a specialised wing of the Central Reserve Paramilitary Force trained to respond to riots and public order situations. See <https://crpf.gov.in/RAFSector.htm>.

259 Anand Mohan J, “After day of violence, night of fear in Northeast Delhi”, *The Indian Express*, 25 February 2020: <https://indianexpress.com/article/cities/delhi/delhi-violence-maujpur-cao-protests-6284807>.

260 India Today Web Desk, 24 February 2020, Note 187.



### Fire Service overwhelmed with Distress Calls

According to Delhi Fire Services, three firemen were injured on February 24 while responding to 45 distress calls from various parts of North East Delhi. One fire tender was pelted with stones, while another was burnt by a mob.<sup>261</sup>

### Appeals by the Lieutenant Governor and the Chief Minister

On the afternoon of February 24, Anil Baijal, the then Lieutenant Governor of Delhi tweeted, “Instructed @DelhiPolice and @CPDelhi to ensure that law and order is maintained in North East Delhi. The situation is being closely monitored. I urge everyone to exercise restraint for maintenance of peace and harmony.”<sup>262</sup>

Arvind Kejriwal, the Chief Minister of Delhi, expressed concern in the following terms:

Very distressing news regarding disturbance of peace and harmony in parts of Delhi coming in. I sincerely urge Hon'ble LG n Hon'ble Union Home Minister to restore law and order n ensure that peace and harmony is maintained. Nobody should be allowed to orchestrate flagrations.<sup>263</sup>

### Statement by the Home Ministry

On the evening of February 24, Ajay Bhalla, the Union Home Secretary, told a TV news channel that the situation was under control with sufficient deployment of security forces on the ground.<sup>264</sup> Later, G. Kishan Reddy, the then Minister of State for Home, shared his view with the press that the violence in North East Delhi “was orchestrated” coinciding with President Trump’s visit to India. He suggested that the Congress party and the anti-CAA movement should be the ones to answer for “who is responsible for damaging the image of India”.<sup>265</sup> On the night of February 24, the Home Minister convened a meeting with Delhi Police Commissioner, Director of Intelligence Bureau, Union Home Secretary Bhalla and others to take stock of the situation in North East Delhi. While it is known that the meeting lasted more than two hours, the deliberations are not reported.<sup>266</sup>

### Deaths

Five deaths were reported by the GTB Hospital on 24 February.<sup>267</sup> Vinod Kumar Kashyap of Brahmpuri was beaten to death by a mob while he was out buying medicines with his son.<sup>268</sup> His son, Monu Kumar, survived. Rahul Solanki of Babu Nagar went out to buy milk and was shot in the throat. He died before his family could get him to a hospital.<sup>269</sup> Mohammad Yusuf was returning home to Mustafabad with his son when they were stopped by a mob at Gokulpuri Chowk. They were beaten with iron rods, sticks and stones. Their two-wheeler was set on fire. Yusuf’s assailants smashed his head with a stone.<sup>270</sup> His son Suleman, survived. Dilbar Negi, a native of Uttarakhand had arrived in Delhi six months earlier, for work. Killed on February

261 Staff Reporter, “Violence continues for third day in northeast Delhi”, *The Hindu*, 25 February 2020: <https://www.thehindu.com/news/cities/Delhi/violence-continues-for-third-day-in-delhi/article30910425.ece>.

262 Lieutenant Governor of Delhi, <https://mobile.twitter.com/LtGovDelhi/status/1231887820861521920>, 24 February 2020.

263 Arvind Kejriwal, <https://twitter.com/ArvindKejriwal/status/1231879205773697024>, 24 February 2020; India Today Web Desk, 24 February 2020, Note 255.

264 India Today Web Desk, 24 February 2020, Note 187; Express Web Desk, 26 February 2020, Note 176.

265 Outlook Web Bureau, “Delhi Violence Effort to Defame India Globally: MoS Home Affairs”, *Outlook*, 24 February 2020: <https://www.outlookindia.com/website/story/india-news-violence-in-delhi-orchestrated-for-publicity-as-trump-is-visiting-india-sources/347807>; SNS, “Delhi violence ‘orchestrated in view of Trump visit’, says MHA; Kejriwal, Rahul appeal for peace”, *The Statesman*, 24 February 2020: <https://www.thestatesman.com/india/delhi-violence-orchestrated-view-trump-visit-says-mha-kejriwal-rahul-appeal-peace-1502859310.html>.

266 Express Web Desk, “Amit Shah holds meeting with CP Amulya Patnaik over violence in North East Delhi”, *The Indian Express*, 25 February 2020: <https://indianexpress.com/article/cities/delhi/delhi-violence-amit-shah-6285208>.

267 Hemani Bhandari and Saurabh Trivedi, “Policeman among 5 killed in Delhi violence over CAA”, *The Hindu*, 25 February 2020: <https://www.thehindu.com/news/cities/Delhi/pro-anti-kaa-groups-clash-in-northeast-delhis-maujpur/article30901937.ece>.

268 Khan and Pandey, 27 February 2020, Note 243.

269 Bilal Kuchay, “Killed by hate”, *Aljazeera*, 2020: <https://interactive.aljazeera.com/aje/2020/delhi-riots-portraits/index.html>.

270 Saurabh Trivedi, “53-year-old beaten to death in violence on February 24”, *The Hindu*, 2 March 2020: <https://www.thehindu.com/news/cities/Delhi/53-year-old-lynched-teenaged-son-hurt-in-violence-on-feb-24/article30958818.ece>.

24 as described above, his burnt body was recovered on February 26 from the warehouse of the sweet shop where he worked. In their statements to the police, Negi's coworkers, including the sweet shop owner, stated that a Muslim mob set fire to the shop and warehouse.<sup>271</sup> Delhi Police Head Constable, Ratan Lal succumbed to his injuries and passed away on February 24 as detailed above.

### Summary of the Day

On February 24, the communal violence originating at the Maujpur-Jaffrabad divide spread systematically through the neighborhoods of North East Delhi. Stone pelting between the two sides was a dominant feature. Widespread gun violence and arson also occurred at many sites of violence. It seemed that there was both planned procuring and collection of weapons, as well as use of what was readily available on the streets, such as stones or construction materials. Businesses, schools, commercial establishments were attacked. A pattern emerged of attacks on anti-CAA protest sites across the district. Multiple incidents of police complicity with Hindu mobs were reported.

### Tuesday, February 25: Violence Intensifies Further

By February 25, 2020, attacks and killings intensified, particularly in Muslim majority neighborhoods.

#### Formation of *Kattar Hindu Ekta* WhatsApp Group

During the night of February 24-25, a WhatsApp group called *Kattar Hindu Ekta* (apparently the name of the group kept changing) with 125 members was created. The group chats reveal planning for acts of violence on communal lines, and sourcing of weapons and ammunition.<sup>272</sup>

In just one reported example, a participant from Ganga Vihar says he could bring a whole “team” from Ganga Vihar with “bullets, guns, everything”.<sup>273</sup> In chat messages to the group, he shared that he killed two Muslims and threw their bodies in a drain. Further, it has also been reported that group members also requested the support of the Rashtriya Swayamsevak Sangh (RSS), the Vishwa Hindu Parishad, and Bajrang Dal, telling each other on the group to “contact them for help”.<sup>274</sup>

#### Self-Imposed Neighborhood Barricades

Reports revealed that by February 25, both communities along the Brahmpuri main road had erected barricades to safeguard their residential areas against attacks.<sup>275</sup> Makeshift barricades were also seen in Jaffrabad, Maujpur, Babarpur, Kardampuri, Gokalpuri, Bhajanpura, Dayalpur, Brijpuri, Mustafabad, Karawal Nagar, Yamuna Vihar, Chand Bagh and Khajuri Khas, among others.<sup>276</sup> It appears that both communities across violence affected localities installed temporary barricades as a measure of protection, building them from improvised materials like damaged vehicles and furniture, wood planks, tin sheets, and the salvageable debris of homes that had been destroyed.

271 Asmita Nandy, “Inside the Charge Sheet on Dilbar Negi’s Killing”, *The Quint*, 17 June 2020: <https://www.thequint.com/news/india/dilbar-negi-burnt-body-found-during-delhi-violence-inside-details-gaps-chargesheet>.

272 Ismat Ara, “Tear Them Apart’: How Hindutva WhatsApp Group Demanded Murder, Rape of Muslims in Delhi Riots,” *The Wire*, 6 July 2020: <https://thewire.in/communalism/delhi-riots-hindutva-whatsapp-muslims-murder-rape>; Aditya Menon, “Killed 2 Muslims, Threw Them in Drain’: Riot-Accused on WhatsApp,” *The Quint*, 3 July 2020: <https://www.thequint.com/news/politics/northeast-delhi-riots-kattar-hindu-whatsapp-group-chargesheet-muslims>; Ayush Tiwari and Basant Kumar, “Delhi riots: Inside the ‘Kattar Hindu’ WhatsApp group that planned, executed murders,” *Newslaundry*, 4 July 2020: <https://www.newslaundry.com/2020/07/04/delhi-riots-inside-the-kattar-hindu-whatsapp-group-that-planned-executed-murders>; Vijayta Lalwani and Shoab Danial, “From planning murder to praising Modi: WhatsApp chats offer a window into the minds of Delhi rioters,” *Scroll.in*, 9 July 2020; <https://scroll.in/article/966775/from-planning-murder-to-praising-modi-whatsapp-chats-offer-a-window-into-the-minds-of-delhi-rioters>.

273 Menon, 3 July 2020, Note 272.

274 Ara, 6 July 2020, Note 272.

275 Vijayta Lalwani and Karnika Kohli, “Divided city: How barricades came up overnight between Hindu and Muslim neighbourhoods in Delhi,” *Scroll.in*, 28 February 2020: <https://scroll.in/article/954574/divided-city-how-barricades-came-up-overnight-between-hindu-and-muslim-neighbourhoods-in-delhi>.

276 Abhishek Dey and Sweta Goswami, “Iron gates reinforce divide in riot-hit Northeast Delhi,” *Hindustan Times*, 16 March 2020: <https://www.hindustantimes.com/india-news/iron-gates-reinforce-divide-in-riot-hit-northeast-delhi/story-ujnJlBGNB3o81e4zp2OKYK.html>.

### Violence in Kardampuri and at the Mustafabad Protest Site

On the morning of February 25, a petrol pump and shops along with houses on the main road adjoining the neighborhood at Kardampuri were burned.<sup>277</sup> In the afternoon, scenes of stone pelting in Kardampuri were on TV news channels, with multiple reports of gunshots fired.<sup>278</sup>

Anti-CAA protest site in Mustafabad also came under attack. A mob of about 50 men attacked the anti-CAA protest site in Mustafabad on the evening of February 25, burning the tent that housed the protesters. Several people, including women and children, were injured.<sup>279</sup>

### Jaffrabad Protest Site and Maujpur Chowk Site Cleared

By the night of February 25, the Delhi Police claimed that the Jaffrabad anti-CAA protest sit-in was cleared,<sup>280</sup> and the demonstration at Maujpur Chowk that came up against the Jaffrabad sit-in was removed.<sup>281</sup>

### Arson in Gokulpuri

The fire that began at Gokulpuri tyre market on February 24 continued to blaze on February 25.<sup>282</sup> Groups of Hindu men armed with rods and sticks were recorded walking the streets of Gokulpuri at mid-day by a journalist in a video. She tweeted, "We saw just two policeman standing a few hundred meters away from these men. Raises serious questions about security deployment."<sup>283</sup> At 2 p.m., a reporter tweeted a video of a Muslim resident who recounted his vehicle being stopped by a mob near Gokulpuri market, and being beaten with iron rods, and bare fists.<sup>284</sup> People armed with sticks were heard chanting *Jai Shri Ram* in Gokulpuri.<sup>285</sup> A journalist posted a video at 3:45 p.m. which showed that the tyre market continued to burn.<sup>286</sup> Several shops and properties were set on fire.<sup>287</sup> A 14-year-old boy injured by a bullet in crossfire had to wait for an ambulance for more than five hours; finally a Delhi Police Control Room van transported him to hospital after a senior officer's intervention. He got shot when he was out to buy breakfast for his family.<sup>288</sup>

A journalist's report revealed that the homes of Muslims in a slum in the Gokulpuri area, adjoining the border with UP, were burned on the night of February 25 by a mob chanting *Jai Shri Ram*. The Muslim residents had left a day before, on the warnings of Hindu neighbors. Dalit residents said the mob spared their homes. Police did not act to protect the slum.<sup>289</sup> While the journalist did his best to get police help for the slum

277 Chakravarty and Yamunan, 25 February 2020, Note 217.

278 Times Now, <https://mobile.twitter.com/TimesNow/status/1232224616162050049>, 25 February 2020; Scroll Staff, "Delhi violence: Toll rises to 13 as rampage continues; anti-CAA protest site in Jaffrabad cleared," *Scroll.in*, 25 February 2020: <https://scroll.in/latest/954244/delhi-violence-fresh-stone-pelting-reported-toll-is-five-as-kejriwal-calls-for-peace>.

279 Ipsita Chakravarty and Sruthisagar Yamunan, "24 hours inside Delhi locality: How violent mobs burnt school, mosque, madrasa, protest site," *Scroll.in*, 27 February 2020: <https://scroll.in/article/954450/24-hours-inside-delhi-locality-how-violence-consumed-school-mosque-madrasa-protest-site>; Naomi Barton and Avichal Dubey, "Delhi Riots: Mosques and Huts Burned, Children Attacked, at Least 2 Dead in Mustafabad," *The Wire*, 25 February 2020: <https://thewire.in/communalism/delhi-riots-mustafabad>.

280 Mahender Singh Manral, <https://mobile.twitter.com/mahendermanral/status/1232324032135036929>, 25 February 2020; Express Web Desk, 26 February 2020, Note 176.

281 HT Correspondent, "Women protesters leave Jafrabad protest site, but only 'temporarily,'" *Hindustan Times*, 26 February 2020: <https://www.hindustantimes.com/delhi-news/women-protesters-leave-jafrabad-protest-site-but-only-temporarily/story-vMPCjy3WQWvS05f9JBwRcM.html>; Staff, "Delhi Violence: Police use water canon to disperse protesters from outside Kejriwal's residence," *India Today*, 26 February 2020: <https://www.indiatoday.in/india/story/delhi-violence-news-live-updates-situation-northeast-maujpur-kejriwal-metro-1649678-2020-02-25>.

282 ANI, <https://mobile.twitter.com/ANI/status/1232160109486174208>, 25 February 2020.

283 Yogita Limaye, <https://mobile.twitter.com/yogital/status/1232225109479391232>, 25 February 2020.

284 Abhishek Dey, <https://mobile.twitter.com/abhishekdey04/status/1232227319982542849>, 25 February 2020.

285 Nicola Careem, <https://mobile.twitter.com/NicolaCareem/status/1232225847286915072>, 25 February 2020.

286 Yogita Limaye, <https://mobile.twitter.com/yogital/status/1232258353872736257>, 25 February 2020.

287 Scroll Staff, 25 February 2020, Note 278.

288 Scroll Staff, 25 February 2020, Note 278; Ritika Jain, <https://mobile.twitter.com/riotsjain/status/1232256580428718080>, 25 February 2020.

289 Ayush Tiwari, <https://mobile.twitter.com/sighyush/status/1232352903714803712>, 25 February 2020; Ayush Tiwari, "Smoke and fury: An eyewitness account of Mob Raj in North East Delhi last night," *Newslaundry*, 26 February: <https://www.newslaundry.com/2020/02/26/smoke-and-fury-an-eyewitness-account-of-mob-raj-in-north-east-delhi-last-night>; Scroll Staff, 25 February 2020, Note 278.

residents, he and other journalists had to leave once an angry mob headed towards them saying, “*media wale hai, maaro saalon ko*”<sup>290</sup> (these are media people, beat them). He recounts that Delhi Police personnel were close by but said, “Leave. We can't protect you.”<sup>291</sup>

### Attack on Fatima Masjid, Khajuri Khas

Chats of the *Kattar Hindu Ekta* WhatsApp group on the morning of February 25 indicated plans to “attack the Fatima Masjid”, located in Khajuri Khas.<sup>292</sup> When the mob arrived in the morning, Hindu elders of Khajuri Khas tried to stop them and managed to delay the attack.<sup>293</sup> The rioters wore helmets, and were armed with shields, sticks, rods, and petrol bombs. When the mob began throwing stones at Fatima Masjid, the Muslim residents responded with stone pelting. In a video, the mob can be seen throwing stones at the *masjid* from adjacent rooftops with easy access, wearing helmets completely covering their faces.<sup>294</sup> Soon, the mob broke down the *masjid*'s gate and set it on fire. Muslim families of the locality took refuge on the terraces of their homes, while police arrived only hours later.<sup>295</sup> In fact, a retired Delhi Police official, a resident in the same lane as Fatima Masjid, told media, “the police inaction allowed the rioters carrying out such arson. Despite the fact so many Delhi Police, serving and retired, officials live here, the police parties didn't reach here on time.” He added, “I have seen 1984 Sikh riots. The attack in our lane was similar to those riots. They identified the houses on the basis of their religious identity and torched them.”<sup>296</sup> Stone pelting in Khajuri Khas continued into the afternoon.<sup>297</sup>

### Violence in Babarpur, Brahmpuri, Karawal Nagar and Bhajanpura

Stone pelting and violence continued across neighborhoods. Journalists at the scene reported clashes in Babarpur, a Hindu majority locality, across the road from Kabir Nagar which is Muslim dominated. By afternoon, a mob from Babarpur came to the Kabir Nagar side and began stone pelting and threw petrol bombs.<sup>298</sup> When the Rapid Action Force arrived, the mob was heard chanting “*Musalman pe lathi chalao, hum tumhare saath hai*” (Wield your sticks on Muslims, we are with you), but reportedly stopped their attack. Journalists on the scene were stopped by a group of men who asked for their phones. They checked every folder before returning them, and said, “Media should help Hindus. Don't take videos.” The phones of two reporters from an English newspaper were also searched for photos and videos.<sup>299</sup>

Fresh rounds of stone pelting were reported from Brahmpuri<sup>300</sup> after which a flag past was conducted in the locality. Stone pelting also took place in Bhajanpura.<sup>301</sup> A fire at Karawal Nagar tyre market broke out on the morning of February 25, but the Delhi Fire Service tender was not able to reach the spot in the absence of

290 Ayush Tiwari, <https://mobile.twitter.com/sighyush/status/1232358691409682432>, 25 February 2020.

291 Ayush Tiwari, <https://mobile.twitter.com/sighyush/status/1232358691409682432>, 25 February 2020.

292 Tiwari and Kumar, 4 July 2020, Note 272.

293 Amit Bhardwaj, “Delhi's Naroda Patiya: Timeline of how Fatima Masjid was set on fire in Khajuri Khas,” *Asiaville*, 29 February 2020: <https://www.asiaville.in/article/delhi-how-fatima-masjid-set-on-fire-in-khajuri-khas-33562>.

294 Amit Bhardwaj, [https://mobile.twitter.com/tweets\\_amit/status/1233709040338759681](https://mobile.twitter.com/tweets_amit/status/1233709040338759681), 29 February 2020.

295 Ajaz Ashraf, “I Visited Nine Broken Mosques and Then I Gave Up”, *Newslick*, 9 March 2020: <https://www.newslick.in/I-Visited-Nine-Broken-Mosques-Then-I-Gave-Up>.

296 Bhardwaj, 29 February 2020, Note 293.

297 Express Web Desk, 26 February 2020, Note 176.

298 Chakravarty and Yamunan, 25 February 2020, Note 217.

299 Chakravarty and Yamunan, 25 February 2020, Note 217; Rohan Venkat, <https://mobile.twitter.com/RohanV/status/1232240055067893762>, 25 February 2020.

300 HT Correspondent, “Fresh stone pelting in northeast Delhi; CM Kejriwal calls MLAs for urgent meeting,” *Hindustan Times*, 25 February 2020: <https://www.hindustantimes.com/delhi-news/stones-glass-shards-pieces-of-bricks-scene-in-delhi-s-jafrabad-and-maujpur-morning-after-violence/story-nsDXJwjx8Pr6WYxsBbRQ4N.html>; Scroll Staff, 25 February 2020, Note 278.

301 ANI, <https://mobile.twitter.com/ANI/status/1232226722180808706>, 25 February 2020; Scroll Staff, 25 February 2020, Note 278.

police protection.<sup>302</sup> There were also reports from Karawal Nagar that acid was thrown at paramilitary forces from rooftops.<sup>303</sup>

### Burning of Mosques in Ashok Nagar

Two mosques in Ashok Nagar – Chand Masjid and Masjid Maula Baksh – were attacked and burned on February 25. A local resident said, after attacking the Masjid Maula Baksh, the mob attacked small businesses near the mosque – a beauty parlor, a shoe shop, and a mobile phone shop – and moved on to Muslim households. The same resident's home was looted, he estimated the loss of valuables like jewelry and cash worth approximately Rs. 15 lakhs.<sup>304</sup>

A mob paraded around a burning mosque in Ashok Nagar chanting *Jai Shri Ram* and “*Hinduon ka Hindustan*” (Hindus’ India), and placed a *Hanuman* flag on top of one of its minarets.<sup>305</sup> A video shows men climbing up the minaret, one smashes the mosque’s microphone, and others climb to install a national flag and *Hanuman* flag on top.<sup>306</sup> A journalist tweeted that she personally saw the mosque burning and the saffron flag on top of it.<sup>307</sup> Journalists tweeted the video of the burning mosque with the *Hanuman* flag hoisted on it, leading to several responses, including by the DCP, North West Delhi, that no mosque in Ashok Vihar was damaged or defaced.<sup>308</sup> The news channel Times Now declared the video fake.<sup>309</sup> Fact-checker Alt News verified that the DCP’s statement – that no mosque in Ashok Vihar was damaged – was indeed true, but that the incident took place in Ashok Nagar. Corroborating the eyewitness journalist who tweeted that she saw the mosque burning and the flag on a minaret, Alt News identified that the said mosque was the Badi Masjid in Ashok Nagar, and confirmed that it was burned. It also verified photographs given by a photojournalist of the flag hoisted on it.<sup>310</sup>

### Arson on Aziziya Masjid, Gamri

There was more violence against Muslim households in Hindu dominated Gamri extension on February 25.<sup>311</sup> A large mob returned on the morning of February 25, chanting *Jai Shri Ram*, and hurled stones and petrol bombs in the locality. In this time, the mob vandalized the local mosque and burnt the Quran. A local chemist, bakery and other commercial establishments were also torched. A Muslim resident says the mob tried to burn a Muslim man, but a Hindu family managed to save him.<sup>312</sup>

Around noon, a Muslim resident who had left home to buy milk learned that a 100-strong mob had entered his lane and were setting homes and shops on fire. While the rest of his family survived by running to the

302 HT Correspondent, “Fire at tire market in Delhi’s Karawal Nagar, fire tenders stuck in Jafrabad”, *Hindustan Times*, 25 February 2020: <https://www.hindustantimes.com/india-news/home-minister-amit-shah-calls-second-review-meeting-over-delhi-violence/story-vGcCRDtGw4ud7TZBAISvpO.html>.

303 India Today, 26 February 2020, Note 301; TNN, “Northeast Delhi violence: Four security men suffer acid burns”, *The Times of India*, 26 February 2020: <https://timesofindia.indiatimes.com/city/delhi/four-security-men-suffer-acid-burns/articleshow/74309035.cms>.

304 Betwa Sharma, 27 February 2020, Note 253; Sourav Roy Barman and Anand Mohan J, “Delhi violence: Three mosques targeted, school burnt, shops & homes looted,” *The Indian Express*, 27 February 2020: <https://indianexpress.com/article/cities/delhi/delhi-violence-ashok-nagar-school-mosque-6288437>.

305 Naomi Barton, “Delhi Riots: Mosque Set on Fire in Ashok Nagar, Hanuman Flag Placed on Minaret,” *The Wire*, 25 February: <https://thewire.in/communalism/delhi-violence-mosque-set-on-fire-in-ashok-vihar-hanuman-flag-placed-on-top>; Scroll Staff, “Delhi violence: Mosque set ablaze, Hanuman flag placed on top, reports The Wire,” *Scroll.in*, 25 February 2020: <https://scroll.in/latest/954310/delhi-violence-mosque-set-ablaze-hanuman-flag-placed-on-top-reports-the-wire>.

306 Neyaz Farooquee, <https://mobile.twitter.com/nafsmanzer/status/1232284084891570178>, 25 February 2020.

307 Naomi Barton, <https://mobile.twitter.com/therealnaomib/status/1232349141625442305>, 25 February 2020.

308 Pooja Chaudhuri and Mohammed Zubair, “Verification: Video of mosque vandalised, set on fire is from Ashok Nagar in Delhi,” *AltNews*, 26 February 2020: <https://www.altnews.in/verification-video-of-mosque-vandalised-set-on-fire-is-from-ashok-nagar-in-delhi>.

309 Times Now, <https://mobile.twitter.com/TimesNow/status/1232344992250650624>, 25 February 2020.

310 Chaudhuri and Zubair, 26 February 2020, Note 308.

311 Aarefa Johari, 26 February 2020, Note 242; Quint, “85-Year-Old Woman Burnt to Death in Delhi’s Gamri Extension,” *The Quint*, 27 February 2020: <https://www.thequint.com/news/india/85-year-old-woman-burnt-to-death-in-delhi-s-gamri-extension>.

312 Johari, 26 February 2020, Note 242.

roof, his 85-year-old mother, Akbari, died in the fire.<sup>313</sup> The entire building of their home was burnt, including the family's tailoring workshop.

In the afternoon, police told Muslim residents that the mobs were going to increase and they did not have adequate strength to contain them or provide protection. They told the families to leave. By the evening, fresh instances of stone pelting and arson began.<sup>314</sup> The Muslim residents left for refuge with relatives and friends in other parts of Delhi.<sup>315</sup>

### Attack on School and Farooqia Masjid, Brijpuri

A school and mosque in Brijpuri were attacked in succession on February 25. Arun Modern Public Senior Secondary School, established in 1986, was set on fire at 4 p.m.<sup>316</sup> In an interview to NDTV, a school official narrated that “around 250 to 300” people attacked the school from all sides.<sup>317</sup> School employees had differing opinions on whether a Hindu or Muslim mob was to blame.<sup>318</sup> The mob destroyed the school canteen and classrooms including the computers. Teachers' lockers were opened, and their files thrown and destroyed. In one saving grace, students were not present. There was a police barrier right in front of the school, but a local resident said that it was unmanned at the time of the attack. The official also said that they called the police and fire department, but no assistance reached them. According to her, the fire blazed for four hours with firefighters arriving only at 8 p.m.<sup>319</sup>

Also, in Brijpuri, the Farooqia Masjid with an adjoining *madarsa*, was attacked in the evening when a congregation was finishing the evening prayers. Three survivors as well as other locals who witnessed the incident, described the attackers as “force” or “*policewaale*” (policemen).<sup>320</sup> The survivors said that the attackers were in uniforms, which they could not identify.<sup>321</sup> A testimony to the Delhi Minorities Commission (DMC) fact-finding team also states that police beat Muslim men inside Farooqia mosque during evening prayers on February 25. It further features a video of the police beating the *muezzin* of the mosque, leaving him with serious injuries visible in the video and photographs.<sup>322</sup> Journalists who visited Farooqia Masjid the next afternoon (February 26) saw blood stains on the floor and burnt copies of the Quran.<sup>323</sup> The DMC team found that the mosque was torched with a chemical spray, with the damage estimated to be valued at approximately Rs. 50 lakhs.<sup>324</sup>

### Gun Violence in Ghonda

Gun shots were fired in the small Muslim area around Auliya Masjid in North Ghonda. Residents said that around 9 p.m. on February 25, “a mob chanting *Jai Shri Ram* gathered outside the mohalla, vandalized streetlights, CCTV cameras, broke locks outside homes and opened fire.” Mohammand Maroof (34 years) and his neighbor Shamshad Khan (24 years) were both injured by bullets.<sup>325</sup> Maroof died, Khan survived.

313 Johari, 26 February 2020, Note 242; Quint, 27 February 2020, Note 311.

314 Johari, 26 February 2020, Note 242; Scroll Staff, 25 February 2020, Note 278.

315 Johari, 26 February 2020, Note 242; Quint, 27 February 2020, Note 311.

316 Chakravarty and Yamunan, 27 February 2020, Note 299.

317 Sukirti Dwivedi, “At A Delhi School, Books, Exam Papers Now Ashes After Mob Set It On Fire,” NDTV, 27 February 2020: <https://www.ndtv.com/delhi-news/delhi-violence-at-northeast-delhi-school-books-exam-papers-now-ashes-after-mob-set-it-on-fire-2186652>.

318 Chakravarty and Yamunan, 27 February 2020, Note 279.

319 Chakravarty and Yamunan, 27 February 2020, Note 279.

320 Kaushal Shroff, “Men in uniform torched Mustafabad's Farooqia Masjid, assaulted people inside: Locals,” *The Caravan*, 11 March 2020: <https://caravanmagazine.in/conflict/men-in-uniform-torched-mustafabads-farooqia-masjid-assaulted-people-inside-locals>.

321 Barman and Mohan J, 27 February 2020, Note 304.

322 Delhi Minorities Commission, 2020, *Report of the DMC Fact-Finding Committee on North-East Delhi Riots of February 2020*, pg. 40-41: <https://ia801907.us.archive.org/22/items/DMC-delhi-riots-fact-finding-2020/Delhi-riots-Fact-Finding-2020.pdf>.

323 Chakravarty and Yamunan, 27 February 2020, Note 279.

324 Delhi Minorities Commission, 2020, pg. 45, Note 322.

325 Lalwani and Kohli, 28 February 2020, Note 275.

## Attacks on Journalists

There were further accounts of journalists being attacked in North East Delhi on February 25:

- Akash Napa of JK 24/7 was shot at while he was reporting from Maujpur.<sup>326</sup>
- Saurabh Shukla and Arvind Gunasekar with NDTV were trying to record a mob attacking a Muslim shrine in Gokulpuri when the same mob surrounded, intimidated, and beat them. They were punched and Gunasekar lost three teeth. The mob was chanting *Jai Shri Ram*. They stopped beating them when they realized they were both Hindus, but only released them once they had deleted their video footage from their phones.<sup>327</sup> Runjhun Sharma of CNN News18 was with Shukla and Gunasekar when the mob attacked; she saw them being beaten and said the mob kept asking about their religious identity. They had to plead with the mob to let them go.<sup>328</sup>
- Mariyam Alavi and her cameraperson, Sushil Rathee, also with NDTV, were injured by a mob.<sup>329</sup>
- Ismat Ara, freelance journalist, was trailed by a group of men she had seen being instructed by a Hindu priest to “beat Muslims”. She managed to evade their questions on her religious identity but they kept following her. She recounts her fears, “On the roads of Maujpur, with no police or CRPF around and a charged-up mob, I was scared they would catch and harass me for being a journalist, molest me for being a girl, and lynch me for being a Muslim if they found out my identity.”<sup>330</sup>

The Editor’s Guild of India issued a statement on February 25 expressing serious concerns of the attacks on journalists covering the violence, stressing that “journalists being attacked is tantamount to a direct assault on press freedom and those guilty of having indulged in such violence must be brought to book.”<sup>331</sup> In a statement issued in March 2020 with summaries of attacks on many journalists, Reporters Without Borders condemned the “repeated press freedom violations by Hindu nationalist activists during intercommunal violence in New Delhi’s North-Eastern districts last week, when they showed a systematic determination to prevent reporters from doing their work.”<sup>332</sup> Both the Reporters Without Borders and Editor’s Guild urged the Delhi Police to ensure the safety of reporters.<sup>333</sup>

### Chief Minister Calls for a Meeting of MLAs

Delhi’s Chief Minister tweeted a further appeal on the morning of February 25 for “everyone to shun violence” and “make all efforts to restore peace”. He announced that he was soon convening a meeting of the Members of the Legislative Assembly (MLAs) of all parties of the affected areas with senior officials.<sup>334</sup> Following the

326 Sharma, 26 February 2020, Note 193; Grewal, 25 February 2020, Note 193; Zeba Warsi, <https://mobile.twitter.com/Zebaism/status/1232243249215164417>, 25 February 2020.

327 NDTV Staff, “NDTV Reporters Attacked By Armed Mobs During Delhi Violence,” NDTV, 25 February 2020: <https://www.ndtv.com/india-news/ndtv-reporters-attacked-by-mobs-in-delhi-violence-2185449>; NDTV Staff, “NDTV’s Saurabh Shukla Shares How A Delhi Mob Attacked NDTV Crew,” NDTV, 25 February 2020: <https://www.ndtv.com/video/news/news/ndtv-s-saurabh-shukla-shares-how-a-delhi-mob-attacked-ndtv-crew-541587>; Sharma, 26 February 2020, Note 193; Grewal, 25 February 2020, Note 193.

328 News18, <https://mobile.twitter.com/CNNnews18/status/1232345914796195840>, 25 February 2020; Arvind Gunasekar, <https://mobile.twitter.com/arvindgunasekar/status/1232372371388063745>, 26 February 2020; Sharma, 26 February 2020, Note 193.

329 NDTV, 25 February 2020, Note 327.

330 Ismat Ara, “I was scared they would catch me for being a journalist, molest me for being a girl, lynch me for being a Muslim’: First person account from Maujpur”, *Firstpost*, 26 February 2020: <https://www.firstpost.com/india/i-was-scared-they-would-catch-me-for-being-a-journalist-molest-me-for-being-a-girl-lynch-me-for-being-a-muslim-first-person-account-from-maujpur-8085851.html>; Sharma, 26 February 2020, Note 193.

331 Editors Guild of India, <https://mobile.twitter.com/IndEditorsGuild/status/1232358976513363975/photo/1>, 25 February 2020.

332 Reporters Without Borders, “Indian reporters repeatedly attacked during week of intercommunal violence,” *RSF*, 3 March 2020: <https://rsf.org/en/news/indian-reporters-repeatedly-attacked-during-week-intercommunal-violence>.

333 *RSF*, [https://mobile.twitter.com/RSF\\_inter/status/1232273814551191553](https://mobile.twitter.com/RSF_inter/status/1232273814551191553), 25 February 2020; Editors Guild of India, <https://mobile.twitter.com/IndEditorsGuild/status/1232358976513363975/photo/1>, 25 February 2020.

334 Arvind Kejriwal, <https://mobile.twitter.com/ArvindKejriwal/status/1232145943492882432>, 25 February 2020; ANI, “Urge everyone to shun violence, says Delhi CM Arvind Kejriwal,” *The Times of India*, 25 February 2020: <https://timesofindia.indiatimes.com/city/delhi/urge-everyone-to-shun-violence-says-delhi-cm-arvind-kejriwal/articleshow/74294591.cms>; Express Web Desk, 26 February 2020, Note 176; India Today, 26 February 2020, Note 281.

meeting, by mid-day, the Chief Minister held a briefing with the press in which he shared several directions given to relevant authorities: he had asked District Magistrates to take out peace marches with police; conduct meetings of local peace committees with representatives of all religious communities and the area MLA; urge local temples and mosques to issue appeals for peace; request the Chief Secretary to discuss with the Police Commissioner to increase deployment of police in the affected areas and let field officers take a lead. He stated that MLAs of the border areas have said that perpetrators are coming from outside, “there is a need to seal the borders and carry out preventive arrests.”<sup>335</sup> He did not take questions from the press as he had to rush to a meeting with the Home Minister.

### **Meeting of Union Home Minister, Lieutenant Governor and Chief Minister**

Union Home Minister, Delhi Chief Minister, Delhi's Lieutenant Governor, Delhi Police Commissioner, and political representatives Manoj Tiwari of the BJP and Subhash Chopra of Congress, held a meeting at about noon on February 25.<sup>336</sup> The Home Minister noted “the professional assessment” that the breakout of violence was “spontaneous”.<sup>337</sup> He spoke mostly about the need for the police and political parties to work together to quell rumors, encourage the immediate revival of local peace committees, and improve coordination between Delhi Police and local MLAs. He shared that a 1000-strong armed battalion of the Delhi Police would be deployed in the affected areas, and that inter-state borders were being monitored.<sup>338</sup>

At about 11 p.m., the Home Minister held a third meeting with Delhi Police on February 25. S.N. Srivastava, IPS was appointed Special Commissioner (Law and Order), Delhi Police with immediate effect on February 25, and also attended the aforementioned meetings.<sup>339</sup>

### **Shoot at Sight Orders and Increased Deployment of Security Forces**

Shoot at sight orders were given in parts of North East Delhi on the night of February 25.<sup>340</sup> Reportedly on that day, the Rapid Action Force was deployed in areas reporting heavy violence – Maujpur, Brahmpuri and others.<sup>341</sup> The Ghaziabad district administration imposed prohibitory orders under Section 144, CrPC in Ghaziabad and sealed borders with North East Delhi.<sup>342</sup> The Delhi Fire Services received 18 calls by 2 p.m. on February 25. They responded by saying they would be able to reach Gokulpuri and Brahmpuri only when they are assured safe passage by police.<sup>343</sup>

The Delhi Police Public Relations Officer was quoted in the evening with the message that “the situation is under control” as orders under Section 144 were in place in the affected areas; that Delhi Police denied any lack of manpower; and that 11 FIRs had been registered relating to various acts of violence. He was reported to have said that the police were investigating Kapil Mishra's speech.<sup>344</sup>

### **Delhi Minorities Commission Calls for Urgent Intervention**

On February 25, the Chairperson of the DMC sent a letter to the Lieutenant Governor of Delhi demanding several immediate actions – the deployment of more police in North East Delhi, curfew to be imposed in

335 Express Web Desk, 26 February 2020, Note 176; News18, <https://mobile.twitter.com/CNNnews18/status/1232183473026191362>, 25 February 2020; Scroll Staff, 25 February 2020, Note 278.

336 Press Information Bureau, Ministry of Home Affairs Press Release, 25 February 2020, <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1604308>.

337 Press Information Bureau, 25 February 2020, Note 336.

338 Express Web Desk, 26 February 2020, Note 176; India Today, 26 February 2020, Note 281.

339 India Today, 26 February 2020, Note 281; PTI, “IPS officer SN Shrivastava appointed Delhi Police Special CP (Law and Order)”, *The New Indian Express*, 25 February 2020: <https://www.newindianexpress.com/cities/delhi/2020/feb/25/ips-officer-sn-shrivastava-appointed-delhi-police-special-cp-law-and-order-2108418.html>.

340 The Hindu Net Desk, “Delhi violence: Shoot at sight orders issued in northeast Delhi,” *The Hindu*, 25 February 2020: <https://www.thehindu.com/news/cities/Delhi/delhi-violence-live-updates/article30910539.ece>.

341 The Hindu, 25 February 2020, Note 340.

342 ANI UP/Uttarakhand, <https://mobile.twitter.com/ANINewsUP/status/1232326826854236160>, 25 February 2020; India Today, 26 February 2020, Note 281.

343 The Hindu, 25 February 2020, Note 340.

344 Express Web Desk, 26 February 2020, Note 176; India Today, 26 February 2020, Note 281; ANI, <https://mobile.twitter.com/ANI/status/1232294275649437696>, 25 February 2020; Scroll Staff, 25 February 2020, Note 278.



the violence-hit areas, and for the perpetrators of the violence to be arrested. Additionally, the letter asked the Delhi Police to escort affected persons who wanted to move out. The Commission also sought an action taken report and reply from the DCP, North East on a number of issues including the ultimatum issued by BJP leader Kapil Mishra to police to remove anti-CAA protesters blocking roads in North East Delhi within three days.<sup>345</sup>

### Deaths

Several media reports carried the confirmation of 13 deaths by February 25, as informed by an official from the GTB Hospital.<sup>346</sup> He also said at least 150 people came to the hospital with injuries.

### Summary of the Day

It appears that targeted attacks on Muslims – people, households, businesses, places of worship – grew in coordination, pace and intensity on February 25. A pattern of attacks on journalists emerged, while destruction of anti-CAA protest sites continued. While the political leadership – both of the Centre and the Delhi Government – finally seemed to take some actions, tangible steps to contain the violence on the ground did not materialize. Both the Delhi Police and Delhi Fire Service were repeatedly cited as being absent, or immensely delayed in reaching sites of distress, with the fire service itself constrained by the police's inability to provide safety. The imposition of curfew and shoot at sight orders did not deter the violent incidents that took place through the day.

### Wednesday, February 26: Mass Violence Ebbs

February 26, 2020 is widely cited as the day when serious violence affecting North East District finally abated. Nevertheless, some incidents of violence still took place on this day. The Delhi High Court played an impactful role on February 26.

### Midnight Hearing held by the Delhi High Court

*Rahul Roy v. Government of NCT of Delhi*: On February 26, the Delhi High Court passed multiple orders towards providing relief to victims of violence. The first hearing took place just after midnight owing to an urgent mentioning. At 12:30 a.m. on February 26, a bench of Justice S. Muralidhar and Justice Anup Bhambhani was convened at Justice Muralidhar's residence. The petition was filed in response to a crisis at Al Hind Hospital in Mustafabad. Joint Commissioner of Police and DCP (Crime) were present at the hearing.

Al Hind Hospital, a small 15 bed hospital, located within a Muslim neighborhood, emerged as the main provider of urgent medical care in the days of violence. As the only hospital in the local area, Dr. M.A. Anwar recounts that Al Hind treated between 500-600 patients between February 24-26.<sup>347</sup> The majority of patients suffered injuries from firearms. With limited facilities inundated with victims of violence, it was necessary that critically wounded patients were urgently shifted from Al Hind to GTB Hospital for further treatment. One of the main reliefs sought from the Court pertained to safe passage of ambulances, both to reach Al Hind and onward to GTB Hospital.

The Order records that Dr. Anwar told the Court over speaker phone that two dead persons, and 22 people critically injured, were required to be transported with police assistance. He said he had been trying to get police help to ensure safe passage of ambulances since 4 p.m. of the previous day but to no avail.

The Court passed the following Order:

The Court at this stage is primarily concerned with ensuring the safety of the lives of the injured and immediate medical attention that they require and for that purpose to ensure the safe passage of the injured victims to the nearest available government hospitals. The Court accordingly directs

<sup>345</sup> Jeevan Prakash Sharma, "Delhi Minority Commission Demands More Police Deployment, Curfew In Violence-Hit Areas," *Outlook*, 25 February 2020: <https://www.outlookindia.com/website/story/india-news-delhi-minority-commission-demands-more-police-deployment-curfew-in-violence-hit-areas/347851>.

<sup>346</sup> The Hindu, 25 February 2020, Note 340.

<sup>347</sup> Sagar, "Even doctors cried treating shot, bleeding patients: Al Hind's Dr Anwar on Delhi violence," *The Caravan*, 16 March 2020: <https://caravanmagazine.in/conflict/dr-anwar-al-hind-even-doctors-cried-bleeding-patients-delhi-violence>.

the Delhi Police to ensure such safe passage by deploying all the resources at its command and on the strength of this order to ensure that apart from the safe passage, the injured victims receive immediate emergency treatment, if not at the GTB Hospital, then at the LNJP Hospital or Maulana Azad or any other government hospital.<sup>348</sup>

The matter was then directed to be listed before the same bench at 2:15 p.m. during the day for a report of compliance.

### **Ankit Sharma's Body Found**

In the morning of February 26, the mutilated body of Intelligence Bureau employee, Ankit Sharma was found in a drain near the Chand Bagh Bridge. He worked as a security assistant with the Intelligence Bureau. The circumstances of Ankit Sharma's death remain unclear.<sup>349</sup> He lived in Khajuri Khas and the drain from which his body was removed was only about 200 meters from where he lived. Hindu and Muslim mobs were continuously clashing, since February 23, at a stretch of road close to his home.<sup>350</sup>

### **Clearing of Khureji Khas Protest Site**

It was reported that the police forcefully "cleared" the anti-CAA protest site at Khureji Khas on February 26.<sup>351</sup> Apparently, the police gave no warnings to the protesters before breaking the tent housing the site.<sup>352</sup> A video on social media show the police removing the gateway, tent, and awnings of the protest site.<sup>353</sup> In another video, police can be seen breaking CCTV cameras at the location.<sup>354</sup> The police removed the protesters and detained some of them.<sup>355</sup>

Detained protesters were taken to Jagatpuri Police Station. Reportedly, the police refused to let their lawyers meet them at the Police Station. It was also reported that male police officers manhandled the women lawyers in the group.<sup>356</sup>

### **Attack on Madarsa adjoining Farooqia Masjid, Brijpuri**

After attacking the Farooqia Masjid on February 25, a mob returned on February 26 to set fire to the adjoining *madarsa*. They destroyed the CCTV cameras within the mosque premises, and also destroyed the room in the

348 Para 4, Order dated 26.2.2020 (12:30 a.m.), *Rahul Roy v. Government of NCT of Delhi*, WP. (CrI.) No. 566/2020, Delhi High Court.

349 Neeta Sharma and Rajeev Ranjan, "Body Of Intel Employee Killed In Delhi Clashes Found In Drain," *NDTV*, 26 February, 2020: <https://www.ndtv.com/india-news/intelligence-bureau-employee-ankit-sharma-found-dead-in-chand-bagh-in-northeast-delhi-hit-by-violence-2185946>; Shiv Sunny, "Intelligence Bureau officer, 26, killed in mob attack in Delhi's Chand Bagh, body dumped in drain," *Hindustan Times*, 27 February 2020: <https://www.hindustantimes.com/india-news/intelligence-bureau-officer-26-killed-in-mob-attack-at-delhi-s-chandbagh-body-dumped-in-drain/story-hMj3tCB7ZGCVsXMpfOqPqM.html>; Scroll Staff, "Delhi violence: Intelligence Bureau officer's body found in drain in Chand Bagh," *Scroll.in*, 26 February 2020: <https://scroll.in/latest/954399/delhi-violence-intelligence-bureau-officers-body-found-in-drain-in-chand-bagh>.

350 Staff Reporter, "IB man's body found in Chand Bagh drain," *The Hindu*, 27 February 2020: <https://www.thehindu.com/news/cities/Delhi/ib-mans-body-found-in-chand-bagh-drain/article30926981.ece>.

351 The Wire Staff, "Allegations of Manhandling, Detentions as Delhi Police 'Clears' Protesters From Khureji Khas," *The Wire*, 26 February 2020: <https://thewire.in/rights/khureji-khas-delhi-police>; Hameeda Syed, "Khureji: Delhi's 'other Shaheen Bagh' and how it was shut down," *Newslaundry*, 13 March 2020: <https://www.newslaundry.com/2020/03/13/khureji-delhis-other-shaheen-bagh-and-how-it-vanished>; Scroll Staff, "Delhi violence: Police break CCTV camera, manhandle protesters at Khureji Khas anti-CAA protest site," *Scroll.in*, 26 February 2020: <https://scroll.in/video/954410/watch-delhi-police-break-cctv-camera-manhandle-protesters-at-khureji-khas-anti-cao-protest-site>.

352 Syed, 13 March 2020, Note 351.

353 Nabiya Khan, <https://mobile.twitter.com/NabiyaKhan11/status/1232574781356007425>, 26 February 2020.

354 Amir Siddique, <https://mobile.twitter.com/amirsiddique96/status/1232610834368516096>, 26 February 2020.

355 Shaheen Bagh Official, <https://mobile.twitter.com/Shaaheenbaghoff1/status/1232600368153935873>, 26 February 2020; The Wire Staff, 26 February 2020, Note 351.

356 Scroll Staff, Delhi: "Lawyers allegedly get beaten up by policemen for seeking release of anti-CAA protestor," *Scroll.in*, 26 February 2020: <https://scroll.in/latest/954406/delhi-lawyers-allegedly-get-beaten-up-by-policemen-for-seeking-release-of-anti-cao-protestor>; The Wire Staff, 26 February 2020, Note 351; Mekhala Saran, "Male Delhi Cops Hit Me, Other Lawyers for Trying to Meet Detainees," *The Quint*, 26 February 2020: <https://www.thequint.com/my-report/north-east-violence-lawyers-assaulted-at-jagatpuri-police-station>; Staff Reporter, "Lawyers demand action against police over assault," *The Hindu*, 28 February 2020: <https://www.thehindu.com/news/cities/Delhi/lawyers-demand-action-against-police-over-assault/article30937215.ece>.

*madarsa* where the CCTV footage was kept. A video is available which shows uniformed men entering and exiting the *madarsa*, and features interviews of survivors of the attack who affirm the presence of armed men.<sup>357</sup> Ground reports corroborate that the attackers were in uniform resembling military fatigues, but have no further details.<sup>358</sup>

### Further Hearings in the High Court

*Harsh Mander v. GNCTD*: Meanwhile, on February 26, an urgent matter was mentioned in the Delhi High Court on the failure of the police to register FIRs against hate speech.<sup>359</sup> The petitioners claimed that the hate speech was responsible for instigating communal violence in Delhi.

A Bench comprising Justice S. Muralidhar and Justice Talwant Singh took up the matter for hearing at 12:30 p.m. Four videos were played in the Court.<sup>360</sup> The first video was of Anurag Thakur's speech where he incited the public present to repeat, "*Desh ke gaddaron ko, goli maaron saalon ko*" (Shoot the traitors of the country). The second video was of a televised interview of Parvesh Sahib Singh, aired on January 28, 2020 in which he labelled anti-CAA protesters of Shaheen Bagh as rapists and murderers. The third video was of Kapil Mishra's three-day ultimatum speech at Maujpur on February 23 referred to above. The fourth was of Abhay Verma, the then MLA, Laxmi Nagar, East Delhi repeating the slogan from Anurag Thakur's speech.<sup>361</sup>

The Court repeatedly asked the Solicitor General, why the FIRs were not being registered. The Solicitor General's repeated refrain was: the time is not "appropriate" or "conducive" for FIRs to be registered in relation to these video clips. Justice Muralidhar responded by asking, "What's the appropriate time, Mr. Mehta? The city is burning".<sup>362</sup> The Solicitor General stated it was not possible for him to indicate when.

In its Order dated February 26, 2020, the Court observed that "in light of what has been witnessed in the capital city in the last three days", it has asked Special Commissioner of Police, to consider "the consequences that would ensue with every day's delay in registering an FIR for each of the speeches played in Court."<sup>363</sup> Notably, the Court also observed that the four speeches "*ex facie* appear to be answering the description of the crime of hate speech in terms of Section 153A(a) and (b), IPC."<sup>364</sup>

The Court asked Special Commissioner of Police to convey to the Delhi Police Commissioner its "anguish" given the "consequences of failure to register FIRs in an atmosphere like the present one".<sup>365</sup> It further observed that "the police should be guided by the judgement of the Constitution Bench of the Supreme Court in the *Lalita Kumari v. Govt. of U.P.*<sup>366</sup> and go strictly by the mandate of the law."<sup>367</sup> The Court concluded with the assurance by the Special Commissioner that he "will himself sit with the CP today itself and view all the videos, not limited to the videos played in the Court but any other videos that might be provided to them and which they perhaps already are in possession of, and take a conscious decision which will

357 Mojo Story, "At Farooqia Masjid, people ask-Who set alight Madrassa? Delhi Police says No Complaint Received", 12 March 2020: <https://www.youtube.com/watch?v=qrDlmy4yemg>.

358 Shroff, 11 March, 2020, Note 320; Delhi Minorities Commission, July 2020, pg. 44-45, Note 322.

359 *Harsh Mander v. GNCT of Delhi*, WP (CrI.) No. 565/2020, Delhi High Court.

360 Karan Tripathi, "Delhi High Court Plays Kapil Mishra's Speech in Court for Police viewing: Seeks response of Solicitor General," *LiveLaw*, 26 February 2020: <https://www.livelaw.in/top-stories/delhi-hc-plays-kapil-mishras-speech-in-court-for-police-viewing-seeks-response-of-solicitor-general-153164>.

361 India Today Web Desk, "Delhi violence: Four video clips that court made cops watch," *India Today*, 26 February 2020: <https://www.indiatoday.in/india/story/delhi-violence-four-videos-clips-that-court-made-cops-watch-1650273-2020-02-26>.

362 Karan Tripathi, "What Is The Appropriate Time For Registering FIR? The City Is Burning', Justice Muralidhar To Solicitor General," *LiveLaw*, 26 February 2020: <https://www.livelaw.in/top-stories/when-is-the-appropriate-time-for-registering-fir-the-city-is-burning-justice-muralidhar-to-solicitor-general-153176>.

363 Para 9, Order dated 26.2.2020, Note 359.

364 Para 9, Order dated 26.2.2020, Note 359.

365 Para 9, Order dated 26.2.2020, Note 359.

366 *Lalita Kumari v. Govt. of UP*, (2014) 2 SCC 1.

367 Para 9, Order dated 26.2.2020, Note 359.

be communicated to the Court tomorrow itself.”<sup>368</sup> The matter was directed to be listed at 2:15 p.m. on February 27.

*Rahul Roy v. Government of NCT of Delhi*: At 2:15 p.m., the bench of Justice Muralidhar and Justice Anup Bhambhani that had assembled at midnight, reconvened to review compliance of the Order passed.

The counsel for the petitioner said that as per the Order passed during the last hearing, patients had reached government hospitals and were being given treatment and that many more injured victims had been rescued since. Accordingly, the Court placed on record “its appreciation of the promptness with which Delhi Police responded to the distress call of the Petitioner through this petition which has resulted in a critical situation being tackled with the cooperation of everyone.”<sup>369</sup>

The Court went on to issue directions on other pressing concerns related to relief and rehabilitation of victims of the violence. Some of them are as follows:

- Safe passage for the bodies of victims who died in the riots, and information to be provided to their friends and family to facilitate the collection of the bodies of their loved ones.
- Setting up of help lines and help desks run by Delhi Police.
- Safe passage of fire services and ambulances, through coordination between Delhi Police and the Director of Fire Services, and the Health Secretary, Government of NCT of Delhi.
- Setting up adequate number of emergency shelters for victims displaced from their homes by the violence, with food, drinking water, medicines, bedding and blankets.
- Appointment of an *amicus curiae* to coordinate between victims and various agencies.
- Notification of night magistrates for a period of two weeks for urgent response.
- The designation of legal aid lawyers at the Delhi Legal Services Authorities to respond to the needs of victims, with access through their helplines running 24/7.
- The provision of trauma care by the Institute of Human Behavior and Allied Sciences.

### Visit by the National Security Advisor

On February 26, Ajit Doval, the National Security Advisor, visited affected areas of North East Delhi (Maujpur, Jaffrabad, Gokulpuri, and Bhajanpura) with the Delhi Police Commissioner to conduct a review of the situation. Following his visit, Doval told reporters that the situation was “under control, people are satisfied, and the police is doing their job”.<sup>370</sup>

### Prime Minister's Appeal for Peace

In his first public statement on the violence, the Prime Minister announced on Twitter on February 26 that he had an “extensive review on the situation prevailing in various parts of Delhi” and appealed to people to maintain “peace and brotherhood at all times”.<sup>371</sup>

### Chief Minister Calls for Army

Delhi Chief Minister tweeted that he was writing to the Union Home Minister asking for the army to be called in as reinforcements.<sup>372</sup> In his address to the Legislative Assembly on the evening of February 26, the

<sup>368</sup> Para 9, Order dated 26.2.2020, Note 359.

<sup>369</sup> Para 3, Order dated 26.2.2020, *Rahul Roy v. Government of NCT of Delhi*, WP (Cr.) No. 566/2020, Delhi High Court.

<sup>370</sup> PTI, “Situation in riot-hit northeast Delhi ‘under control’: NSA Ajit Doval,” *The New Indian Express*, 26 February 2020: <https://www.newindianexpress.com/cities/delhi/2020/feb/26/situation-in-riot-hit-northeast-delhi-under-control-nsa-ajit-doval-2108965.html>.

<sup>371</sup> The Quint, “Modi Breaks Silence on Delhi Violence, Appeals for Peace & Harmony,” *The Quint*, 26 February 2020: <https://www.thequint.com/news/politics/pm-modi-breaks-silence-on-northeast-delhi-violence>.

<sup>372</sup> Arvind Kejriwal, <https://mobile.twitter.com/ArvindKejriwal/status/1232536291213901825>, 26 February 2020; The Quint, “CAA Protests: Internet Services Restored in Aligarh,” *The Quint*, 29 February 2020: <https://www.thequint.com/news/india/anti-kaa-nrc-clashes-violence-delhi-india-police-live-updates>.

Chief Minister pledged Rs. 1 crore compensation to Ratan Lal's family and a job in the Delhi Government to one of his family members.<sup>373</sup>

### Police Briefing to the Media

Delhi Police Public Relations Officer in his press conference stated that 106 people had been arrested and 18 FIRs registered in connection with the violence. He said the number of calls from North East Delhi on February 26 had greatly reduced from the previous days. Senior officers were leading route marches. He mentioned that stone pelting incidents would be investigated, and that many policemen were injured in stone pelting. He released two helpline numbers for people to reach out during distress in violence affected areas.<sup>374</sup> He ended by saying that the Delhi Police had brought the situation under control.

### Deaths

Dinesh Kumar Khatik succumbed to bullet injuries and died on February 26.<sup>375</sup> He had left his home to find milk and food for his children around the Mustafabad area where he got caught in the violence. He was reportedly hit by a bullet while he was on the streets.

### Dead Bodies recovered from Drains

The dead bodies of four Muslim men were removed from the Bhagirathi Vihar drain on later dates; all four were last seen and heard from on February 26. Two brothers, Amir and Hashim, were due to return home in the Mustafabad area on February 26, after visiting a sick relative. Instead, their dead bodies were found in the Johripur-Bhagirathi Vihar drain on February 27. In their last conversation with their family on the night of February 26, the brothers said they were near the Gokulpuri tyre market (which had been set ablaze the day before). The way home from the tyre market passed through the Johripur-Bhagirathi Vihar Bridge. Reportedly, the body of one of the brothers was found stuck to his motorbike. The body of Bhure Ali, a daily wage worker, was found in the Bhagirathi Vihar drain on March 1. He had not returned home after leaving for work on February 26. His father filed a missing person complaint at the Gokulpuri Police Station on February 27. 25-year-old Hamza had gone to check on his shop in Mustafabad on the evening of February 26. His body was recovered from the drain on March 1.<sup>376</sup> Aas Mohammad's body was pushed up to the surface after heavy rain on February 28, and found further downstream near Gokulpuri Metro Station on March 1.<sup>377</sup>

### Summary of the Day

On February 26, the Delhi Police and the National Security Advisor unanimously declared the communal violence to be "under control". The High Court passed far-reaching orders towards relief measures for victims, and took steps to initiate the prosecution of political leaders for hate speech. Nevertheless, violent acts, including killings, took place on February 26, indicating that the violence had not completely ceased. In certain pockets the violence continued on February 26-27.<sup>378</sup>

## Immediate Aftermath

In the days immediately following February 26, the numbers of dead and injured persons increased, with discoveries of dead bodies being washed up in North East Delhi's extensive drains. Meanwhile, the Delhi Police began investigating the violence.

373 The Quint, 29 February 2020, Note 372; Quint video on YouTube, "Delhi Violence: Delhi CM Addresses Delhi Assembly", streamed live 26 February 2020: <https://www.youtube.com/watch?v=NqOwhVhvkKk>.

374 The Quint, 29 February 2020, Note 372; YouTube video (ANI), "Delhi Violence: Delhi Police PRO Addresses the Media", streamed live on 26 February 2020: <https://youtu.be/57OZAqEQwac>.

375 Express News Service, "One year after Northeast Delhi riots | The 53 killed: the lives in their wake," *The Indian Express*, 2 March 2020: <https://indianexpress.com/article/cities/delhi/northeast-delhi-riots-53-people-killed-cao-protesters-7203497>; TNN, "At 'peace' march in Connaught Place, family of Delhi riot victims narrate ordeal," *The Times of India*, 1 March 2020: <https://timesofindia.indiatimes.com/city/delhi/at-peace-march-in-cp-familyof-riot-victims-narrate-ordeal/articleshow/74421428.cms>.

376 Ayush Tiwari and Basant Kumar, "Delhi carnage: The story of one mob, two drains, and five murders," *Newslaundry*, 21 March 2020: <https://www.newslaundry.com/2020/03/21/delhi-carnage-the-story-of-one-mob-two-drains-and-five-murders>.

377 Tiwari and Kumar, 4 July 2020, Note 272.

378 Scroll Staff, "Delhi violence: 60-year-old scrap dealer dies after being attacked by mob in North East district", *Scroll.in*, 28 February 2020: <https://scroll.in/latest/954684/delhi-violence-60-year-old-scrap-dealer-dies-after-being-attacked-by-mob-in-north-east-district>.

The official total death toll following the Delhi violence was 53.<sup>379</sup> As many as 11 bodies were pulled out from the drains of North East Delhi in the days after February 26.<sup>380</sup> The police worked with divers and experts from civic agencies to scan the drains for bodies.<sup>381</sup> Several of the recovered bodies were decomposed beyond recognition and DNA testing was recommended by hospital authorities to identify them.<sup>382</sup>

Bullet wounds were reported as the most common injury suffered by victims of the violence.<sup>383</sup> Early data by the Delhi Police indicated at least 102 injured persons had bullet wounds, and 171 suffered injuries caused by sharp weapons or blunt objects.<sup>384</sup> Injuries from stabbing, stone pelting, assault, and tear gas shells were also widespread. The Delhi Police suffered extensively with a total of 108 injured police personnel.<sup>385</sup>

### Investigation Commences

On February 27, the Delhi Police assigned the investigation into the violence to the Crime Branch, forming two Special Investigation Teams led by officers of the rank of DCP. By the evening of February 27, more than 130 people had been arrested, and about 48 FIRs had been registered.<sup>386</sup>

### Further Orders in *Rahul Roy v. Government of NCT of Delhi*

Following Justice Muralidhar's transfer to the Punjab and Haryana High Court (effective at midnight on February 27), the matter of *Rahul Roy v. Government of NCT of Delhi* was heard by Chief Justice D.N. Patel and Justice C. Hari Shankar on February 27. The Delhi High Court adjourned the matter until April 13 and also allowed the Central Government to be impleaded as a party in the case.<sup>387</sup> On March 4, hearing a Special Leave Petition filed by Harsh Mander along with a Writ Petition filed by a group of victims of the violence, the Supreme Court asked the Delhi High Court to list the matter on March 6. The then Chief Justice of India, S.A. Bobde, said the long adjournment was "not justified", asking the High Court to expedite hearing the case.<sup>388</sup>

379 The Hindu, "Delhi violence: Death toll rises to 53", *The Hindu*, 5 March 2020: <https://www.thehindu.com/news/national/delhi-violence-death-toll-rises-to-53/article30992113.ece>.

380 Abhishek Dey, "Bodies float in labyrinthine drains of northeast Delhi; 11 found", *Hindustan Times*, 3 March 2020: <https://www.hindustantimes.com/cities/bodies-float-in-labyrinthine-drains-of-ne-delhi-11-found/story-us9cDeZOfvQ8bpABTc4q6O.html>.

381 Anvit Srivastava and Baishali Adak, "Delhi riots: Civic agencies will help police hunt for bodies in drains," *Hindustan Times*, 29 February 2020: <https://www.hindustantimes.com/cities/civic-agencies-will-help-police-hunt-for-bodies-in-drains/story-8CjH7p5tqbBEBwtKFnARM.html>.

382 Dey, 3 March 2020, Note 380.

383 Shemin Joy, "Delhi violence: Nearly half of those killed lost their lives due to bullet injury," *Deccan Herald*, 26 February 2020: <https://www.deccanherald.com/national/north-and-central/delhi-violence-nearly-half-of-those-killed-lost-their-lives-due-to-bullet-injury-808407.html>; Mahender Singh Manral, "Delhi violence: At least 82 have bullet injuries, criminals gave weapons, say police," *The Indian Express*, 28 February 2020: <https://indianexpress.com/article/cities/delhi/delhi-northeast-violence-bullet-injuries-police-caa-protests-6290347>.

384 Karn Pratap Singh, "At least 102 hit by bullets in North East Delhi riots: Cops", *Hindustan Times*, 5 March 2020: <https://www.hindustantimes.com/delhi-news/102-people-shot-at-over-13-000-distress-calls-received-in-two-days-of-rioting-police-report/story-gr15lfN9Sn4505m7Po4ITM.html>.

385 Siddharth Varadarajan, "Delhi Police Affidavit Shows Muslims Bore Brunt of Riots, Silent on Who Targeted Them and Why", *The Wire*, 16 July 2020: <https://thewire.in/communalism/delhi-police-affidavit-shows-muslims-bore-brunt-of-riots-silent-on-who-targeted-them-and-why>.

386 Scroll Staff, "Delhi violence: Police hand over inquiry to Crime Branch, set up two special investigation teams," *Scroll.in*, 27 February 2020: <https://scroll.in/latest/954542/delhi-violence-police-hand-over-inquiry-to-crime-branch-set-up-two-special-investigation-teams>; Stela Dey, "2 Special Investigation Teams Formed To Probe Delhi Clashes," *NDTV*, 27 February 2020: <https://www.ndtv.com/india-news/special-investigation-team-to-probe-delhi-violence-in-which-38-have-died-2186779>.

387 Scroll Staff, "Delhi violence: Time not suited for hate speech FIRs, police tell HC; Centre gets 4 weeks to reply," *Scroll.in*, 27 February 2020: <https://scroll.in/latest/954512/delhi-violence-time-not-suited-for-hate-speech-firs-police-tell-hc-centre-gets-4-weeks-to-reply>; Bar and Bench, "[Breaking] Delhi Riots: FIRs to be registered at an appropriate time, Police tells Delhi HC; matter adjourned till April 13," 27 February 2020: <https://www.barandbench.com/news/litigation/breaking-delhi-riots-firs-to-be-registered-at-an-appropriate-time-police-tells-delhi-hc-matter-adjourned-till-april-13>.

388 Order dated 4.3.2020, *Shaikh Mujtaba Farooq v. Union of India*, WP (Cr.) 103/2020, Supreme Court.

## Conclusion

The mass violence that took over North East Delhi over these four days was devastating for individuals, families, and the social fabric. The human toll resulted in deaths, debilitating injuries, and displaced people. The Delhi Police suffered losses and a high number of injured personnel. Across the district, homes, shops, businesses, schools, vehicles, and places of worship were destroyed. State institutions were alarmingly slow to respond. Multiple reports of police apathy in preventing the violence, as well as of police collusion and active participation, raise deeper questions of the state's role.

Based on the material amassed, there are certain features which indicate the essential character of the violence. The central takeaway is that the divisive Hindu-Muslim binary that was steadily stoked in the months preceding, finally manifested in this communally charged violence. We find that the February violence emerged as the ultimate culmination of a larger communally divisive project that was set in motion before the eruption of violence, alluded to in preceding chapters. Once it broke out, while the violence was perpetrated through the mechanics of mob involvement on both sides, Muslim identity was singled out as a target to be attacked. Through the days of violence, not just individuals, but Muslim homes, businesses, and places of worship were systematically targeted. The extent of police complicity in allowing, or participating in this, adds another important layer to the nature of violence.

Implicit within this, we recognize a very particular factor at play in this episode of violence. The socio-political contestation over the CAA was an underlying subtext in the sectarian divisions, marked particularly by the targeting of the anti-CAA protest sites. The information recorded in this chapter, reveals that the sites of the anti-CAA sit-in protests dotted across North East Delhi were attacked and steadily cleared, including at Chand Bagh, Kardampuri, Jaffrabad, Mustafabad and Khajuri Khas. There was a clear effort to extinguish the anti-CAA protests in the course of the violence.

Reflecting on the impact of such mass violence, we are left with little doubt that the relations between Hindus and Muslims stand altered. We express our concern for the inevitable long-term consequences on the agency of the Muslim community to express itself politically or otherwise. With an overriding national context, i.e., the contestation over the CAA, it would be safe to assume that the socio-cultural ramifications will be felt beyond the boundaries of North East Delhi, particularly in the impact on the psyche of the Indian Muslim.

## Timeline of the Violence

### 22 February

**Night:** Anti-CAA women protesters move to block the main road outside the Jaffrabad Metro Station

### 23 February

**Morning:** Political and Hindutva figures mobilise pro-CAA supporters to face off against the new protest site

**Afternoon:** Kapil Mishra tweets to supporters to gather at Maujpur Chowk at 3 p.m., near Jaffrabad protest site

Kapil Mishra gives ultimatum to police to clear anti-CAA protest sites at Maujpur

Stone pelting breaks out between pro-CAA and anti-CAA groups across Maujpur-Jaffrabad

**Evening:** Armed mobs appear on the streets; incidents of Muslims being frisked and beaten

### 24 February

**Morning:** Stone pelting and clashes intensify between Jaffrabad and Maujpur; arson and violence in Chand Bagh, leading to the death of Head Constable Ratan Lal

**Through the day:** Assault of five Muslim men in Kardampuri by the police; death of Faizan two days later

Attacks on schools in Shiv Vihar

Burning of tyre market and mosque in Gokulpuri

Violence at Karawal Nagar, Mustafabad, Khajuri Khas, Ghonda, Gamri, and Yamuna Vihar

**Evening:** Delhi Police pronounces curfew orders in affected areas;

Five deaths reported

### 25 February

**Intervening night:** Kattar Hindu Ekta WhatsApp group forms to plan violence

**Through the day:** Attacks on mosques in Khajuri Khas, Ashok Nagar, Gamri, Brijpuri

Continued arson of Gokulpuri tyre market

Stone pelting and clashes in Babarpur, Brahmpuri, Karawal Nagar and Bhajanpura

**Night:** Delhi Police gives shoot-at-sight orders

13 deaths reported as of this day

### 26 February

**Midnight:** Emergency hearing by Delhi High Court for safe passage of ambulances out of NE Delhi

**Morning:** Ankit Sharma's (Intelligence Bureau staffer) dead body found at a drain in Chand Bagh

National Security Advisor tours affected areas of North East Delhi; declares "under control"

**Through the day:** Police forcibly clear anti-CAA protest site at Khureji Khas

Attack on madarsa in Brijpuri

Delhi High Court directs Delhi Police to decide within 24 hours on registration of FIRs against politicians for hate speech

11 dead bodies recovered from drains over the next few days



## 4. Relief and Compensation: Gaps in Enforcement

This chapter surveys the harm inflicted by the violence that unfolded in North East Delhi. It presents a record of deaths, injuries, loss and damage to public and private property, and to religious sites, across the district. The chapter also examines the Delhi Government's efforts to provide relief and reparations to people and families affected by the violence, highlighting access to medical care, immediate post-violence shelter, and the pace of compensation.

### Extent of Deaths, Injuries and Damage of Property

As recorded in Chapter 3, 53 people were killed in the course of the violence, of which two were security force personnel. In July 2020, the Delhi Police submitted an affidavit to the Delhi High Court, which provided an official break-up of the deceased by religion.<sup>389</sup> As per the affidavit, 40 of the deceased were Muslims (75 percent), while the remaining 13 deaths were of Hindus.<sup>390</sup> 13 deaths were caused by gunshot injuries, whereas arson or rioting resulted in 34 deaths. The cause of death remains unknown for six deaths.<sup>391</sup>

#### Injuries

The Delhi Police's affidavit provides a list of the 473 civilians injured in the violence. While their religion is not stated, it appears from their names that 216 of the injured persons are Hindus (45 percent) while 257 persons are Muslim (55 percent).<sup>392</sup> A total of 108 Delhi Police personnel were injured during the days of violence.<sup>393</sup>

The Delhi Police reported that of the total 581 injured civilians and police, 100 sustained gunshot injuries, three were victims of acid attacks, 219 of physical assault, and 10 received burn injuries. The remaining 249 were hurt due to stone pelting.<sup>394</sup>

A report by Jan Swasthya Abhiyan, a Delhi-based organization involved in facilitating healthcare and medical intervention for victims of violence, noted that many victims (especially those from the Muslim community) did not approach government hospitals due to apprehensions. These victims were worried that a medico-legal case (MLC) would eventually lead to FIRs being filed against them as "rioters".<sup>395</sup> This perception may have caused many injured people not to access a government health facility, or any health facility at all. The official count of injured may, therefore, be grossly understated.

#### Damage to Homes and Businesses

As per an interim report published by the North East Delhi district administration in early March 2020, the violence resulted in 122 homes, 322 shops, and 301 vehicles being damaged. Belt Two of the North East Delhi Revenue district (comprising Yamuna Vihar, Mustafabad, Gokulpuri, Brijpuri, Chand Bagh, and Bhagirathi Vihar) sustained the most damage, where 40 houses, 162 shops, and 149 vehicles were targeted. This is more than double the damage endured by Belt One (Shiv Vihar, Johripur, Karawal Nagar, Ankur Vihar, Kamal Vihar), and Belt Three (Bhajanpura, Gamri, Sri Ram Colony, Ghonda, Khajuri Khas, Brahmpuri, and Gautampuri)

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389 Affidavit of Delhi Police in *Ajay Gautam*, July 2020, Note 1.

390 Affidavit of Delhi Police in *Ajay Gautam*, July 2020, Annexure-J, Note 1.

391 Affidavit of Delhi Police in *Ajay Gautam*, July 2020, pg. 5, Note 1.

392 Varadarajan, 16 July 2020, Note 385.

393 Affidavit of Delhi Police in *Ajay Gautam*, July 2020, pg. 6, Note 1.

394 Affidavit of Delhi Police in *Ajay Gautam*, July 2020, pg. 52, Note 1.

395 Jan Swasthya Abhiyan Delhi, 2020, *The Role of Health Systems in Responding to Communal Violence in Delhi*, pg. 5, [http://phmindia.org/wp-content/uploads/2020/03/Final-Report-on-Delhi-violence\\_JSA.pdf](http://phmindia.org/wp-content/uploads/2020/03/Final-Report-on-Delhi-violence_JSA.pdf).

each. Belt One had 174 incidents of property damage (31 houses, 51 shops, and 92 vehicles), while Belt Two had 173 incidents of property damage (45 houses, 81 shops, and 47 vehicles). Belt Four comprising Shahdara Revenue district suffered 47 instances of property damage (six houses, 28 shops, and 13 vehicles).<sup>396</sup>

The July 2020 affidavit of the Delhi Police revealed higher figures of property destruction and damage. Specifically, these figures are 185 houses, 468 shops, 747 vehicles, 60 *rehris* (hand-carts), and two *ghoda-gadis* (horse-drawn carts). Out of the total 185 damaged houses reported by the police, 14 were Hindu households, 50 were Muslim households, and the rest remain unidentified.<sup>397</sup> The affidavit also shows, neighborhood-wise, that 42 damaged shops belonged to Hindus, and 173 shops belonged to Muslims.<sup>398</sup>

A journalistic report revealed that the police undercounted the extent of damage to Muslim homes and shops. It pointed out that the police affidavit excluded Muslim homes in Khajuri Khas, where 54 houses were destroyed, and Karawal Nagar where 23 Muslim houses were destroyed. These were Hindu majority areas where Muslim pockets bore the brunt of violence. It also stated that there was no breakup by religion for the owners/operators of shops destroyed in Khajuri Khas and Karawal Nagar in the affidavit. Going by this report, if the area-wise breakup of damaged homes and shops were correctly added, the extent of damage to Muslim property would be much higher.<sup>399</sup>

### Damage to Places of Worship

The Delhi Police's affidavit of July 2020 listed damage to six temples and 13 mosques.<sup>400</sup> Reportedly in response to applications filed under the Right to Information Act, the Delhi Police provided different responses on damage to places of worship. They replied that two Hindu temples, eight mosques, two *madarsas*, and one *dargah* had been damaged. The Delhi Waqf Board reported damage to 19 mosques.<sup>401</sup>

In a fact-finding report of June 2020 by the DMC, it was recorded (with photographic evidence and testimonies) that 17 Muslim places of worship were severely damaged or destroyed, and another five had been attacked.<sup>402</sup> The report notes on the basis of confirmation with the *pujaris* and local residents, that Hindu temples in Muslim majority areas were intact, as the Muslim residents had kept vigil to ensure their safety.

## Access to Medical Care

Access to medical care, both within North East District and in larger city hospitals, came into sharp focus over the days of violence and their immediate aftermath. The experiences of victims point to serious gaps in the public health system.

### Urgent Medical Care during the Days of Violence

As the violence peaked on February 25, 2020, hospitals in North East Delhi faced a crisis. As mentioned in Chapter 3, Al Hind Hospital in Mustafabad, with a capacity of 15-beds, was overwhelmed with over 500 injured persons by the evening of February 25. By late night, the hospital was overflowing with increasing numbers of bullet injuries, acid attack cases, and deaths. Despite lacking in adequate facilities to perform major surgery, it provided essential medical care for hundreds of people during the violence.<sup>403</sup>

396 Abhishek Dey, "122 homes, 301 vehicles damaged in Delhi riots, says interim damage report", *Hindustan Times*, 3 March 2020: <https://www.hindustantimes.com/delhi-news/delhi-riots-122-homes-301-vehicles-damaged-in-mayhem/story-yUqXEVoYZ9EkmoHpZ1SkbL.html>.

397 Affidavit of Delhi Police in *Ajay Gautam*, July 2020, Annexure-D, Note 1.

398 Affidavit of Delhi Police in *Ajay Gautam*, July 2020, Annexure-D, Note 1.

399 Varadarajan, 16 July 2020, Note 385.

400 Affidavit of Delhi Police in *Ajay Gautam*, July 2020, Annexure-D, Note 1.

401 Aditya Menon and Shadab Moizee, "Delhi Riots: 11 Muslim, 2 Hindu Places of Worship Damaged Say Cops", *The Quint*, 29 June 2020: <https://www.thequint.com/news/india/northeast-delhi-riots-mosques-temples-dargah-damaged-police-rti>.

402 Delhi Minorities Commission, 2020, pg. 42, Note 322.

403 Veena Nair and Anusuya Som, "A tale of two hospitals overwhelmed by Delhi's communal carnage", *Newslaundry*, 26 February 2020: <https://www.newslaundry.com/2020/02/26/a-tale-of-two-hospitals-overwhelmed-by-delhis-communal-carnage>.

However, as the violence progressed, all roads in the Mustafabad neighborhood were barricaded by the police. It became increasingly difficult for ambulances to reach Al Hind to shift the critically injured to better equipped government hospitals such as the GTB Hospital. For instance, a team of about eight doctors from the Progressive Medicos and Scientists Forum made several attempts to reach Al Hind Hospital on February 24 and 25, but reported being stopped by the police as well as mobs.<sup>404</sup> In a statement to the media, Dr. Bhatti of the Forum, described their experiences on February 25:

We started out on February 25. We were scared. The situation was volatile...Late night, we tried again, only to be stopped by the police at the Signature Bridge saying that private ambulances were not allowed in Mustafabad. We called in the state government CATS ambulance service but got no help. The hospital doesn't have facilities to accommodate so many critical patients. But the patients were reluctant to leave. They had lost all hope in the police. We convinced a very critical patient to shift to GTB and accompanied many, but we were stopped by police two-three times.<sup>405</sup>

As recorded in Chapter 3, on the night of February 25-26, an urgent midnight sitting of the Delhi High Court was convened to respond to a petition seeking safe passage of ambulances to, and from, Al Hind Hospital for injured victims. It was only after the High Court Order directing the police to ensure safe passage that the ambulances were able to reach Al Hind on the morning of February 26, and transport injured victims to the GTB and other hospitals.<sup>406</sup>

### Gaps in Medical Treatment

Even as the violence ceased, access to medical care did not improve markedly. The report by Jan Swasthya Abhiyan, mentioned above, documented numerous challenges faced by victims. The report reiterates how the fears of being implicated in cases deterred victims from government hospitals as they opted to seek treatment at small private clinics within their neighborhoods.<sup>407</sup> Many patients' families complained that treatment records and MLC documents were not given to them, case history details were not recorded (particulars such as the place of violence, weapon used or the identity of the assailant), and injuries were not properly documented.<sup>408</sup> In some cases where death took place in the hospital, families were not given information about the injuries sustained, the treatment given, and the immediate reasons for the death.<sup>409</sup>

Families of deceased persons also complained of inordinate delays in organizing post mortems, and handing over of post mortem reports.<sup>410</sup>

The report records the following:

One family member told us 'I brought a live man here to the casualty, and now he is dead. I do not know what the hospital did or what kind of injury he had. We have been waiting for his body and post mortem reports for more than 24 hours and we have only been given one paper that says that the police have handed over the body to us. What are we supposed to make of this?' In another case where a woman lost two sons, the family has been asking volunteers to help procure medico-legal records. They said we do not know what injuries our sons had, what treatment they were given, and how they eventually died. Thus in all, we saw at least three cases of the deceased in which the families had just been given one document from the police which was required for burial. Other

404 Staff Reporter, "Report calls for ramping up medical services to riot victims", *The Hindu*, 18 March 2020: <https://www.thehindu.com/news/cities/Delhi/report-calls-for-ramping-up-medical-services-to-riot-victims/article31094154.ece>.

405 Somrita Ghosh, "Band of doctors overcomes fear to save riot victims in Northeast Delhi", *The New Indian Express*, 2 March 2020: <https://www.newindianexpress.com/cities/delhi/2020/mar/02/band-of-doctors-overcomes-fear-to-save-riot-victims-in-northeast-delhi-2110893.html>.

406 Note 348.

407 Jan Swasthya Abhiyan Delhi, 2020, pg. 5, Note 395.

408 Jan Swasthya Abhiyan Delhi, 2020, pg. 8-9, Note 395.

409 Jan Swasthya Abhiyan Delhi, 2020, pg. 9, Note 395.

410 Ed. Utkarsh Mishra, "Delhi riots: Relatives wait for hrs to get bodies of victims", *Rediff*, 27 February 2020: <https://www.rediff.com/news/report/pix-a-long-wait-to-get-a-last-glimpse-of-dear-ones/20200227.htm>.

than that, no record of injuries or treatment were given to families. When they asked for it, they were told that they can only access them from the police, after two weeks.<sup>411</sup>

It bears noting that hospital/medical records are important evidence to claim compensation and for criminal prosecution. Discrepancies by hospitals in providing these records to patients and their families would have directly impeded their claims for compensation.

Further, patients and volunteers reported that injured persons faced derogatory and communal remarks from the staff at the hospitals, including being referred to as “*ugravadi*” and “*aatankvadi*” (terrorists) by doctors.<sup>412</sup> The Jan Swasthya Abhiyan report noted the following in this regard:

Some said that when they requested prompt treatment, they were told ‘What will you do if we treat you? You will go back on the streets and be violent’. These are also the exact words that a volunteer heard when he was waiting to take detainees from the police station to the hospital. A volunteer at a shelter who had been accompanying victims to seek care reported that doctors at casualty had asked some victims the full form of NRC and CAA. It is disturbing to see that health professionals are using this to shame patients in casualty, who have suffered grave violence.<sup>413</sup>

## Relief Measures

While the Delhi Government took initiative to announce compensation schemes in the aftermath of the violence, implementation on the ground left much to be desired. Likewise, early relief efforts suffered from lapses described further in this section.

### Early Efforts at Relief

Relief efforts in the immediate aftermath of the violence were led by individuals, civil society and religious community-based organizations, while the government was largely absent.<sup>414</sup> Several private trusts set up mobile ambulances with doctors and first aid for victims. Religious organizations distributed meals, blankets, and other necessities to people.<sup>415</sup> Volunteers of the Delhi Sikh Gurdwara Management Committee delivered food daily to around 15,000 victims, who had not shifted to relief camps, from February 26 to March 7. They also deployed volunteers and four medical teams during the same period.<sup>416</sup>

The Chief Minister in a press conference held on February 27 stated that 210 civil defence volunteers had been deployed in the areas affected by the violence; and six control rooms were set up in Nand Nagri, Seelampur and Shahdara to assist violence affected persons. The State Government also announced nine relief camps for displaced persons.<sup>417</sup>

A fact-finding team that visited the affected areas on February 29 reported that government agencies had not yet started providing adequate aid.<sup>418</sup> Private initiatives were still carrying out relief measures and no

411 Jan Swasthya Abhiyan Delhi, 2020, pg. 8, Note 395.

412 Jan Swasthya Abhiyan Delhi, 2020, pg. 7, Note 395.

413 Jan Swasthya Abhiyan Delhi, 2020, pg. 7, Note 395.

414 Rohit Kumar, “North East Delhi: As Relief Volunteers, Locals Set Example, Govt Remains Conspicuous by its Absence”, *The Wire*, 12 March 2020: <https://thewire.in/government/delhi-riots-volunteers-aap-govt>; Hemani Bhandari, “Riot victims ‘dissatisfied’ with Delhi govt’s relief measures”, *The Hindu*, 4 March 2020: <https://www.thehindu.com/news/cities/Delhi/riot-victims-dissatisfied-with-delhi-govts-relief-measures/article30976322.ece>.

415 Sweta Goswami, “After facing flak, Delhi government steps up rehabilitation work”, *Hindustan Times*, 3 March 2020: <https://www.hindustantimes.com/cities/after-facing-flak-delhi-govt-steps-up-rehabilitation-work/story-bmc9YjmPQ8hOckossKpioN.html>.

416 Shinjini Ghosh, “Gurdwara volunteers did their bit, fed 15,000 riot victims daily”, *The Hindu*, 13 March 2020: <https://www.thehindu.com/news/cities/Delhi/gurdwara-volunteers-did-theirbit-fed-15000-riot-victims-daily/article31054280.ece>.

417 Sweta Goswami, “42 families move into govt relief camps, 210 civil defence volunteers deployed”, *Hindustan Times*, 29 February 2020: <https://www.hindustantimes.com/cities/only-42-families-move-into-delhi-govt-relief-camps-on-friday/story-Owp81AynUFHntDSCoPJeUM.html>.

418 The Wire Staff, “Centre, Delhi Govt Yet to Provide Relief to Riot-Affected People: Fact-Finding Report”, *The Wire*, 2 March 2020: <https://thewire.in/government/centre-delhi-govt-yet-to-provide-relief-to-riot-affected-people-fact-finding-report>.

government representative was seen coordinating or delivering relief materials.<sup>419</sup> It appeared in most cases, existing *rainbaseras* (night shelters for the homeless) were designated by the government as relief camps for the victims. However, many victims complained of their unhygienic conditions.<sup>420</sup> The delay in setting up functional relief camps led to a large number of survivors migrating to their villages, and many were forced to move in with relatives.<sup>421</sup> Only one of the designated government relief camps, which was not a night shelter, was in decent condition. Located in Shri Ram Colony, it housed 42 families.<sup>422</sup>

### Eidgah Camp

The sole full-time relief camp was set up at the Eidgah in Mustafabad on March 2.<sup>423</sup> While the Delhi Government's Waqf Board set it up, locals and volunteers organized it.<sup>424</sup>

On March 20, 2020, the Delhi High Court heard a petition by victims seeking directions for ensuring hygiene at relief camps, and requesting that public utilities be provided given the Covid-19 pandemic. The lawyers appearing for the Government of India and the Delhi Government, and civic authorities including the East Delhi Municipal Corporation, stated that they would take steps to provide a fire engine, ambulance and mobile toilets, measures for maintaining hygiene, and making counsellors available at relief camps. They also said that three additional relief camps would be established in North East District.<sup>425</sup>

In another petition before the Delhi High Court, two residents of the Eidgah camp sought a team of doctors and sanitation workers to be deployed at the camp. Similar to the former petition, the petitioners were seeking measures in light of the poor health and sanitation conditions at the camp, exacerbated by the onset of Covid-19. As the Court was only hearing urgent matters by this time, on March 23 it directed that all the directions in the former petition are to be implemented in a time-bound manner.<sup>426</sup> The Court also ordered the Delhi Government to set up a team of doctors and medical officials within 48 hours.<sup>427</sup>

The Eidgah relief camp was abruptly wound up on March 24, 2020. By this time, more than 800 victims were residing in the Eidgah relief camp.<sup>428</sup> Camp residents claimed that three tents were removed, while volunteers "rudely"<sup>429</sup> told them to vacate.<sup>430</sup> Imran Khan, a survivor residing at Eidgah, relayed the following:

For the last two days, the volunteers have been asking us to leave the camp. They claim that people living close to the camp are complaining because of the public toilet vans on the street. They removed one camp on Saturday afternoon, another on Sunday night and one more on Monday

419 Kumar, 12 March 2020, Note 414; Bhandari, 4 March 2020, Note 414.

420 Vijaya Lalwani, "Why Delhi government's relief camps are empty – despite riot-hit people desperately needing shelter", *Scroll.in*, 2 March 2020: <https://scroll.in/article/954917/why-delhi-government-s-relief-camps-are-empty-despite-riot-hit-people-desperately-needing-shelter>.

421 The Wire Staff, 2 March 2020, Note 418.

422 Lalwani, 2 March 2020, Note 420; Amil Bhatnagar, "Delhi violence: Houses gutted, 42 families find refuge in govt shelter", *The Indian Express*, 1 March 2020: <https://indianexpress.com/article/cities/delhi/delhi-violence-government-shelters-6293266>.

423 Aashi Sadana, "At Mustafabad relief camp, picking up pieces after Delhi violence", *The Indian Express*, 13 March 2020: <https://indianexpress.com/article/cities/delhi/delhi-violence-riots-mustafabad-relief-eidgah-camp-6312232>.

424 Asmita Nandy, "Delhi Violence Survivors Face Rain, Grief & Apathy in Relief Camps", *The Quint*, 8 March 2020: <https://www.thequint.com/news/india/delhi-violence-relief-camp-homeless-take-shelter-mustafabad-eidgah>; Shinjini Ghosh, "Any little help means a lot to us, say Delhi riot victims at relief camp", *The Hindu*, 8 March 2020: <https://www.thehindu.com/news/cities/Delhi/any-little-help-means-a-lot-to-us-say-riot-victims-at-relief-camp/article31012350.ece>.

425 Order dated 20.3.2020, *Shaikh Mujtaba Farooq v. Union of India*, WP (CrI.) No. 665/2020, Delhi High Court.

426 Para 6, Order dated 23.3.2020, *Md. Akhtar v. Govt of NCT of Delhi*, WP (C) No. 2948/2020, Delhi High Court.

427 Paras 7-8, Order dated 23.3.2020, Note 426.

428 Staff Reporter, "Number of victims at Idgah camp touches 870", *The Hindu*, 19 March 2020: <https://www.thehindu.com/news/cities/Delhi/number-of-victims-at-idgah-camp-touches-870/article31103350.ece>.

429 Hemani Bhandari, "Riot victims at relief camp asked to leave, stare at uncertain future", *The Hindu*, 24 March 2020: <https://www.thehindu.com/news/cities/Delhi/riot-victims-at-relief-camp-asked-to-leave-stare-at-uncertain-future/article31146996.ece>.

430 Sana Shakil, "COVID-19: Delhi Riots victims suffer again, this time due to shutdown", *The New Indian Express*, 29 March 2020: <https://www.newindianexpress.com/cities/delhi/2020/mar/29/covid-19-delhi-riots-victims-suffer-again-this-time-due-to-shutdown-2122835.html>.

evening. Where are we supposed to go? We have our own house in Shiv Vihar but we are five brothers, besides the parents. There is no space. Therefore, my wife and I are staying here. I have not received any compensation from the government despite submitting documents. If I get the money, I could start my work and rent a place.<sup>431</sup>

Organizers of the Eidgah camp offered Rs 3,000 in cash to the victims to help pay for rent and rations for a few days, and told them to look for accommodation.<sup>432</sup> Most families, however, claimed that they did not receive any money for rent.<sup>433</sup> Further, renovation work in violence affected areas also got stalled due to the Covid-19 lockdown.<sup>434</sup> Mohammed Imran, Nodal Officer of the Delhi Waqf Board, confirmed that by the morning of March 25, the camp was completely cleared. The families remaining in the camp were asked to find their own accommodation.<sup>435</sup>

On March 27, the Delhi High Court ordered the Delhi Government to ensure that all victims who may be homeless are provided with accommodation. This could be done either at community centers or at night shelters operated by the Delhi Urban Shelter Improvement Board in the North East District.<sup>436</sup> The Court also directed the government to provide food, water and healthcare to them.<sup>437</sup>

## Administration of Compensation Scheme

In the key press conference held right after the violence ceased, the Chief Minister on February 27 announced the following scheme for compensation:<sup>438</sup>

- **Deaths:** Compensation of Rs. 10 lakhs for death of an adult; Rs. 5 lakhs for death of a child. For an adult death, immediate disbursement of Rs 1 lakh as ex-gratia and the remaining to be released upon completion of the required documentation.
- **Injuries:** Compensation of Rs 5 lakhs for injured persons who have suffered “permanent incapacitation”; Rs 2 lakhs in case of serious injuries; Rs 20,000 in case of minor injuries.
- **Residential property:** Compensation of Rs. 5 lakhs for complete damage to a house; Rs. 2.5 lakhs in case of substantial damage; and Rs. 15,000 in case of minor damage. As per the scheme, Rs. 25,000 to be disbursed immediately for loss of household items in cases where houses have suffered “total or substantial” damage. The scheme also provided a maximum of Rs. 5 lakhs compensation for uninsured commercial units.

In addition, the government announced the “*Farishite Scheme*” would be extended to victims of the violence to cover the cost of medical treatment in private hospitals.<sup>439</sup>

While the broad elements of the compensation scheme were well-publicized, the procedure to claim the compensation was not defined. On March 2, the Delhi High Court in *Rahul Roy v. NCT of Delhi*, asked the

431 Bhandari, 24 March 2020, Note 429.

432 Anand Mohan J. and Jignasa Sinha, “Coronavirus: Delhi’s Eidgah relief camp cleared out, riot-hit victims hunt for another shelter”, *The Indian Express*, 25 March 2020: <https://indianexpress.com/article/coronavirus/coronavirus-delhis-eidgah-relief-camp-cleared-out-riot-hit-victims-hunt-for-another-shelter-6329782>.

433 Mohan J and Sinha, 25 March 2020, Note 432.

434 Hemani Bhandari, “Virus adds to woes of riot victims in Shiv Vihar”, *The Hindu*, 28 March 2020: <https://www.thehindu.com/news/national/virus-add-to-woes-of-riot-victims-in-shiv-vihar/article31186391.ece>.

435 Staff Reporter, “Coronavirus | Relief camp at Mustafabad cleared”, *The Hindu*, 25 March 2020: <https://www.thehindu.com/news/cities/Delhi/coronavirus-relief-camp-at-mustafabad-cleared/article31160704.ece>.

436 Pg 2, Order dated 27.3.2020, Note 425.

437 Pg 3, Order dated 27.3.2020, Note 425.

438 The compensation scheme is available at <https://dmshahdara.delhi.gov.in/service/delhi-governments-assistance-scheme-for-the-help-of-riot-victims>.

439 Pretika Khanna, “Delhi violence: Kejriwal announces relief measures for affected areas”, *Mint*, 27 February 2020: <https://www.livemint.com/news/india/delhi-violence-kejriwal-announces-relief-measures-for-affected-areas-11582804278679.html>.

administration to file a report on the rehabilitation measures undertaken so far.<sup>440</sup> The government finally announced the process to access compensation on March 5.

On March 6, Manish Sisodia, the Deputy Chief Minister of Delhi announced that the government would launch a two-day drive to release compensation to victims of the Delhi violence.<sup>441</sup> He assured timely completion of the verification process for disbursement. He also announced enhanced compensation upgraded from the original scheme, in certain categories. Each floor of a house would be treated as one residential unit for the purpose of compensation. Rs. 5 lakhs would be given as compensation for each unit, out of which Rs. 4 lakhs were for repairs, and Rs. 1 lakh for loss of household articles, if the entire house was burnt. In case of substantial damage to the house, Rs. 2.5 lakhs would be provided, of which Rs. 2 lakhs would be for repairs, and Rs. 50,000 for compensating damage to belongings.<sup>442</sup>

However, the documentation required for compensation claims presented difficulties.<sup>443</sup> Affected persons were required to present FIRs. The prospect of approaching the police, worsened by a prevailing sense of public distrust in it, was a daunting task replete with struggles.<sup>444</sup> MLC records were also required for claiming compensation. As stated earlier, victims complained of many discrepancies in the recording of MLCs. MLC records were not being provided to victims, or cases were not recorded as MLC.<sup>445</sup> Nodal officers appointed by the government were also reportedly non-responsive. These cumulative problems precipitated by onerous, multiple requirements severely hampered victims' access to compensation.

By March 2020, it appeared that the Delhi Government was rushing to settle existing compensation claims. While addressing the press on March 18, the Deputy Chief Minister said:

I want to finish the relief disbursement as soon as possible. All irregularities with respect to names of victims should be sorted out. I also want you to direct your respective Sub-Divisional Magistrates (SDMs) to speed up the verification process and remove all kinds of duplication found in the relief compensation forms. I want my team to work day and night and wind up the verification immediately.<sup>446</sup>

According to the government, by March 2020, Rs. 13,51,51,590 had been disbursed to the victims.<sup>447</sup> 214 forms were received for substantial damage to households. Of these, 203 were awarded full monetary compensation. 221 forms were received from households with minor damages, of which 163 had been fully compensated.<sup>448</sup>

440 PTI, "Delhi violence: HC asks police to file report on rehabilitation measures for victims", *The Times of India*, 2 March 2020: <https://timesofindia.indiatimes.com/city/delhi/delhi-violence-hc-asks-police-to-file-report-on-rehabilitation-measures-for-victims/articleshow/74436817.cms>; Para 4, Order dated 2.3.2020, *Rahul Roy v. Government of NCT of Delhi*, WP. (CrI.) No. 566/2020, Delhi High Court.

441 PTI, "Delhi violence | Government to launch verification drive for release of compensation for Delhi violence victims: Manish Sisodia", *The Hindu*, 3 December 2021: <https://www.thehindu.com/news/national/delhi-violence-government-to-launch-verification-drive-for-release-of-compensation-for-delhi-violence-victims-manish-sisodia/article31000826.ece>.

442 Special Correspondent, "2-day verification drive to release financial aid to begin on March 7", *The Hindu*, 7 March 2020: <https://www.thehindu.com/news/cities/Delhi/2-day-verification-drive-to-release-financial-aid-to-begin-on-march-7/article31005090.ece>; Staff Reporter, "Delhi govt. officials accompany riot-hit people to their houses for verification of losses", *The Hindu*, 8 March 2020: <https://www.thehindu.com/news/cities/Delhi/delhi-govt-officials-accompany-riot-hit-people-to-their-houses-for-verification-of-losses/article31013457.ece>.

443 Seemi Pasha, "Delhi Riots: Police, SDM Office Dithered on Compensation Claims for Months Before HC Order", *The Wire*, 23 June 2020: <https://thewire.in/rights/delhi-riots-compensation-claims-police-sdm-office>.

444 Yash Kumbhat and Eklavya Vasudev, "Redressal Process for Delhi Riot Victims Proves To Be Yet Another Punishment", *The Wire*, 8 January 2021: <https://thewire.in/government/delhi-riots-police-redressal-process-punishment>.

445 Staff Reporter, "NGO alleges gaps in government measures for riot survivors", *The Hindu*, 13 March 2020: <https://www.thehindu.com/news/cities/Delhi/ngo-alleges-gaps-in-government-measures-for-riot-survivors/article31054323.ece>.

446 Special Correspondent, "Manish Sisodia directs officials to expedite relief disbursement", *The Hindu*, 18 March 2020: <https://www.thehindu.com/news/cities/Delhi/manish-sisodia-directs-officials-to-expedite-relief-disbursement/article31094133.ece>.

447 Special Correspondent, 18 March 2020, Note 446.

448 Special Correspondent, 18 March 2020, Note 446.

By this time, affected persons who had fled to take shelter with relatives to escape the violence were returning to North East Delhi. The demand for compensation and rehabilitation increased. By March 19, 2020 the number of survivors seeking assistance at the Eidgah relief camp had increased to 870, from 550 in the first week of March.<sup>449</sup>

### Delays continue post Covid Lockdown

Gross delays continued to plague the processing of compensation claims. The situation was exacerbated by the impact of the nationwide lockdown announced in March end in the wake of the Covid-19 pandemic which lifted only in May 2020.

A media report quoting senior officials and records of the Delhi Government stated that until the end of June 2020, of around 3,200 claims for compensation received by the government, 1,700 were approved, around 700 remained pending, and over 900 were rejected.<sup>450</sup> It further stated that about Rs. 20 crores had been dispersed by this time as compensation across categories.

Of claims for injuries and residential property damages, many were pending on account of the “lockdown” as cited in official records. In fact, the majority of pending cases (178 out of 355) had “lockdown” marked on them, including cases of damage to commercial property. Around 900 out of 2,700 claims for property damages were rejected for reasons such as “no damage as per assessment”, and “cases not falling in eligibility criteria”. Another repeated reason was the “relieving of sector SDMs”. Of five schools damaged in the district, only three received compensation. In two instances, the compensation claim remained pending “due to dispute”. In 61 cases, compensation could not be transferred due to “incorrect/dormant accounts”.<sup>451</sup>

The report further explained that initially 12 SDMs were appointed for verifying relief claims across the four subdivisions of Yamuna Vihar, Shahdara, Seelampur and Karawal Nagar. These officers were later shifted out thereby delaying the process. On July 10, the Deputy Chief Minister issued a note to the District Magistrate and the Secretary, Revenue Department, observing that in many cases, compensation was sanctioned, but the amount had not been deposited in the applicant's account. The note directed the District Magistrate's office to examine the forms that were filed but could not be submitted to the SDM office, and those that were submitted but not verified. It also sought a timeline to provide compensation to those eligible as quickly as possible.<sup>452</sup>

It appears that following the lifting of the lockdown, a delay in the opening of key government offices, such as SDM offices, also impeded the processing of compensation applications.<sup>453</sup>

Multiple survivors filed pleas in the High Court, calling attention to the lack of response to their compensation applications. On June 22, the High Court directed the government to accept and process the petitioners' compensation forms without insisting on their producing the FIR, and that their compensation be processed expeditiously.<sup>454</sup> Despite the High Court Order, the survivors faced difficulties. On June 24, when the petitioners visited the SDM office, they found a handwritten notice outside the gate that stated:

*Yahaan DC office complex mein koi bhi kisi prakar ki public dealing corona virus ke kaaran nahi ho paa rahi hai. Yahaan is parisar mein agle aadesh tak koi bhi dealing ka kaam nahi hoga.*<sup>455</sup>

449 Staff Reporter, 19 March 2020, Note 428.

450 Sourav Roy Barman, “Five months since NE Delhi riots, 700 compensation applications pending”, *The Indian Express*, 21 July 2020: <https://indianexpress.com/article/cities/delhi/five-months-since-ne-delhi-riots-700-compensation-applications-pending-6515560>.

451 Barman, 21 July 2020, Note 450.

452 Barman, 21 July 2020, Note 450.

453 Ashlin Mathew, “Delhi Riots: Victims run from pillar to post to get govt compensation for bullet injuries, loss of property”, *National Herald*, 25 July 2020: <https://www.nationalheraldindia.com/india/delhi-riots-victims-run-from-pillar-to-post-to-get-govt-compensation-for-bullet-injuries-loss-of-property>.

454 Order dated 22.6.2020, *Neha Fareen v. State of NCT of Delhi*, WP(C) 3650/2020, Delhi High Court, available at [https://www.livelaw.in/pdf\\_upload/pdf\\_upload-376890.pdf](https://www.livelaw.in/pdf_upload/pdf_upload-376890.pdf); Aishwarya Iyer, “Two years after Delhi violence, riot victims still await compensation for their losses”, *Scroll.in*, 6 March 2022: <https://scroll.in/article/1018754/two-years-after-delhi-violence-riot-victims-still-await-compensation-for-their-losses>.

455 Pasha, 23 June 2020, Note 443.



(No work is being transacted at this office due to Covid-19. No work with respect to compensation will be transacted until further orders.)

### **Report by the Committee on Welfare of Minorities 2020-21**

In March 2021, the Committee on the Welfare of Minorities presented a review of compensation paid to the victims of the North East Delhi violence in the Delhi Legislative Assembly. The Committee's report disclosed that as of January 2021, a total amount of Rs. 26,09,78,416 (amounting to more than 26 crores) had been sanctioned as compensation for deaths, injury, property and vehicle damage.<sup>456</sup>

The nine-member Committee also identified gaps causing delay in compensation payments reaching survivors. Difficulties arising from the lockdown and pending assessments by SDMs of damages were cited, specifically delay in evaluating cases of injuries.<sup>457</sup>

On the basis of cases that came before the Committee, its report flagged a pattern of instances in which victims were dissatisfied with the compensation amounts paid to them, on the ground that they were not commensurate with the losses suffered.<sup>458</sup> Many cases where compensation was rejected were brought to the Committee for reassessment; as well as cases where serious injuries or permanent incapacitation were categorized as minor injuries with meagre compensation amounts provided.<sup>459</sup> The Committee reported that many of these cases were subsequently reviewed by the Office of the Divisional Commissioner. It was found that in many cases of loot and vandalism, compensation claims were rejected as the assessment team was unable to gauge the damages.<sup>460</sup>

In response to these recurring problems, the Committee recommended the formation of a new Committee consisting of representatives from the Office of the Divisional Commissioner, the Delhi Waqf Board, and MLAs of the affected constituencies, to conduct a physical survey for a reassessment of compensation in cases where compensation was rejected, or those where it appeared inadequate to the loss suffered.<sup>461</sup> It also called for the resumption of filing compensation claims.

### **The Claims Commission**

In April 2020, the Delhi Government approached the High Court to set up a body for monitoring and executing compensation claims, as per the guidelines laid down by the Supreme Court in *In Re: Destruction of Public and Private Properties v. State of Andhra Pradesh*.<sup>462</sup> The Chief Justice of the Delhi High Court appointed Justice Sunil Gaur, former judge of the Delhi High Court, as the Claims Commissioner.<sup>463</sup> It was hoped that a body dedicated to the monitoring of compensation claims would have improved the situation, but the Claims Commission itself has suffered from prolonged teething troubles.

The Claims Commission started accepting claims only on November 30, 2020. As per the Claims Commissioner, between November 30, 2020 and February 15, 2021, the Commission received over 2,500

<sup>456</sup> Committee on the Welfare of Minorities of the Legislative Assembly of the National Capital Territory of Delhi, 2021, *First Report Committee on Welfare of Minorities (2020-21)*, pg. 7-8: <http://delhiassembly.nic.in/Committee/VII-Assembly/WoM/VIIA-WoM-1R.pdf>.

<sup>457</sup> Committee on the Welfare of Minorities of the Legislative Assembly of the National Capital Territory of Delhi, 2021, pg. 3, Note 456.

<sup>458</sup> Committee on the Welfare of Minorities of the Legislative Assembly of the National Capital Territory of Delhi, 2021, pg. 3-4, Note 456.

<sup>459</sup> Committee on the Welfare of Minorities of the Legislative Assembly of the National Capital Territory of Delhi, 2021, pg. 3-4, Note 456.

<sup>460</sup> Committee on the Welfare of Minorities of the Legislative Assembly of the National Capital Territory of Delhi, 2021, pg. 5, Note 456.

<sup>461</sup> Committee on the Welfare of Minorities of the Legislative Assembly of the National Capital Territory of Delhi, 2021, pg. 9, Note 456.

<sup>462</sup> *In Re: Destruction of Public and Private Properties v. State of Andhra Pradesh*, (2009) 5 SCC 212.

<sup>463</sup> Aditi, "Delhi Riots: Former Delhi HC Judge, Justice Sunil Gaur appointed as Claims Commissioner", *Bar and Bench*, 1 May 2020: <https://www.barandbench.com/news/litigation/delhi-riots-former-hc-judge-justice-sunil-gaur-appointed-as-claims-commissioner>.

applications, the majority of which were related to inadequate relief for property losses.<sup>464</sup> However, in the absence of infrastructure and personnel, it was able to begin its work only in January 2021. At the time, it still had not been provided basic facilities like WiFi, phones, and vehicles.<sup>465</sup> On January 11, 2021, nearly nine months after the recommendation to appoint assessors was made, the government notified the appointment of five loss assessors, with the approval of the Lieutenant Governor.<sup>466</sup>

Reports stated that the Chair of the Commission was preparing to propose 20 more assessors to the Office of the Lieutenant Governor by end February 2021, as he felt it would be too difficult for five persons to handle the workload.<sup>467</sup> The Claims Commissioner is reported to be open to addressing the issue of burdensome requirements, stating “most applicants have approached us saying the relief granted to them is far too little. The government adopted a very strict yardstick but we will take a very practical approach. We will not reject a claim citing lack of one document or another.”<sup>468</sup>

As of March 2022, of the total 2569 claims for compensation received by the Claims Commission, they had examined 1425 but were yet to begin assessing the remaining 1234.<sup>469</sup> The Chair estimates that the process is likely only to be completed by December 2022.<sup>470</sup> In August 2022, the Lieutenant Governor of Delhi approved the appointments of 40 more assessors to assist the Commission as well as directed that all pending cases be cleared within three months.<sup>471</sup>

## Conclusion

Gaps in timely provision of medical relief and compensation have once again failed the victims of the violence. The Delhi Government's efforts have fallen short of the state's obligation to ensure timely and adequate compensation. This obligation derives from the judicial consensus that when the state fails to prevent widespread violence, victims have a right to claim damages from the state.<sup>472</sup>

It becomes clear that state institutions were largely absent during the days of violence in providing relief. Victims experienced a lack of access to treatment, and gaps in the handing over of hospital/medical records. Absence of information and procedural hurdles made access to compensation even more difficult. These factors impeded victims' right to compensation, and would have exacerbated their vulnerability.

Public authorities with mandates to assist have not been utilized. A redress channel that ought to have been explored effectively in the immediate aftermath of the violence was the application of the Disaster Management Act, 2005. It is noteworthy that communal violence would clearly meet the definition of “disaster” under Section 2(d) as a “grave occurrence” arising due to a “man-made case”. The National Executive Committee and the National Disaster Management Authority under the Act should have been purposefully pressed into service with the extensive machinery that is at their command. The Disaster Management Act, 2005 under Section 2(e) contemplates “disaster management” in terms of “prompt

464 Sourav Roy Barman, “Task cut out for riots claims commission: 2,500 forms to be reassessed”, *The Indian Express*, 19 February 2021: <https://indianexpress.com/article/cities/delhi/task-cut-out-for-riots-claims-commission-2500-forms-to-be-reassessed-7194888>.

465 Anisha Bedi, “Why Delhi riots panel hasn't ruled on any of the 2,600 compensation claims it has received”, *The Print*, 25 February 2021: <https://theprint.in/judiciary/why-delhi-riots-panel-hasnt-ruled-on-any-of-the-2600-compensation-claims-it-has-received/611040>.

466 Barman, 19 February 2021, Note 464.

467 Bedi, 25 February 2021, Note 465.

468 Barman, 19 February 2021, Note 464.

469 Iyer, 6 March 2022, Note 454.

470 Iyer, 6 March 2022, Note 454.

471 Express News Service, “Claims by Delhi riot victims pending, 40 more assessors to help fast track things”, *The Indian Express*, 25 August 2022: <https://indianexpress.com/article/cities/delhi/claims-by-delhi-riot-victims-pending-40-more-assessors-to-help-fast-track-things-8110074>.

472 See *Mohinder Kaur v. State of Haryana*, (2000) 124 PLR 87; *JK Traders v. State of AP*, 2000 (5) ALT 726; *Ashwani Gupta v. Government of India*, 117 (2005) DLT 112; *Manjit Singh Sawhney v. Union of India*, 120 (2005) DLT 156.

response to any threatening disaster situation or disaster”, “evacuation, rescue and relief”, and “rehabilitation and reconstruction”. If the statutory machinery had been deployed in time for all the three aforementioned functions, affected persons might have had access to critical assistance in their time of need.

Likewise, the Delhi State Legal Services Authority could have played a far more effective role in assisting the violence affected families, particularly to avail compensation.<sup>473</sup> With the Claims Commission beset by delays and lack of resources, the Authority could provide the required assistance to deal with compensation claims. In light of the earlier missed opportunities, lawyers empaneled with the Authority can still be roped in for effective legal assistance to the Commission. This can surely expedite the process of payment of compensation and consequently, rehabilitation.

In the absence of a comprehensive survey conducted either by the Central or the Delhi Government on the quantum of damage and current needs of survivors, there is no reliable estimate of the number of people impacted due to the violence. Meanwhile, survivors continue to struggle to claim compensation.

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<sup>473</sup> The Delhi Legal Services Authority has been constituted under the Legal Services Authorities Act, 1987 to provide effective legal aid to weaker sections of society. The Delhi Legal Services Authority works under the administrative control of the Delhi High Court.

## Part II

# Examining Hate on TV News Channels and Social Media Platforms

Part II consists of the following chapters:

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**5. Troubling Dualities: News Media as Arbiter of Fact or Platform of Hate?**

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**6. Social Media as a Vehicle for Hate Speech**

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The preceding chapters have pointed how anti-Muslim hate speech, often punctuated with messaging that incited violence, was proliferating in the build-up to violence in North East Delhi. Dissemination of hate was an essential feature of this brewing environment. This section of the report presents an empirical analysis of the tenor and messaging of the most viewed television news channels over a specified period. Likewise, social media platforms in the run-up and during the violence were dug into, focusing on how hate speech was spread. The findings are contained in this two-chapter section. This is not aimed to project a general comment on the state of media, or regulation of social media. It is limited to presenting problematic instances of hate being purveyed through news channels and on social media.

# 5. Troubling Dualities: News Media as Arbiter of Fact or Platform of Hate?

Earlier chapters of this report allude to the significance of media narratives and commentary in the public discourse on the CAA, the nationwide protests, and also on the North East Delhi violence. This chapter analyses the tenor of the debates on these issues, aired on much watched news channels, from December 2019 to February 2020.

## Rationale for the Study

In a democracy, a free press, in reporting the news, is responsible for being an independent arbiter of facts devoid of prejudice. On issues that have the potential to generate wide contestation or lead to strife, the role of the media as an impartial conveyor becomes all the more critical.

In November 2021, the News Broadcasting and Digital Standards Authority (NBDSA)<sup>474</sup> passed an Order directing TV news channel Times Now to remove all content of specified episodes of a primetime show from its website, for failing to abide by broadcasting and ethical standards.<sup>475</sup> The two episodes in question, aired in September 2020, focused on the unfolding investigation into the 2020 Delhi violence. The crux of the complaints before the Authority were that the episodes, steered by the show's anchors, expressed a biased view of individuals (known anti-CAA protesters) being investigated, wholly endorsing the Delhi Police's accusations without presenting judicial and other observations critical of the investigation that had emerged by that time. After examining the contentions of both the complainant and broadcaster as well as reviewing the footage, the NBDSA found that the anchors "did not conduct the debates in an impartial and objective manner and had therefore violated the Fundamental Principles as enumerated in the Code of Ethics and Broadcasting Standards and various Guidelines issued by the NBDSA."<sup>476</sup> The Order brings the said channel in the dock on the tenor and intent of its messaging on issues under scrutiny in this report. As important as this is in and of itself, the possible implication that bias and misrepresentation of facts may be much wider in media reporting, is to be taken note of.

There has been no comprehensive analysis of media reporting and commentary on the developments following the passage of the CAA, and the February 2020 communal violence. With the revelations through the NBDSA's Order, the need for such analysis is even more necessary. This chapter offers a beginning.

## Scope and Methodology

The analysis in this chapter is in part based on a content-analysis of selected episodes of primetime shows on the six most viewed televised news channels (based on Target Rating Point – TRP – data that was available). Episodes which were aired within the specific time period, and focused on issues pertaining to the CAA, the connected protests, and the violence, were collated for analysis. Print media was not included in the study.

We identified six news channels with the highest viewership – Republic TV and Times Now which are English channels, and Aaj Tak, Zee News, India TV, and Republic Bharat, four Hindi news channels. We then identified episodes from selected primetime shows that featured debates on the CAA and related issues.

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474 The News Broadcasting and Digital Standards Authority (NBDSA) is a nine-member independent body set up by the News Broadcasters Association, presently chaired by Justice A.K. Sikri (Retd.). Its mandate involves adjudicating complaints about broadcasts. There is a detailed Code of Ethics and Broadcasting Standards laid down by NBDSA for violation of which a complaint may be made, including that a news channel must ensure impartiality, objectivity and neutrality.

475 Order dated 19.11.2021, NBDSA. The Order can be found at: [https://www.livelaw.in/pdf\\_upload/0117ltr-dt-221121watermark-404562.pdf](https://www.livelaw.in/pdf_upload/0117ltr-dt-221121watermark-404562.pdf).

476 Pg. 25, Order dated 19.11.2021, Note 475.

The selected primetime shows were Halla Bol (Aaj Tak), DNA (Zee News), Poochta Hai Bharat (Republic Bharat), Haqiqat Kya Hai (India TV), The Debate (Republic TV), and India Upfront (Times Now).

Members of the research team selected a total of 326 episodes of these shows telecast in the months under study, constituting approximately 243 hours (14,580 minutes) of broadcast time. These episodes were accessed through the websites or social media accounts of the respective channels. Content and analysis of the viewed footage was categorized thematically. The content analysis that follows below is based on verbatim quotes by anchors and panelists from the viewed episodes (marked by time stamps in the footnotes), as well as words used in episode titles, flashing text, and hashtags.<sup>477</sup> The full analysis is available with the Committee.

The Committee recognizes the vast breadth of the media landscape that reported on these issues. Our intention in conducting this limited study was to discern if there are patterns emerging in the commentary and narratives broadcast by these channels in reporting the issues under scrutiny. If so, these patterns would be indicative of how these six most viewed channels were choosing to position these issues to their viewers.

## Content Analysis of the Primetime Shows

The analysis of the selected episodes reveals some recurring patterns: a similarity in rhetoric, positioning and language to describe the issues under scrutiny. Prejudice and suspicion against the Muslim community was a consistent feature underlining the messaging across these shows. There was a concerted attempt to frame the issues around the CAA as *Hindus versus Muslims* with Muslims being portrayed as “troublemakers” or “ungrateful citizens”, or people whose actions were “antithetical to national interest”. The use of sensationalist tickers, hashtags and headlines flashed across television screens is part and parcel of the visual components of these primetime shows. Wider research reveals that media platforms employ a tactic of repeating slogans until they become a “mindless but memorable cliché”.<sup>478</sup> These visual tools play a major role in propagating specific messaging—in this context, the messaging focused on which community should receive sympathy, and which should be demonized. Our analysis has enabled us to discern the following specific themes:

### **Vilifying Anti-CAA Protests as Overwhelmingly Violent**

The nationwide protests against the CAA were a central focus for these channels. Our analysis reveals a consistent effort by all six channels to project the protests as singularly disruptive and violent. This narrative of violence began to be shaped with the rise of anti-CAA protests in December 2019. As set out in Chapter 1, the first protest marches experienced eruptions of stone pelting, arson of public property and vehicles, and clashes with the police, mostly in the states of Assam, UP, and Delhi. These arose against the background of the police denying permission for the marches, or use of force through lathi-charge and firing. In UP alone, 22 people were killed in just two days of protests.<sup>479</sup>

Our analysis of the episodes selected across the six channels reveals that these instances of violence were employed to build a broad narrative to vilify the anti-CAA protests. The coverage appeared to portray the protests as single-handedly responsible for the unfolding violence. The entire protest movement in Delhi, with a concerted focus on Shaheen Bagh, was shown as violent, conspiratorial, and communal. Various essential elements of the anti-CAA protests, including their substantive demands and peaceful sit-ins, were left out of the narrative, as was any comment on police violence.

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<sup>477</sup> A hashtag, recognized by the use of the hash symbol #, enables social media users to tag content for cross-referencing or sharing. Hashtags is introduced by Twitter as: “A hashtag—written with a # symbol—is used to index keywords or topics on Twitter. This function was created on Twitter, and allows people to easily follow topics they are interested in”: <https://help.twitter.com/en/using-twitter/how-to-use-hashtags>.

<sup>478</sup> Hobbs, Renee, 2020, *Mind Over Media - Propaganda Education for a Digital Age*, W.W. Norton & Company, pg. 187.

<sup>479</sup> Express News Service, 19 February 2020, Note 29.

Following the events of December 15, these channels uniformly cast anti-CAA protesters in a specific light. Words like “vandals”, “rioters”, “potential terrorists”, “anti-national”, “*tukde-tukde gang*”, “victimizers”, “cowards”, “blackmailers” and “dangerous” were repeatedly used to describe the anti-CAA protesters.

An episode of Republic TV's primetime show, *The Debate*, aired on December 16, 2019, was punctuated with flashing text, such as, “Using Rights Excuse for Riots?”, and ran the hashtag, #RightsNotRiots.<sup>480</sup> In the episode, the anchor repeatedly called protesters “potential terrorists” trying to incite communal violence.<sup>481</sup>

On December 17, violent clashes broke out between the police and protesters in Delhi's Seelampur-Jaffrabad area in the daytime. The episode of India TV's primetime show, *Haqiqat Kya Hai* telecast on December 17 night posed a series of rhetorical questions: “*Dilli me kisne lagayi aag*” (Who set Delhi on fire?), “*Dilli ko kisne jalaya?*” (Who burnt down Delhi?).<sup>482</sup> The episode displayed the following flashing texts (among others):

- *Jaffrabad me dange ke 210 minutes, 100% complete picture.*<sup>483</sup>  
(210 minutes of riots in Jaffrabad, 100% complete picture)
- *Dilli ke musalmano me Modi phobia kisne phailaya?*<sup>484</sup>  
(Who has spread Modi phobia in Delhi's Muslims?)
- *PM Modi ke khilaaf 'guerilla yudh' direct.*<sup>485</sup>  
(Direct guerilla war against PM Modi)
- *Jamia-Jaffrabad ki danga files decoded.*<sup>486</sup>  
(Files of Jamia-Jaffrabad riot decoded)

A plain reading of this text indicates the portrayal of “Delhi's Muslims” as a catch-all category for a potentially dangerous community with designs of war against the Indian state. This goes further with the casting of the clashes in Jamia and Jaffrabad as *riots*, in parallel with insinuations being made of joint “Jamia-Jaffrabad” conspiracies. This suggests that these supposed conspiracies were already in motion, and seemingly deduced on the very day of the events taking place.

The anchor's content on the episode of *DNA* (Zee News) on December 18 claimed that the protests against the CAA are a larger conspiracy to spread communal riots with the help of social media tools, which were referred to as “*Digital Danga*”.<sup>487</sup> The anchor termed the protesters as “Urban Naxals” and stated, “*Ab sochane wali baat hai ki 2016 ke baad aisa kya hua hai ki ye chhaatra...urbannaxalism ke liye andolan kar rahe hai.*”<sup>488</sup> (One wonders as to what transpired in 2016 which made the students...come together to promote urban naxalism.)

The episode of *Poochta Hai Bharat* (Republic Bharat) on December 27, 2019, centered its messaging around uncorroborated visuals and WhatsApp messages.<sup>489</sup> The moderator made the following statement while

480 Republic TV, “The Debate”, <https://youtu.be/3gZK7MsKlnw>, 16.12.2019.

481 Republic TV, “The Debate”, 5:24, 11:41, <https://youtu.be/3gZK7MsKlnw>, 16.12.2019.

482 India TV, “Haqiqat Kya Hai”, <https://www.indiatv.in/video/hakikat-kya-hai/watch-india-tv-special-show-haqikat-kya-hai-december-17-2019-678878>, 17.12.2019.

483 India TV, “Haqiqat Kya Hai”, 1:16 to 1:18, <https://www.indiatv.in/video/hakikat-kya-hai/watch-india-tv-special-show-haqikat-kya-hai-december-17-2019-678878>, 17.12.2019.

484 India TV, “Haqiqat Kya Hai”, 2:14 to 2:16, <https://www.indiatv.in/video/hakikat-kya-hai/watch-india-tv-special-show-haqikat-kya-hai-december-17-2019-678878>, 17.12.2019.

485 India TV, “Haqiqat Kya Hai”, 14:11 to 14:12, <https://www.indiatv.in/video/hakikat-kya-hai/watch-india-tv-special-show-haqikat-kya-hai-december-17-2019-678878>, 17.12.2019.

486 India TV, “Haqiqat Kya Hai”, 29:13 to 29:16, <https://www.indiatv.in/video/hakikat-kya-hai/watch-india-tv-special-show-haqikat-kya-hai-december-17-2019-678878>, 17.12.2019.

487 DNA, “Zee News”, <https://www.facebook.com/sudhirchaudhary.72/posts/2630040203753904>, 18.12.2019.

488 DNA, “Zee News”, 54:09 to 54:23, <https://www.facebook.com/sudhirchaudhary.72/posts/2630040203753904>, 18.12.2019.

489 Republic Bharat, “Puchta Hai Bharat”, <https://youtu.be/FIL8atZPWjQ>, 27.12.2019.

showing visuals of Muslim protesters: “*jo log dara rahe the ki shukravar ko dange honge, poore Hindustan ne aaj unhen dara diya.*”<sup>490</sup> (Some people were threatening that there will be riots on Friday, they have been silenced by the entire Hindustan.) The anchor also read out a WhatsApp message that said:

*Jihad karna shuru karo, India Gate pe milenge, hockey aur baseball bat leke aana. Police par toot padna, khoon-e-shahadat karo.*<sup>491</sup>

(Start doing *jihad*, we will meet at India Gate. Bring a hockey and baseball bat. Attack the police. Be martyrs.)

The show also ran the following text of an alleged WhatsApp message as *Breaking News* on the screen: “*Jihad karna jayaz hai, shuru karo.*”<sup>492</sup> (*Jihad* is justified, start it.) The genesis of the statements of threats of impending riots, or any evidence in connection to the protesters shown, were not provided. Similarly, there was no description of the origins or authenticity of the WhatsApp messages that were being displayed prominently.

In the chronology of the anti-CAA movement, in December 2019 itself, the protests evolved beyond university campuses into a larger movement characterized by sit-in protests within neighborhoods. After the initial violence in December 2019, large-scale violence was not reported at protest sites.

However, by January-February 2020, as the Delhi Assembly elections drew closer, these channels amplified their insinuations. The analysis shows that the narrative from these channels mimicked the hate speech and open calls to violence by political and Hindu nationalist figures as described in Chapter 2. The Shaheen Bagh protest was particularly vilified across these channels, cast as a source of violence or emerging conspiracies of various hues.

On January 27, 2020, an episode of *DNA* (Zee News) was called “*Kya ab Shaheen Bagh jaane ke liye visa lagega?*” (Are we going to now need VISA for entering Shaheen Bagh?) with the accompanying hashtag #370InShaheenBagh.<sup>493</sup> In the show, the anchor compared Shaheen Bagh to conflict sites like Kashmir and Syria in an attempt to characterize the protest site as violent and aggressive. The protest area was described as a place where even police cannot go replete with risks to the anchor and his colleagues’ lives.<sup>494</sup> Protesters were described as brainwashed, “*Shaheen Bagh jaa kar hamen ye baat saaf samajh aa rahi thi ki in pradarshankariyon ka ab brainwash ho chuka hai.*”<sup>495</sup> (After going to Shaheen Bagh, we have understood that the protesters have been brainwashed.) The title of the episode with the suggestion of requiring a visa, and framing of the hashtag, #370InShaheen Bagh, cast the Shaheen Bagh protest site as the “other” through a particularly misguided reference to Jammu and Kashmir’s stripped constitutional status. The anchor portrayed the site and protesters of Shaheen Bagh as a place and people who had to be “brought back” to India.

Other comments made in the show alluded to Shaheen Bagh protest as intended towards undemocratic motives:

- *Shaheen Bagh tukde-tukde gang ka naya mukhyalay ban gaye hai.*<sup>496</sup>  
(Shaheen Bagh has become the secretariat of the *tukde-tukde* gang.)

- *Shaheen Bagh mein jo abhi ho raha hai yeh loktantra mein ek daag hai.*<sup>497</sup>  
(What is happening in Shaheen Bagh is a stain on democracy.)

490 Republic Bharat, “Puchta Hai Bharat”, 1:33 to 1:40, <https://youtu.be/FIL8atZPWjQ>, 27.12.2019.

491 Republic Bharat, “Puchta Hai Bharat”, 17:38 to 17:52, <https://youtu.be/FIL8atZPWjQ>, 27.12.2019.

492 Republic Bharat, “Puchta Hai Bharat”, 18:06 to 18:07, <https://youtu.be/FIL8atZPWjQ>, 27.12.2019.

493 Zee News, “DNA”, <https://youtu.be/JSgc0jqx-50>, 27.1.2020.

494 Zee News, “DNA”, 26:20, 27:53, <https://youtu.be/JSgc0jqx-50>, 27.1.2020.

495 Zee News, “DNA”, 37:30 to 37:36, <https://youtu.be/JSgc0jqx-50>, 27.1.2020.

496 Zee News, “DNA”, 2:48 to 2:52, <https://youtu.be/JSgc0jqx-50>, 27.1.2020.

497 Zee News, “DNA”, 38:40 to 38:44, <https://youtu.be/JSgc0jqx-50>, 27.1.2020.



The next day's (January 28, 2020) telecast continued this narrative, and ran with the text "*Shaheen Bagh ko ab khali kara denachahiye*" (Shaheen Bagh should now get emptied), and hashtag #LekarRahengeShaheenBagh.<sup>498</sup> The anchor asked the audience:

*Kya hum sab mil kar Shaheen Bagh ko tukde-tukde gang seh azad nahi kar sakte hain?*<sup>499</sup>  
(Can't all of us together free Shaheen Bagh from the *tukde-tukde* gang?)

Shaheen Bagh was again compared to Pakistan and Kashmir in a sweeping tone with generalized insinuations. The following comment was made on the show:

*Ek baat aur common hai, joh Pakistan aur Shaheen Bagh ke pradarshan kari hai, voh ek bhasha mein bolte hai...unki vichar dhara bilkul milti hai.*<sup>500</sup>  
(Another aspect that is common between Pakistan and protesters from Shaheen Bagh is that they speak the same language; their ideology is the same.)

The above-mentioned comments use "they" and "their" pejoratively with reference to some type of perceived, threatening Islamist solidarities with nothing beyond speculation offered.

The trope of Muslims as the "enemy other" was recurrent. In the episode aired on *The Debate* on February 10, 2020, titled "Anger Over Unending Shaheen Bagh Blockade" with the hashtag #ShaheenBaghExploitation, one panelist told another:<sup>501</sup>

These people want to make India into an Iraq, they want to make India into a Syria, into an Iraq and into an Afghanistan which we will never let happen. And shame on them...*Tumhe sharam aanee chahiye* (You should be ashamed). *Tum Hindustan ke dushman ho* (You are an enemy of India). *Tum Shaheen Bagh ke dushman ho* (You are an enemy of Shaheen Bagh). *Tum un auraton ke dushman ho jo sardiyon mein baithee hain* (You are an enemy of the women who are sitting in the cold).<sup>502</sup>

The panelist went on to say, "*shukr karo Allah ka ke Hindustan me reh rahe ho, kha rahe ho, pee rahe ho, aur Hindustan ke wazir-e-azam ko galiyan dete ho, shame on you.*"<sup>503</sup> (Thank Allah that you are living, eating and drinking in Hindustan, and you abuse the Prime Minister of Hindustan, shame on you.)

Another panelist shared similar views, "people of this country will never ever, never ever forgive the organic protesters of Shaheen Bagh for thrusting down a militant, radical, Islamist ideology in the name of which they have created horror and havoc on the streets of Delhi."<sup>504</sup>

In some instances, hateful content was facilitated by these news channels through an uncritical acceptance of inciting comments made by panelists invited for discussions. In other instances, provocative and inciting remarks were made by the anchors themselves.

On January 28, 2020, in an episode of *Halla Bol* (Aaj Tak), the anchor praised provocative statements made by a BJP representative.<sup>505</sup> The representative recited the statements in the form of a poem:

*Imam ka hukm hai chalo desh toden* (The Imam orders us to break the country)  
*Ye mauqa na aayega chalo desh toden* (This opportunity won't come, let's break the country)  
*Shaheen baghon me palti hai Hasrat* (These desires are nourished at various Shaheen Baghs)  
*Phir desh toote ye hoti hai kasrat* (The country should break again, this is the exercise)

498 Zee News, "DNA", <https://youtu.be/yJtWTJMdLzw>, 28.1.2020.

499 Zee News, "DNA", 1:11, <https://youtu.be/yJtWTJMdLzw>, 28.1.2020.

500 Zee News, "DNA", 4:51 to 5:03, <https://youtu.be/yJtWTJMdLzw>, 28.1.2020.

501 Republic World, "The Debate", <https://youtu.be/ju6pT12sg-U>, 10.2.2020.

502 Republic World, "The Debate", 27:57, <https://youtu.be/ju6pT12sg-U>, 10.2.2020.

503 Republic World, "The Debate", 28:45, <https://youtu.be/ju6pT12sg-U>, 10.2.2020.

504 Republic World, "The Debate", 19:32, <https://youtu.be/ju6pT12sg-U>, 10.2.2020.

505 Aaj Tak, "Halla Bol", <https://youtu.be/Hfelzrk1HQs>, 28.1.2020.

*Is aag ko ab jihaad se joden* (Let us connect this fire with *jihad*)  
*Imam ka hukm hai chalo desh toden* (The Imam orders us to break the country).<sup>506</sup>

In an episode of *Poochta Hai Bharat* (Republic Bharat) on February 5, 2020, communal statements by panelists were not discouraged by the anchor.<sup>507</sup> The panelists said, “If Hindus don't vote as Hindus, then there will be Shaheen Baghs in all Mohallas (colonies) of Delhi...Otherwise, there will be a steady crop of terrorists through Shaheen Bagh...As Hindus they should vote for the BJP.”<sup>508</sup> Another panelist stated, “*in desh ke gaddaron ko beech sadak mein goli maarni chahiye, Shaheen Bagh mein khade karke goli maarni chahiye.*”<sup>509</sup> (The traitors of this country should be shot in the middle of the streets, and should be shot in Shaheen Bagh.)

In another episode of *Halla Bol* on February 10, 2020, a panelist, who was a BJP state MLA said, “*Wo joote khayenge, aur kagaz bhi dikhayenge*”<sup>510</sup> (These protesters will be beaten and will also have to show their documents) which was followed by a remark from a panelist who said: “*Agar Hindutva ki qabar khud sakti hai to desh ke gaddaron ko goli bhi lag sakti hai*”<sup>511</sup> (If Hindutva is being sent to the grave, then the country's traitors can also be shot). The anchor did not respond to this violent content.

Once mass violence broke out in North East Delhi by February 24, in their coverage of the days of violence, some channels blamed protesters as the perpetrators behind the violence, levelling serious allegations against them.

On February 24, 2020, when *The Debate* aired on Republic TV, the host accused anti-CAA protesters of killing Head Constable, Ratan Lal.<sup>512</sup> He made this serious accusation on the very day Ratan Lal died amidst mob violence. The exact circumstances of his killing remain under investigation to date, and certainly were not known on February 24. The episode featured flashing text such as, “Rioters Kill Police Constable” followed by, “They Have Blood on their Hands”. In several statements during the episode, the anchor asserted that:

- Head Constable Ratan Lal died. He was deployed to curb the Maujpur violence. He was trying to pacify these people. They picked up a stone and hit him and they killed him. He died today. Sickeningly outrageous today. And after that they say gherao the police.<sup>513</sup>
- I think the only question they need to answer, instead of giving any reasons, can they bring Head Constable Ratan Lal back to life...Because they wanted a headline timed to an international event. They are responsible for the murder of Head Constable Ratan Lal. He died due to his injuries. Of people who they say are peaceful protesters.<sup>514</sup>

The anchor repeatedly insinuated that the killing of Ratan Lal and acts of violence were deliberately being done to coincide with the official visit of then American President Donald Trump (which took place on February 25):

This is timed to a first ever visit of an American President. This is timed to a headline. And today there is a police officer who is fighting today after being injured at 4 o' clock. Okay. Another police officer has died. We've seen the events. Today these are not protesters. They have brought out their guns, and they're on the kill.<sup>515</sup>

506 Aaj Tak, “Halla Bol”, 8:18 to 8:54, <https://youtu.be/Hfelzrk1Hqs>, 28.1.2020.

507 Republic Bharat, “Poochta Hai Bharat”, <https://youtu.be/8FP1R7xSOZI>, 5.2.2020.

508 Republic Bharat, “Poochta Hai Bharat”, 8:02 to 9:45, <https://youtu.be/8FP1R7xSOZI>, 5.2.2020.

509 Republic Bharat, “Poochta Hai Bharat”, 20:24 to 20:49, <https://youtu.be/8FP1R7xSOZI>, 5.2.2020.

510 Aaj Tak, “Halla Bol”, 1:12 to 1:14, <https://www.youtube.com/watch?v=l7w1nm-EerA>, 10.2.2020.

511 Aaj Tak, “Halla Bol”, 17:43 to 17:48, <https://youtu.be/l7w1nm-EerA>, 10.2.2020.

512 Republic World, “The Debate”, <https://youtu.be/TXBZwd2g5fE>, 24.2.2020.

513 Republic World, “The Debate”, 21:24, <https://youtu.be/TXBZwd2g5fE>, 24.2.2020.

514 Republic World, “The Debate”, 6:37, <https://youtu.be/TXBZwd2g5fE>, 24.2.2020.

515 Republic World, “The Debate”, 32:01, <https://youtu.be/TXBZwd2g5fE>, 24.2.2020.

On February 24, 2020, Zee News also mostly concentrated their coverage to propagate that a conspiracy was in play with the prime intent of maligning India before the international world during President Trump's visit.<sup>516</sup> They claimed that the “*tukde-tukde gang*” and Opposition parties were behind this. It was stated:

- *Yeh joh tasveerein dekh rahe hai, yeh achanak nahi hua...shadyantra chal rahi hai bharat ko badbam karne ki aise sammein mein jab Donald Trump bharat aaye hue hai.*<sup>517</sup>

(This picture [of violence] that you see, did not happen all of a sudden It is a conspiracy planned to malign India during Donald Trump's visit.)

- *Unke samne bharat ki chavi kharab karni ki, sari duniya ke samne Bharat ki chhavi kharab karne ki shazish hai aur iss shazish mein tukde-tukde gang, patrakar, budhi jivi aur desh ke vipaksh ke neta hai.*<sup>518</sup>

(Their plot is to malign India's image on the international stage and the *tukde-tukde gang*, journalists, intellectuals and leader of Opposition are a part of this plot.)

Beyond these sensational statements, no cogent information to back these weighty claims were given. This was similar to the narrative being presented by Republic TV. On February 25, 2020, Republic Bharat continued to project a narrative that the protesters were the ones behind the violence.<sup>519</sup> The anchor pushed the narrative that the protesters were in fact rioters by stating:

*Sharm nahi aati, jo log ab tak CAA kah rahe the...ye maine tab bhi bola tha, ye CAA wale nahi hai, ye dangai hai, inako CAA, NRC kuch pataa nahi hai.*<sup>520</sup>

(I was saying this earlier itself, these people who are talking about CAA, they are rioters, they don't know anything about the CAA, NRC.)

Also on February 25, panelists on *The Debate* (Republic TV)<sup>521</sup> made the following remarks:

- The *Nanis* and *Dadis* (grandmothers) of Shaheen Bagh are basically *jihadi* elements sitting and inciting a violent mob here.<sup>522</sup>

- This is not a protest; this is a classical definition of waging war against India. You (protesters) are burning people, you are throwing acid bombs.<sup>523</sup>

- You (protesters) are instigating violence for past 70 days.<sup>524</sup>

In these episodes aired on 25 February, when the violence was occurring at its peak, anchors and panelists were already speaking in determinative terms of supposed root causes of the violence and the group identity of its perpetrators. These statements were made without offering any basis to inspire the certitude with which they were stated. In the context that these were aired at the time of ongoing violence, voicing such allegations without substantiation would be in breach of journalistic standards especially on reporting of communal violence.

The similarity in the language and rhetoric coming out of these channels indicates that they were intent on discrediting the rapidly growing anti-CAA protests while simultaneously using communal overtones to shape a narrative. To call the protesters “rioters” and “potential terrorists” and invoke baseless parallels to sites of war like Syria delegitimized the protests while imbuing a direct communal tone. The narrative of

516 Zee News, “DNA”, <https://www.facebook.com/ZeeNews/videos/214898796324558>, 24.2.2020.

517 Zee News, “DNA”, 1:18:24 to 1:18:40, <https://www.facebook.com/ZeeNews/videos/214898796324558>, 24.2.2020.

518 Zee News, “DNA”, 1:18:40 to 1:18:59, <https://www.facebook.com/ZeeNews/videos/214898796324558>, 24.2.2020.

519 Republic Bharat, “Poochta Hai Bharat”, <https://youtu.be/vCYbUw8rYdQ>, 25.2.2020.

520 Republic Bharat, “Poochta Hai Bharat”, 4:50 to 4:58, <https://youtu.be/vCYbUw8rYdQ>, 25.2.2020.

521 Republic World, “The Debate”, <https://youtu.be/klp8peXkjjs>, 25.2.2020.

522 Republic World, “The Debate”, 23:27, <https://youtu.be/klp8peXkjjs>, 25.2.2020.

523 Republic World, “The Debate”, 34:09, <https://youtu.be/klp8peXkjjs>, 25.2.2020.

524 Republic World, “The Debate”, 39:12, <https://youtu.be/klp8peXkjjs>, 25.2.2020.

the Muslim community as the “violent other” in the context of opposition to the CAA began to be shaped from this time. The messaging seemed to be also aimed at whipping up public outrage against Shaheen Bagh. This polarized environment would only have been exacerbated when some of the channels began to irresponsibly bandy about serious allegations of protesters as culpable for the violence in North East Delhi. These allegations were made while the violence was still playing out from February 24 to 26, when nothing substantive of its origins was established.

### Smearing Anti-CAA Assertion as Islamic Radicalization

An important strand of the vilifying narrative used by these channels was to show anti-CAA protests being imbued with designs of Muslim extremism, backed by Islamic extremist groups. The language of attacking Hindus, of waging *jihad*, was used to embed the Hindu-Muslim binary with Muslims as aggressors.

An episode of *DNA* (Zee News) aired on December 26 was titled “*Kashmir se UP Pahuche Expert Patharbazo ka DNA test*”<sup>525</sup> (DNA Test of Expert Stone Pelters from Kashmir who have reached UP). The episode claimed that a range of actors – Pakistan's Inter-Services Intelligence agency (ISI), the Popular Front of India (PFI) and “expert stone pelting groups from Kashmir” – were funding and “training” anti-CAA protesters for violence, taking the examples of Delhi and UP. The anchor stated the following:

- *UP ke virodh pradarshan ke liye Kashmir ke pathar bajo ko le kar aaya gaya tha.*<sup>526</sup>  
(Stone pelters from Kashmir were brought to the protests in UP)
- *Sootro seh yeh kaha ja sakta hai ki Bharat mein hinsa phelane mein Pakistan ki khufiya agency ISI funding kar rahi hai.*<sup>527</sup>  
(As per sources, Pakistan's spy agency ISI is funding the violence being [currently] spread in India.)
- *Delhi aur UP ke hinsa ke peeche PFI, Islamic Youth Federation aur Kashmir ke pathar baj ka haath hai.*<sup>528</sup>  
(PFI, Islamic Youth Federation and Kashmiri stone pelters are behind the violence in Delhi and UP)

These significant claims were not backed by any tangible information or evidence.

The episode of *Haqiqat Kya Hai* (India TV) on January 3, 2020 portrayed Muslims, including a prominent politician, as colluding with the protesters for violence at local levels through the cover of mosques, and the protests.<sup>529</sup> The episode flashed the text, “*CAA ko radh karke bolo La Ilaha Illalla. Ek ek nara suniye pradarshan ka matlab samjhaya, Owaisi ke sheher mein bharkau loudspeaker full on hai. Dharmik naro ke piche ki planning ki brain mapping.*”<sup>530</sup> (Remove CAA and say *La Ilaha Illallah*. Listen to each slogan and listen to the meaning of the protesters. In Owaisi's town, a provocative loudspeaker is fully on. The brain mapping behind the communal slogans.)

The show's anchor posed the question, “*Modi ke dushman kaise dete hai musulmano ko tuition?*”<sup>531</sup> (How do Modi's enemies give tuitions to Muslims?) He then went on to give the following explanation:

- *Bahut gaur se in dharmic naron ko samajhiye... In naro ke peeche maksad samjhaiye... kaise apne mazhab ko khatre mein batakar Musalmano ko sadakon par sangram ke liye bhadakaya jaa raha hai.*<sup>532</sup>

525 Zee News, “DNA”, 5:49 to 5:52, <https://www.facebook.com/ZeeNews/videos/986532601733017>, 26.12.2019.

526 Zee News, “DNA”, 24:06 to 24:21, <https://www.facebook.com/ZeeNews/videos/986532601733017>, 26.12.2019.

527 Zee News, “DNA”, 26:23 to 26:32, <https://www.facebook.com/ZeeNews/videos/986532601733017>, 26.12.2019.

528 Zee News, “DNA”, 27:05 to 27:15, <https://www.facebook.com/ZeeNews/videos/986532601733017>, 26.12.2019.

529 India TV, “Haqiqat Kya Hai”, <https://www.indiatv.in/video/hakikat-kya-hai/watch-india-tv-special-show-haqikat-kya-hai-january-3-2020-681971>, 3.1.2020.

530 India TV, “Haqiqat Kya Hai”, 01:09 to 6:38, <https://www.indiatv.in/video/hakikat-kya-hai/watch-india-tv-special-show-haqikat-kya-hai-january-3-2020-681971>, 3.1.2020.

531 India TV, “Haqiqat Kya Hai”, 01:33, <https://www.indiatv.in/video/hakikat-kya-hai/watch-india-tv-special-show-haqikat-kya-hai-january-3-2020-681971>, 3.1.2020.

532 India TV, “Haqiqat Kya Hai”, 01:09 to 2:11, <https://www.indiatv.in/video/hakikat-kya-hai/watch-india-tv-special-show-haqikat-kya-hai-january-3-2020-681971>, 3.1.2020.

(Pay close attention to these slogans...understand the behind these slogans is to bring Muslims on the street in protest by telling them that their religion is under threat.)

- *Idgah mei chal raha Modi virodh...Musalmano ko uksane wali narebaazi kyon?*<sup>533</sup>

(Dissent against Modi is occurring in the Idgahs...The slogans are provoking Muslims.)

- *Chaukane wali baat ye hai Yaha mazhab bachane ke liye Musalmano ko sir pe kafan bandh ke nikalne ko kaha gaya. Jihad ka rasta apnane ke liye naujawano ko bharkaya ja raha hai.*<sup>534</sup>

(In the name of saving one's religion, Muslim youth are being provoked and influenced into accepting the path of *jihad*. And are willing to die for it.)

- *Jumme ke baad CAA ke khilaaf morcha jarur nikla.*<sup>535</sup>

(A rally against the CAA would definitely be taken out after *jummah* prayer.)

By casting protest as akin to notions of religious warfare, the show's anchor seemed intent on creating a fear psychosis in the minds of non-Muslims and driving a wedge between communities. At the same time, articulation and mobilization against the CAA by Muslims was painted as aggressive and communal.

A panelist on *The Debate* (Republic TV), aired on January 10 titled, "Who Wants to Break India Again", with the hashtag #JinnahAzadiSlogan, said:<sup>536</sup>

This is further to *bharat tere tukde honge, Inshallah, Inshallah* (India you will be broken into many bits, God willing). And that was not doctored, neither this is doctored. This is a narrative being built up. They want to build up a Caliphate here. They want to bring a new Islamic nation. And that is why Jinnah wali *azaadi* now.<sup>537</sup>

On January 16, 2020, the episode of *The Debate* (Republic TV) was focused on the central question, "Is Shaheen Bagh a Paid Protest?" with the hashtag #ProtestOnHire.<sup>538</sup> The anchor shared his views:

This is the attempt of Islamic radicalization that is going on in Shaheen Bagh. Shaheen Bagh is not a people's protest. It is political plus it is an attempt at Islamic radicalization. It is an attempt at religious polarization. If you want to protest, go to Jantar Mantar. Why do you have to be in a Muslim majority area in Delhi? This has to stop at some point of time. The whole country is fed up with this Shaheen Bagh rubbish. This McDonaldization, as I said yesterday, of the protest movement. Start a Shaheen Bagh franchise. You have some free time, start a Shaheen Bagh in Pune, start a Shaheen Bagh in Kolkata, start a Shaheen Bagh in Bengaluru. But it's now going strongly against national interest.<sup>539</sup>

The bogey of an Islamic fundamentalism aiming to destroy the country, using anti-CAA protests, and Shaheen Bagh particularly, as their *cover*, continued to be propagated on these channels.

On January 17, 2020, *The Debate* aired with the title, "Shaheen Bagh Campaign: Call off 'Political Protests'", with a hashtag #ShaheenBaghSham and printed text on the screen such as, "Anything but a Public Protest".<sup>540</sup> During the show, the anchor said:

533 India TV, "Haqiqat Kya Hai", 03:41 to 03:44, <https://www.indiatv.in/video/hakikat-kya-hai/watch-india-tv-special-show-haqikat-kya-hai-january-3-2020-681971>, 3.1.2020.

534 India TV, "Haqiqat Kya Hai", 05:52 to 6:02, <https://www.indiatv.in/video/hakikat-kya-hai/watch-india-tv-special-show-haqikat-kya-hai-january-3-2020-681971>, 3.1.2020.

535 India TV, "Haqiqat Kya Hai", 11:09, <https://www.indiatv.in/video/hakikat-kya-hai/watch-india-tv-special-show-haqikat-kya-hai-january-3-2020-681971>, 3.1.2020.

536 Republic World, "The Debate", <https://youtu.be/voc1yFvFW3Q>, 10.1.2020.

537 Republic World, "The Debate", 5:42, <https://youtu.be/voc1yFvFW3Q>, 10.1.2020.

538 Republic World, "The Debate", <https://youtu.be/K5Cu5aFTI1c>, 16.1.2020.

539 Republic World, "The Debate", 4:48, <https://youtu.be/K5Cu5aFTI1c>, 16.1.2020.

540 Republic World, "The Debate", <https://youtu.be/RCZY6kkpZml>, 17.1.2020.

- This group wants bloodshed. Thousands of Rohingya refugees are living in camps in and around Kalindi Kunj and Shaheen Bagh...You're bringing infiltrators into the protest, foreigners, threats to internal security are being provoked out there. Small children are being told that their entire life's purpose should be to assassinate Narendra Modi and Amit Shah.<sup>541</sup>
- I think it should stop now. Viewers tell me what you think. First of all, its political. Secondly it is communal. Thirdly it is being planned in Pakistan and in Lahore, the meetings were held there. Fourth it has got a lot of funding from the Middle Eastern countries.<sup>542</sup>

A panelist concurred on similar lines, "You people are helping anti-nationals, you people are helping countries which are against India like Pakistan, because these kinds of protests are being sponsored by Pakistan and Pakistan leveraging these kinds of protests to instigate the world that the government is against XYZ. But this is not true. You also know it well. That these are all stage-managed intentionally at the behest of Pakistan, being funded by Pakistan only to give a bad name to the country."<sup>543</sup> None of the claims of planning from other countries were backed up during the episode with any demonstrable evidence. The narratives being driven stood in stark contrast to the nature of protest unfolding publicly at Shaheen Bagh.

On January 27, 2020, in an episode of *The Debate* on Republic TV, titled "12 Tapes Expose 'Break India' Conspiracy", which ran with the hashtag #UniteForIndia, the anchor opened the show with:<sup>544</sup>

Ladies and gentlemen, first of all, thank you for your support for the unite for India campaign, our campaign against the Muslim supremacist Islamic radicals who are trying to create a Shaheen Bagh experiment everywhere in India. And we must call them out as Muslim supremacists because their philosophy is Muslims for Muslims.<sup>545</sup>

On January 29, *The Debate's* episode (Republic TV) ran with a hashtag #ProPakShaheenBagh; the flashing text illustrates the themes of the debate on the episode, for instance, "Pro Pak. Anti-Indian Army. Pro Violence" and "They are Openly Pro-Pakistan Now".<sup>546</sup>

The anchor made the following remarks:

Across India, there have been anti-CAA protests today. And there has been non-stop violence across the day in these so-called protests. And ladies and gentlemen, I understand why these people are now resorting to mass violence. They have been unable to prove, unable to prove let me repeat, that CAA has any impact on Indians. Muslims or otherwise. And since they have been unable to prove that, the only resort for them now is violence. They have realized now that the game and the bane of Islamic radicalization and Muslim separatism and supremacy which shows at the core of Shaheen Bagh that both have been exposed, that there are no more disguises to wear anymore. And hence the only option for them now is violence. Will all those who were encouraging the money-making racket called Shaheen Bagh take responsibility for the violence today. Why are they hiding now when innocent Indians are killed every single day. Openly pro-Pakistan, openly anti-Indian army.<sup>547</sup>

It is not clear how it could definitively be said that the CAA has no impact on Indians, "Muslims or otherwise", when the CAA still had not been implemented. The question of impact can only be gauged through the experience of implementation.

541 Republic World, "The Debate", 8:45, <https://youtu.be/RCZY6kkpZml>, 17.1.2020.

542 Republic World, "The Debate", 26:57, <https://youtu.be/RCZY6kkpZml>, 17.1.2020.

543 Republic World, "The Debate", 7:46, <https://youtu.be/RCZY6kkpZml>, 17.1.2020.

544 Republic World, "The Debate", <https://youtu.be/cCAF13OaK1Y>, 27.1.2020.

545 Republic World, "The Debate", 3:29, <https://youtu.be/cCAF13OaK1Y>, 27.1.2020.

546 Republic World, "The Debate", <https://youtu.be/HhA8zlvjUKY>, 29.1.2020.

547 Republic World, "The Debate", 0:15, <https://youtu.be/HhA8zlvjUKY>, 29.1.2020.

On February 20, 2020, another episode of *Halla Bol* (Aaj Tak), was aired with the title “*Zeher Bolenge, Zeher Gholenge!*”<sup>548</sup> (They will speak poison, they will mix/make poison). During the debate, one of the panelists said:

- *Protestors will demand algav-wad, uske baad kattar-wad, uske baad aatank-wad, uske baad Islamic State ki demand, ye bahut serious issue hai aur usko pehli stage pe hi rok dena chahiye.*<sup>549</sup>  
(Protesters will demand separatism, after that fundamentalism, then terrorism, and after that an Islamic State, this is a very serious issue and it must be stopped at the first stage itself.)
- *Akbaruddin Owaisi, Bakhtiyaar Khilji aur Mohd Ghori ko apna baap maante hain.*<sup>550</sup>  
(They consider Akbaruddin Owaisi, Bakhtiyaar Khilji and Mohd Ghori as their father figures.)

Protesters were further termed *jihadis* by the panelists. None of these comments were condemned or contested by the anchor.

It appears that these shows were striving to concoct labels for the violence they kept predicting was being conspired by anti-CAA protesters, particularly Shaheen Bagh. Latching on to Islamic radicalization served to sharpen the casting of Muslims as the “enemy other”, as well as paint Islam itself in a violent light.

### **Delegitimizing Protests through Unsubstantiated Conspiracy Theories**

These channels further framed the protest movement as a homegrown conspiracy with violent motives, hatched either by the Opposition, or by international actors. Within this, there was also an attempt to frame the protests as anti-Modi as a conspiracy aimed to discredit the Prime Minister and exaggerate the dangers posed by the CAA-NRC.

On December 19, 2019, an episode of *Haqiqat Kya Hai* (India TV) was titled as, “*Modi ka Dushman ‘Danga Brigade’...Darr ke Aage Siyaasat Hai*” (Modi’s enemy, the riot brigade...There is politics beyond fear).<sup>551</sup> The flashing text on screen carried the messaging further with direct references signaling protests to be against Modi. The trend of equating the protests with “riots” appears here too:

- *Modi ke saare dushman active, samjho na bhaijaan.*<sup>552</sup>  
(All of Modi’s enemies are active, don’t you understand, brother.)
- *Mukhota musalman ka dimaag Modi virodhi morche ka.*<sup>553</sup>  
(Behind the mask of Muslim is the mind of an anti-Modi coalition.)
- *Modi ke khilaaf danga organised and sponsored.*<sup>554</sup>  
(The riots against Modi are organized and sponsored.)

The anchor of the show further went on to state the following:

- *All India anti-Modi morcha banakar desh bhar mei pradarshan shuru.*<sup>555</sup>  
(They’ve created an all-India anti-Modi campaign and begun protests across the country.)

548 Aaj Tak, “Halla Bol”, <https://youtu.be/OGvTK7TIJKA>, 20.2.2020.

549 Aaj Tak, “Halla Bol”, 19:46 to 19:56, <https://youtu.be/OGvTK7TIJKA>, 20.2.2020.

550 Aaj Tak, “Halla Bol”, 16:30 to 16:35, <https://youtu.be/OGvTK7TIJKA>, 20.2.2020.

551 India TV, “Haqiqat Kya Hai”, <https://www.indiatv.in/video/hakikat-kya-hai/watch-india-tv-special-show-haqikat-kya-hai-december-19-2019-679304>, 19.12.2019.

552 India TV, “Haqiqat Kya Hai”, 00:43, <https://www.indiatv.in/video/hakikat-kya-hai/watch-india-tv-special-show-haqikat-kya-hai-december-19-2019-679304>, 19.12.2019.

553 India TV, “Haqiqat Kya Hai”, 00:53, <https://www.indiatv.in/video/hakikat-kya-hai/watch-india-tv-special-show-haqikat-kya-hai-december-19-2019-679304>, 19.12.2019.

554 India TV, “Haqiqat Kya Hai”, 00:55, <https://www.indiatv.in/video/hakikat-kya-hai/watch-india-tv-special-show-haqikat-kya-hai-december-19-2019-679304>, 19.12.2019.

555 India TV, “Haqiqat Kya Hai”, 8:32 to 8:36, <https://www.indiatv.in/video/hakikat-kya-hai/watch-india-tv-special-show-haqikat-kya-hai-december-19-2019-679304>, 19.12.2019.

- *Har rajya mei Modi virodhi dal pradarshan mei shamil kiya gaya.*<sup>556</sup>  
(In every state, they included this collective of anti-Modi protesters.)
- *Modi virodhi morche me musalmano ko Modi ka dar dikhaya.*<sup>557</sup>  
(They showed Muslims the fear of Modi in these marches.)
- *CAA ke bahane Narendra Modi par nishana saadh raha hai.*<sup>558</sup>  
(Using CAA as an excuse, a target is being hung around Modi.)
- *Muslim + afwah = All India anti-Modi movement.*<sup>559</sup>  
(Muslims + rumours = an all- India anti-Modi movement.)
- *Issme musalman hai, aur parde ke peeche pura sanchalan anti-Modi gut kar raha hai.*<sup>560</sup>  
(Muslims are involved, but behind the curtain, the whole operation is being run by the anti-Modi groups.)

This indicates how the protests were framed as being against Modi, virtually singularly, with blame placed on Muslims working with an unidentified group vilified as “the anti-Modi chain”. This narrative discredited the anti-CAA protests by projecting them as a tool by which the Opposition could target the Prime Minister, insinuating this was the actual intent.

In an episode of DNA (Zee News) on December 25, the anchor accused the “*tukde-tukde gang*” of attempting to promote and motivate violence through social media, seemingly in cohort with anti-CAA protesters on the ground.<sup>561</sup> The anchor stated the following:

- *Is desh ka tukde-tukde gang ek sau chattis crore Bharatiyon ko gumrah karne ki puri koshish kar rahe hai.*<sup>562</sup>  
(The *tukde-tukde* gang of our country is trying to fool 136 crore Indians.)
- *Is gang ke sadasya jo sadakon par hi patharbaji nahi karte, ab woh social media mein bhi wahi kar rahe hai.*<sup>563</sup>  
(The members of this gang, who were previously stone pelters on the street, are now doing the same on social media.)
- *Virodh pradarshan ke naam par desh mein hinsa faelane ki sazish mein do tarike ke log shamil hai. Woh log jo haatho mein lathi, pathar, petrol bomb le kar sadko mein buson aur trainon mein aag lagayi, police par petrol bomb feki aur shehar aur gaon ke logo ko pareshan kiya... Dusre woh log the, joh hinsa faelane ke liye pathar ka nahi, vicharokasaharaliya, yehsocial media aurkisi aur manchseh vicharikhinsafaelane ka kam karrahe hai.*<sup>564</sup>  
(There are two types of people involved in the conspiracy to spread violence. There are those who carry sticks, stones, and petrol bombs on the streets, burn down buses and trains, throw petrol bombs on the police, and disrupt the lives of city and village people. The other type of persons spread violence not through stones, but by circulating violent thoughts on social media and other platforms.)

556 India TV, “Haqiqat Kya Hai”, 8:36 to 8:39, <https://www.indiatv.in/video/hakikat-kya-hai/watch-india-tv-special-show-haqikat-kya-hai-december-19-2019-679304>, 19.12.2019.

557 India TV, “Haqiqat Kya Hai”, 8:39 to 8:43, <https://www.indiatv.in/video/hakikat-kya-hai/watch-india-tv-special-show-haqikat-kya-hai-december-19-2019-679304>, 19.12.2019.

558 India TV, “Haqiqat Kya Hai”, 8:54 to 8:58, <https://www.indiatv.in/video/hakikat-kya-hai/watch-india-tv-special-show-haqikat-kya-hai-december-19-2019-679304>, 19.12.2019.

559 India TV, “Haqiqat Kya Hai”, 10:02 to 10:15, <https://www.indiatv.in/video/hakikat-kya-hai/watch-india-tv-special-show-haqikat-kya-hai-december-19-2019-679304>, 19.12.2019.

560 India TV, “Haqiqat Kya Hai”, 10:15 to 10:22, <https://www.indiatv.in/video/hakikat-kya-hai/watch-india-tv-special-show-haqikat-kya-hai-december-19-2019-679304>, 19.12.2019.

561 Zee News, “DNA”, <https://www.facebook.com/ZeeNews/videos/766021393896581>, 25.12.2019.

562 Zee News, “DNA”, 0:00 to 0:08, <https://www.facebook.com/ZeeNews/videos/766021393896581>, 25.12.2019.

563 Zee News, “DNA”, 1:19 to 1:26, <https://www.facebook.com/ZeeNews/videos/766021393896581>, 25.12.2019.

564 Zee News, “DNA”, 22:14 to 22:33, <https://www.facebook.com/ZeeNews/videos/766021393896581>, 25.12.2019.



There is no information on who makes up the *tukde-tukde* gang.

On January 3, 2020, an episode of *Poochta Hai Bharat* of Republic Bharat castigated the Opposition for playing politics around the CAA.<sup>565</sup> It insinuated that the Opposition encouraged violence. The episode ran with the following titles:

*CAA pe vipaksh ka jhoot benakaab...jhoot ke dam par vipaksh ki raajneeti...hinsa failayi to hisaab do.*  
(The Opposition's barefaced lies on the CAA...The Opposition's politics are on the basis of lies...Be accountable for the violence spread.)

Flashing text during the show referred to Pakistanis and Bangladeshis as part of those inciting violence without any evidence to back this claim, and stated, "*Pakistan se aaye desh jalane wale...dilli hinsa me 15 Bangladeshi.*" (People from Pakistan have come to burn the country...15 Bangladeshis present in the Delhi violence.)

On January 4, 2020, the *India Upfront* (Times Now) episode titled "Are the CAA Protests an anti-Modi Conspiracy to Misdemean Muslims?" ran with the hashtag #CAAAntiModiConspiracy.<sup>566</sup> A panelist said:

This yet again exposes these anti-CAA protesters for what they really are. Illogical, irrational in Modi hatred, they have just absolutely gone berserk, and astoundingly hypocritical. They know as you also said, and as we have proved over the last one month, in 2012 and 2015, the Congress and the Communists demanded the exact same CAA, wherein Bangladeshi minorities, specifically non-Muslims, were to be given Indian citizenship. They know they were completely silent for 70 years, when lakhs of Hindu refugees from what was then West Pakistan ran for their lives and settled in Kashmir but were denied citizenship, jobs, dignity, basic human rights, because of Article 370. They know that the CAA is not about Indian Muslims at all. And yet, they want India to burn to the tune of supremacists and bigoted chants like '*la ilaha illallah*' and '*Hinduon se Azaadi*', invoking the notion of some God-granted '*rishta*'. Then scared, they are exposing themselves, they start singing the national anthem.<sup>567</sup>

On January 15, 2020, an episode of *The Debate* (Republic TV) was aired with the title "Congress-Pakistan hold CAA meet in Lahore?" and the hashtag #LahoreConspiracy.<sup>568</sup> Printed text on the screen read, "Lahore to Shaheen Bagh via ISI?". During the show, the anchor stated:

Please understand the dangerous mind that is planning this. They are making Shaheen Bagh into a franchise...And they are building Shaheen Bagh as a phrase. And I was recently told they have started saying, Shaheen Bagh of Kolkata, Shaheen Bagh of Bangalore, they want to have Shaheen Bagh of Pune. They want to create a Shaheen Bagh political business model supported by the Pakistanis. And then they want to say *Pune mein ek Shaheen Bagh shuroo karo, Kolkata mein Shaheen Bagh shuroo karo. Aur wahan pei sare Musalmano ko bulao.* Call all the Muslims there and tell the Muslims, many of whom may not be educated, many of whom may not have the facts, psyche the Muslims, tell the Muslims you are going to lose your citizenship. Lie to them, use them, blatantly use them, provoke them, and get people, pay them 500 rupees, get them everyday...This is a franchise model, it's a franchise model ladies and gentlemen, we should all beware. We should fight this.<sup>569</sup>

Beyond insinuations, these tremendous claims of a larger conspiracy planned by the Opposition, foreign players, and Muslims to destabilize the Modi government and the country were not backed by any objective information. Muslim protesters were reported as being ill-informed about the law and misguided by people

565 Republic Bharat, "Poochta Hai Bharat", <https://youtu.be/i4eiEeXluNg>, 3.1.2020.

566 Times Now, "India Upfront", <https://www.timesnownews.com/videos/times-now/india-upfront/shocking-facts-out-are-caa-protests-an-anti-modi-conspiracy-to-misdemean-muslims-india-upfront/49862>, 4.1.2020.

567 Times Now, "India Upfront", 4:03, <https://www.facebook.com/Timesnow/videos/1341828802681152>, 4.1.2020.

568 Republic World, "The Debate", <https://youtu.be/u1bBZQTMk9Y>, 15.1.2020.

569 Republic World, "The Debate", 21:00, <https://youtu.be/u1bBZQTMk9Y>, 15.1.2020.

acting against the nation's interests. Of particular note is the type of language being constantly repeated to manipulate public opinion to a certain slant. In the absence of cogent substantiation of any kind, the channels seemed to be airing groundless opinions that were aimed to malign the protests.

### **Calls to Forcibly Shut Down Anti-CAA Protests**

From about mid-January 2020, calls for the closure of the Shaheen Bagh protest site were made on some shows. Following a protest by residents of Sarita Vihar in Delhi demanding the removal of police barricades in their neighborhood (ostensibly placed because of the neighboring sit-in protests), an episode of *The Debate* (Republic TV) of January 21, 2020 whipped up a Hindu-Muslim narrative between Sarita Vihar and Shaheen Bagh, casting Shaheen Bagh as anti-Hindu.<sup>570</sup> Titled “Sarita Vihar's SOS not heard at Shaheen Bagh?” with the hashtag #IndiaWithSaritaVihar, the episode carried this as flashing text, “A call for help from the citizens.”<sup>571</sup> The anchor made the following remarks:

- Not far from Shaheen Bagh in Delhi is a colony called Sarita Vihar. Sarita Vihar is large residential colony whose hardworking tax-paying citizens have had their lives turned upside down for over a month. The children in Sarita Vihar have been terrorized and traumatized by the violent protests unending at Shaheen Bagh. All the roads are blocked all the time by the politicians and violent protesters at Shaheen Bagh. Anti-nationals and members of the *tukde-tukde* gang mock these people of Sarita Vihar, they laugh at them, and one of them said today on Twitter that till 370 is not brought back in Kashmir, the people of Sarita Vihar and other parts of Delhi must be prepared to pay and must be prepared to suffer. Shaheen Bagh, which is a useful epicenter of an anti-Hindu, anti-India, money guzzling, opportunistic and entirely political movement. Why is Shaheen Bagh, where the worst of communal pro-Jinnah statements are made, fashionable? And why is Sarita Vihar where not one resident has done anything wrong not even an afterthought? My hashtag tonight is not just for the people of Sarita Vihar, my hashtag tonight is for the vast suffering and silent majority of right-thinking citizens in India. It is time for you to wake up. If there's one group standing there for the violence in Shaheen Bagh, then I request all viewers tonight you stand by Sarita Vihar. And Sarita Vihar is only a metaphor tonight for people suffering all over Delhi, for people suffering all over the country with this nonstop violence.<sup>572</sup>
- This entire area of Sarita Vihar is being terrorised. Everybody says the place is hijacked. And they say if you speak one word they say that we will come to your house in Sarita Vihar and attack you.<sup>573</sup>

With aggressive, accusatory language towards Shaheen Bagh, the anchor clearly pits the two areas against each other, and implicitly two communities. While there is no direct call for removal of Shaheen Bagh, the narrative is laced with the insinuation particularly in using language such as Sarita Vihar being “terrorized” and “hijacked”.

The study picked up instances of mid-February 2020 where muted calls to violence against protesters were made. These were couched as necessary to *prevent* riots or mass violence the protesters may be hatching.

In an episode aired on February 17, 2020, on *Poochta Hai Bharat* (Republic Bharat), the anchor made the following remarks:

*“Is desh ki janta Shaheen Bagh ke khilaf hai...dharna band karna padega warna ukhaade jaoge...jab tak dange na ho, ye log chup nahi honge, ham dange nahin hone denge.”*<sup>574</sup>

570 ANI, “Residents of Delhi's Sarita Vihar protest to remove barricades due to CAA, NRC demonstrations”, *Business Standard*, 12 January 2020: <https://www.business-standard.com/multimedia/video-gallery/general/residents-of-delhi-s-sarita-vihar-protest-to-remove-barricades-due-to-caa-nrc-demonstrations-97701.htm>.

571 Republic World, “The Debate”, <https://youtu.be/BGLa6Dq9Cfc>, 21.1.2020.

572 Republic World, “The Debate”, 0:54, <https://youtu.be/BGLa6Dq9Cfc>, 21.1.2020.

573 Republic World, “The Debate”, 14:33, <https://youtu.be/BGLa6Dq9Cfc>, 21.1.2020.

574 Republic Bharat, “Poochta Hai Bharat”, 43:00 to 43:07, [https://youtu.be/\\_3X517Gj8vU](https://youtu.be/_3X517Gj8vU), 17.1.2020.

(The people of this country are against Shaheen Bagh...You'll have to stop the protests or else you'll be uprooted...Until there are riots, these people won't shut up, we will not let riots take place.)

Another episode of *Poochta Hai Bharat* ran with the title “*Shaheen Bagh ke Bahane Hinduon ko Bhadkaya Ja Raha Hai*” (Hindus are being provoked on account of Shaheen Bagh).<sup>575</sup> In the episode, which was telecast on February 20, 2020, three days before violence broke out in North East Delhi, the anchor made the following remarks:

- *Kya nagrikta kanoon ke naam danga karaane ki dhamki?*<sup>576</sup>  
(Are threats of riots being made on the basis of the citizenship law?)
- *Shaheen Bagh ke bahaane Hinduon ko dhamkaya jaa raha hai?*<sup>577</sup>  
(Are people being threatened in the name of Shaheen Bagh?)
- *Musalmano ko bhadkaakar desh ke batware ki saazish?*<sup>578</sup>  
(Are Muslims being provoked with a conspiracy to break up the country?)
- *Kya voh Shaheen Bagh ke aad men dange ki dukaan kholanaa chahte? In logon ne pahale sadak jam karaayaa, sarkar aur Supreme Court ke khilaf khada honaa sikhaya, vahi log ab dange kaa plan taiyaar kar rahe hain.*<sup>579</sup>  
(Are they wanting to commit riots on the pretext of Shaheen Bagh. Firstly, they organized road blocks, then they mobilized people to stand against the government and the Supreme Court, and now the same people are planning riots.)

The panelist on the show also made provocative remarks such as, “*Musalman hi dange karte hai desh me*”<sup>580</sup> (Only Muslims cause riots in the country) and “*dangaiyon ko goli marni chahiye*”<sup>581</sup> (Rioters should be shot).

It is alarming that these calls to violence were made on televised shows aired to millions of viewers, with no censure or consequence for those making them. This indicates they may have been accorded tacit credence.

## Leaked Allegations and Media Trials

Petitions before courts identified a further concern relating to media coverage, which extended well past the days of the North East Delhi violence. Two persons accused in the violence cases petitioned the Delhi High Court seeking directions against the police from leaking allegations relating to them to the media, pending investigation. It was also pleaded that media ran virtual “trials” in a sensationalist media environment.

In her petition, Devangana Kalita alleged that the Crime Branch of Delhi Police had been leaking selective information to the media. The information pertained to allegations and evidence collected against her.<sup>582</sup> The crux of her petition stemmed from a “Brief Note” (dated June 2, 2020) that was found to have been drafted and circulated by the Delhi Police to various media agencies. The Court in its Order in *Devangana Kalita v. Delhi Police*<sup>583</sup> provides an extensive background to the controversy. In the *note*, the police shared that they would be filing chargesheets in two Delhi violence cases on that day, of which one was the “Jaffrabad riots case” in FIR No. 50/2020. The *note* disclosed the names of two women belonging to the group *Pinjra Tod* and alleged they were actively involved in hatching a conspiracy to cause riots near the Jaffrabad Metro Station as well as being part of a larger conspiracy. Her lawyer submitted that Kalita's right to a fair trial was

575 Republic Bharat, “Poochta Hai Bharat”, 1:46 to 1:51, <https://youtu.be/2Cv33Qt5tUc>, 20.1.2020.

576 Republic Bharat, “Poochta Hai Bharat”, 1:40 to 1:44, <https://youtu.be/2Cv33Qt5tUc>, 20.1.2020.

577 Republic Bharat, “Poochta Hai Bharat”, 1:46 to 1:51, <https://youtu.be/2Cv33Qt5tUc>, 20.1.2020.

578 Republic Bharat, “Poochta Hai Bharat”, 1:53 to 1:58, <https://youtu.be/2Cv33Qt5tUc>, 20.1.2020.

579 Republic Bharat, “Poochta Hai Bharat”, 3:14 to 3:22, <https://youtu.be/2Cv33Qt5tUc>, 20.1.2020.

580 Republic Bharat, “Poochta Hai Bharat”, 31:06 to 31:20, <https://youtu.be/2Cv33Qt5tUc>, 20.1.2020.

581 Republic Bharat, “Poochta Hai Bharat”, 32:12 to 32:21, <https://youtu.be/2Cv33Qt5tUc>, 20.1.2020.

582 See Writ Petition filed in *Devangana Kalita v. Delhi Police*, WP (Cr.) No. 898/2020, Delhi High Court.

583 *Devangana Kalita v. Delhi Police*, 2020 SCC OnLine Del 867.

prejudiced, and her right to be presumed innocent was extinguished.<sup>584</sup> She contended that several print, TV and social media sources branded her as guilty by relying on the allegations in the note.<sup>585</sup>

On June 10, 2020, the High Court restrained the Delhi Police from “issuing any such statements or circulating information regarding allegations and evidence allegedly collected against the petitioner or other accused, to any person, including the media or on social media platforms.”<sup>586</sup> Notably, the Court barred the police from circulating any statements or information pertaining not only to the petitioner (Devangana Kalita), but also to “other accused”.

At this initial stage, the Court called on the DCP Crime Branch to disclose the genesis of the circulated information, stating the following:

The Concerned DCP of the Crime Branch is directed to file a personal affidavit affirming if any such information has been circulated by officials of the Crime Branch to third persons, journalists or on social media.<sup>587</sup>

The Delhi Police later disclosed to the Court that they had issued and circulated the note. In its final judgment in Devangana's case dated July 27, 2020, while the High Court refused to set aside the “Note”, it directed the Delhi Police “not to issue any further communication naming any accused or any witness till the charges, if any, are framed and the trial is commenced”.<sup>588</sup>

The Delhi Police argued that Devangana and her colleagues engaged in a media campaign to refute Delhi Police's accusations against her, and the note was circulated “to defend the reputation and to maintain public trust in the Delhi Police”.<sup>589</sup> The Court responded by clarifying the difference between an accused person challenging the allegations against them and an investigating body publicly pronouncing the accused guilty before trial and held the following:

It is also averred in the affidavit that the petitioner could not make any grievance of being subjected to a media trial since she and the members of her group had started a media campaign/trial in her favor to gain sympathy and generate public opinion against the respondent investigating agency. It is averred that she cannot now be heard to be aggrieved by a rebuttal and factual explanation of real and true facts. This averment is based on an erroneous premise that merely because the sympathisers of the petitioner have issued messages on social media that she is being maliciously persecuted or demanded her release It would entitle or justify the investigating agencies to proclaim that the petitioner is guilty of offences even at the stage where the investigation is not complete. There is a cardinal difference in attempting to influence formation of an opinion that an accused is not guilty and the state attempting to influence an opinion to the contrary. An expression of an opinion that an accused is not guilty does not destroy the presumption of innocence that must be maintained till an accused is tried and found guilty of an offence. A media campaign to pronounce a person guilty would certainly destroy the presumption of innocence. The approach that it would be justified to fuel a media trial merely because the sympathizers of the accused are proclaiming his/her innocence, cannot be countenanced.<sup>590</sup>

The Court further noted that:

Selective disclosure of information calculated to sway the public opinion to believe that an accused is guilty of the alleged offence; to use electronic or other media to run a campaign to besmirch

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584 Paras 9-13, Note 583.

585 Para 11, Note 583.

586 Para 11, Note 583.

587 Para 9, Note 583.

588 Para 68, Note 583.

589 Para 18, Note 583.

590 Para 25, Note 583.

the reputation or credibility of the person concerned; and to make questionable claims of solving cases and apprehending the guilty while the investigations are at a nascent stage, would clearly be impermissible. This is not only because such actions may prejudicially affect a fair trial but also because it may, in some cases, have the effect of stripping the person involved of his/her dignity or subjecting him/or her to avoidable ignominy.<sup>591</sup>

Similarly, Asif Tanha, also an accused, in *Asif Iqbal Tanha v. State of NCT of Delhi*,<sup>592</sup> expressed that he was aggrieved by various news reports stating that he had confessed to organizing and inciting communal riots that occurred in North East Delhi. The Petition remains pending before the Delhi High Court.

## Conclusion

The analysis above reveals and substantiates the recurring narratives being projected by these shows/channels during the period studied in this report. Anti-Muslim prejudice is a running thread through the conjoined narratives attempting to cast anti-CAA protesters, Shaheen Bagh particularly, as conspiratorial and violent. Expressions of prejudice, stereotypes, hyperbole, and baseless comparisons underpinned the claims made.

The open accusations of criminality made against anti-CAA protesters, first as a block, and then against individuals, were highly irresponsible, particularly given the extent to which accusations were shaped and spread. In a signal of the gravity, the Delhi High Court was compelled to give stern warnings against the conduct of any kind of “media trial” and directed the police to stop leaking documents or leads in cases concerning individuals to media sources.

The language of anchors and panelists, and the phrasing of the visual tools on these shows, reveal the antagonistic messaging and sensationalist style. The analysis above illustrates how anchors and panelists used insulting, pejorative words – terrorist, *jihadis*, *dangaiyon* (rioters), traitors – to describe Muslims as violent and anti-national. Anchors and panelists repeatedly referred, dismissively, to Muslims as “they” or “these people”, alluding to a supposed unified “they” as a religious block with designs against Hindus or the country. In tandem with hostility towards the Muslim community was the equation of the supposedly violent and conspiratorial nature of the anti-CAA protest movement and protesters. Again, antagonistic terms were coined and repeated – “*tukde-tukde gang*”, “*danga brigade*”. There were repeated instances where panelists used such offensive terms or expressed calls for violence, with no rebuttal from the anchors to challenge misrepresentations or denounce the violent calls.

The titles, flashing text and hashtags used in the episodes provide further evidence of the themes identified and are also telling of semantic tools being used to shape and reinforce problematic messaging. Many episode titles were phrased as rhetorical questions. The content of titles and flashing text were sensationalist in tone and geared to provoke viewers. As has been pointed out, hashtags too were sensationalist in tone, often offensive and misleading in facts. They added to the narratives being shaped for repetition and consumption on social media.

Further, there was a fundamental disjunct between the narratives of violence, conspiracy and Islamic radicalization being pushed by these shows/channels, and the publicly stated positions of the protest movement. An honest interaction with the positions of the protest movement would have necessitated recognizing that the protesters were opposing CAA-NRC for making their citizenship rights insecure. The refusal to engage with the stated position of the protests also prevented these channels from providing an informed and journalistically defensible critical commentary on different facets of the protests, if that was the channels’ intended objective.

The uncanny similarity in rhetoric, messaging and even semantic style across these shows/channels is revealing. Whipping up an enraged environment, planting ungrounded fears of the anti-CAA protests, and

<sup>591</sup> Para 51, Note 583.

<sup>592</sup> Para 3, Order dated 24.08.2020, *Asif Iqbal Tanha v. State of NCT of Delhi*, WP (CrI.) 1292/2020, Delhi High Court.

creating vindictiveness against the Muslim community, where a forceful end to the protests may appear valid, appear to be the larger outcomes being pursued.

Historically, violence has remained a troubling feature of mass protests, and other form of mobilizations. Media reporting on it needs to be nuanced and responsible, and oriented by facts that shed light on all elements that have contributed to violence, including the use of excessive and violent force by the police. A sensationalist discourse, aimed at stigmatizing the otherwise legitimate features of a cause, serve to make media channels a party to the conflict. This encourages an environment of vigilantism or even create permissive conditions for high-handed state responses. It is critical that news organizations strictly follow journalistic rules of rigor and objectivity in reporting on violence of any kind, and refrain from projecting generalized judgments that malign one group or community. The failure of the existing regulatory frameworks to act as a check is starkly exposed through this analysis.

# 6. Social Media as a Vehicle for Hate Speech

This chapter draws from examples within earlier chapters of this report which demonstrate use of social media platforms to spread hate speech against Muslims. It also discusses the unique set of challenges presented by the proliferation of social media.

## Regulation of Harmful Content on Social Media

The advent of online social media as a seamless part of daily life has become a reality with millions using social media platforms to share, like, tweet, and update content on platforms such as Facebook, Twitter, YouTube, and others. Social media platforms also provide messaging services between people, such as on Facebook and Twitter, or exclusively on WhatsApp (owned by Facebook). India is known to have the world's highest numbers of WhatsApp and Facebook users. YouTube (owned by Google) and TikTok are two other hugely popular social media platforms used for posting and watching videos. The multiplier effect, in terms of reach and influence, is staggering.

Social media occupies a space that is unique and unprecedented in modern life, which does not quite fit the traditional media landscape. A social media platform is not a journalistic platform as it is not an organization of reportage. It is a platform used by individuals and groups to generate and share content of different kinds, which can span information, ideas, previously published content, opinions, or videos. The distinctive nature of social media is its decentralization – anyone can be a generator and a consumer of content, and the scale of dissemination can be extremely widespread. While this brings unparalleled autonomy in terms of content creation and distribution, it also poses serious questions about how to approach regulation of harmful, hateful, and inaccurate content, balanced against digital rights and freedom of expression.

This is further complicated by the use of algorithms driving social media platforms, which are designed to maximize users' engagement with content. The algorithms operate to specifically influence a user's perception by directing them to the same line of content they have clicked on in the past, even if it is harmful content. Thus, depending on consumer patterns, algorithms can perpetuate the consumption of fake news, hate speech or intolerant content.<sup>593</sup>

While social media platforms such as Facebook, Twitter and YouTube, have standards and enforcement mechanisms to regulate different forms of harmful content<sup>594</sup>, it is becoming increasingly evident that these are not adequate to guard against destructive and harmful usage.

### Spread of Hate on Facebook

Facebook is a case in point. Internal Facebook documents released by whistleblowers in 2021 flag the platform's grossly deficient regulation of harmful content, including hate speech, misinformation, and speech inciting violence.<sup>595</sup> With India as Facebook's largest market, users here are particularly vulnerable.

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593 Reportedly, senior leadership at YouTube and Facebook have ignored their own staff and researchers' warnings that internal algorithms have the effect of pushing out harmful content and require stronger regulation, as to not limit users' engagement. See Mark Bergen, "YouTube Executives Ignored Warnings, Letting Toxic Videos Run Rampant", *Bloomberg*, 2 April 2019: <https://www.bloomberg.com/news/features/2019-04-02/youtube-executives-ignored-warnings-letting-toxic-videos-run-rampant>; Keach Hagey and Jeff Horwitz, "Facebook Tried to Make Its Platform a Healthier Place. It Got Angrier Instead", *The Wall Street Journal*, 15 September 2021: <https://www.wsj.com/articles/facebook-algorithm-change-zuckerberg-11631654215>.

594 Facebook's Community Standards: <https://transparency.fb.com/en-gb/policies/community-standards>; Twitter's Hateful Conduct Policy: <https://help.twitter.com/en/rules-and-policies/hateful-conduct-policy>; YouTube's Community Guidelines: <https://support.google.com/youtube/answer/9288567>.

595 Jeff Horwitz, "The Facebook Files: A Wall Street Journal investigation", *The Wall Street Journal*, <https://www.wsj.com/articles/the-facebook-files-11631713039>; Jane Wakefield, "Facebook staffer sends 'blood on my hands' memo", *BBC*, 15 September 2020: <https://www.bbc.com/news/technology-54161344>.

A 2019 report by an independent civil society organization, based on monitoring of hate speech on Facebook India over six months, state their “most important finding” in the following terms:

Our most important finding is that, without question, hate speech targeting Indian caste, religious, and gender/queer minorities is the most rampant across Facebook. Outside of direct slurs, we found a consistent set of disturbing content that includes discriminatory posts and clear escalation in calls for violence against minorities.<sup>596</sup>

Within the different categories of hate speech, Islamophobic hate speech (37 percent) was found to be the most prevalent in this study. Notably, the months after December 2019 during the anti-CAA protests have been flagged by Facebook researchers as a period in which inflammatory content, mostly targeted at Muslims, rose by 300 percent on the platform.<sup>597</sup>

In terms of enforcement, Facebook and YouTube claim that their artificial intelligence (AI) technology is able to detect and remove the majority of harmful content almost immediately, before it is seen.<sup>598</sup> However in the documents released in 2021, Facebook’s own engineers conclude that AI systems remove only about three to five percent of hate speech content and less than one percent of content that Facebook classifies as violent and inciting.<sup>599</sup>

By Facebook’s own admission, the platform is unable to cope with India’s linguistic diversity when it comes to regulation of content. Of India’s 22 officially recognized languages, Facebook provides its platform in 20 Indian languages.<sup>600</sup> A Facebook representative stated to the Wall Street Journal that Facebook’s AI systems have the capacities to screen material in only five Indian languages, including Hindi and Bengali, and have human reviewers in more languages.<sup>601</sup>

Furthermore, the independence of Facebook’s internal review processes has also come under increased scrutiny. For instance, Facebook researchers in an internal report highlighted that most content by users, groups and pages related to the RSS is “never flagged” because of deficiencies in the AI systems.<sup>602</sup> Of the 20 Indian languages available on Facebook, the company has fact checkers for only 11.<sup>603</sup> External research has also found that removal of harmful content by Facebook India is not necessarily sustained. The 2019 study referenced above, which monitored hate speech on Facebook India for six months, found that while Facebook claims it reviews and responds to harmful content reported to it within 24 hours, Facebook India took an average of 48 hours to respond. They received no response to 11 percent of posts reported. The study also found that 43 percent of initially removed posts were restored on the platform after about 90 days from the date of reporting, which the researchers view as lowering the actual rate of removal from 12 percent to 6.8 percent. All of the restored posts they studied were Islamophobic posts.<sup>604</sup>

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596 Equality Labs, 2019, *Facebook India: Towards the Tipping Point of Violence: Caste and Religious Hate Speech*, pg. 23: <https://www.equalitylabs.org/facebookindiareport>.

597 Newley Purnell and Jeff Horwitz, “Facebook Services Are Used to Spread Religious Hatred in India, Internal Documents Show”, *The Wall Street Journal*, 23 October 2021: <https://www.wsj.com/articles/facebook-services-are-used-to-spread-religious-hatred-in-india-internal-documents-show-11635016354>.

598 Detecting violations available at <https://transparency.fb.com/en-gb/enforcement/detecting-violations>; Gerrit De Vynck, “YouTube says it’s getting better at taking down videos that break its rules. They still number in the millions”, *The Washington Post*, 6 April 2021: <https://www.washingtonpost.com/technology/2021/04/06/youtube-video-ban-metric>.

599 Deepa Seetharaman, Jeff Horwitz and Justin Scheck, “Facebook Says AI Will Clean Up the Platform. Its Own Engineers Have Doubts.”, *The Wall Street Journal*, 17 October 2021: <https://www.wsj.com/articles/facebook-ai-enforce-rules-engineers-doubtful-artificial-intelligence-11634338184>.

600 Scroll Staff, “Delhi violence: Facebook has fact-checkers for only 11 of 20 Indian languages, official tells panel”, *Scroll.in*, 19 November 2021: <https://scroll.in/latest/1010932/delhi-violence-facebook-has-fact-checkers-for-11-of-20-indian-languages-top-official-tells-panel>.

601 Purnell and Horwitz, 23 October 2021, Note 597.

602 Purnell and Horwitz, 23 October 2021, Note 597.

603 Scroll Staff, 19 November 2021, Note 600.

604 Equality Labs, 2019, pg. 24, Note 596.



### Fueling Violence: The Case of WhatsApp

The use of WhatsApp in India, the peer-to-peer messaging application, has also been found to foment societal divisions and amplify hate speech. A study by the Media and Communications department of the London School of Economics was commissioned by WhatsApp itself to conduct research on the role of WhatsApp messages in the spread of mob violence and lynchings in India since 2015. The study found that even where victims of lynchings may have been targeted for different reasons, a common thread was the use of messaging applications like WhatsApp to “spread lies about the victims, and use misinformation (fake news) to mobilize, defend, and in some cases to document and circulate images of their violence”.<sup>605</sup> Prejudice against certain communities was found to be a fundamental cause for violence. A key finding of the study in this respect is as follows:

A key finding is that in the case of violence against a specific group (Muslims, Christians, Dalits, Adivasis, etc.) there exists **widespread, simmering distrust, hatred, contempt and suspicion towards Pakistanis, Muslims, Dalits and critical or dissenting citizens** amongst a section of rural and urban upper and middle caste Hindu men and women. WhatsApp users in these demographics are predisposed both to believe disinformation and to share misinformation about discriminated groups in face-to-face and WhatsApp networks.<sup>606</sup> (Emphasis supplied)

The prejudice of such users tends to grow through their viewing of misinformation and hate speech, with little questioning of the accuracy of the sources or of the WhatsApp posts. Emotions routinely stoked are anger, pride, disgust, humiliation, suspicion and hatred. The study finds that:

Incidents alleged to have happened at a local, regional or national level are deliberately twisted to deepen anti-Muslim prejudice and hatred, to provoke pride in an imagined Hindu community and to legitimize any subsequent violence against Muslims.<sup>607</sup>

In another disclosed internal report, Facebook researchers flagged the Hindu nationalist group, the Bajrang Dal, as using WhatsApp to “organize and incite violence”. Even when Facebook staff recommended that the Bajrang Dal be designated a dangerous group which would mean they would be permanently banned on Facebook, they were not banned and remained active. Facebook reportedly did not remove the Bajrang Dal due to fears that this would jeopardize the company’s business potential and make staff in India vulnerable to threats.<sup>608</sup>

## Amplifying Hateful Content in the context of Delhi Violence

As noted in Chapters 2 and 3 of this report, social media provided an effective medium to entrench the polarization of online consumers in an already communally fraught atmosphere post the passage of the CAA. The aim of the targeted analysis in this section is to put forth case studies that reveal how social media was used as a vehicle to spread hate, which in turn created circumstances primed for violence. This section does not enter the domain of examining the use of social media to carry out the violence.

### YouTube

A case in point is the social media footprint of Yati Narsinghanand, the chief priest of Devi Mandir at Dasna, Ghaziabad and leader of an organization called *Hindu Swabhiman* and president of the *Akhil Bharatiya Sant Parishad*, in the period from December 2019. A small selection of his offensive speeches made in February 2020 and circulated through YouTube include the following:

605 Shakuntala Banaji and Ram Bhat with others, *WhatsApp Vigilantes: An exploration of citizen reception and circulation of WhatsApp misinformation linked to mob violence in India*, pg. 3, <https://www.lse.ac.uk/media-and-communications/assets/documents/research/projects/WhatsApp-Misinformation-Report.pdf>.

606 Banaji and Bhat, pg. 4, Note 605.

607 Banaji and Bhat, pg. 46, Note 605.

608 Jeff Horwitz and Newley Purnell, “In India, Facebook Fears Crackdown on Hate Groups Could Backfire on Its Staff”, *The Wall Street Journal*, 13 December 2020: <https://www.wsj.com/articles/in-india-facebook-fears-crackdown-on-hate-groups-could-backfire-on-its-staff-11607871600>.

- When your religion needs, you should fight a war. And to pick up arms for religion is not a *paap* (sin) but *punya* (virtue).<sup>609</sup>
- Shaheen Bagh is calling for the genocide of Hindus.<sup>610</sup>
- All Hindus must stand with Kapil and Gopal who showed the courage to fight Shaheen Bagh. Support these warriors and fight Islam.<sup>611</sup>
- If we don't remove an evil like Islam from society, how will we survive?<sup>612</sup>
- Humanity can be saved only if we finish off Islam.<sup>613</sup>
- Only Kapil Mishra stood for Hindus against Jihadis in Delhi. All Hindus must stand with Kapil Mishra.<sup>614</sup>

The assertions against Muslims being propagated in the above narratives amount to hate speech. His posts amplify the Hindu-Muslim binary being spread by many at the time, by vilifying Muslims and Islam as aggressors against Hindus, spreading false claims, and glorifying others' calls for violence against the Muslim community. Even more dangerous are the direct calls to violence against Islam and Muslims, couched within the justification that it is virtuous to pick up arms if it is to protect one's religion.

As per YouTube's community guidelines, this content would qualify as hate speech and violent content. YouTube's policy includes "content promoting violence or hatred against individuals or groups" based on religion, as one attribute among a list of others, which also include ethnicity and caste as hate speech.<sup>615</sup> The platform also disallows any content that incites anyone to commit violent acts against individuals or a "defined group of people".<sup>616</sup>

Though YouTube recently terminated Narsinghanand's account citing "multiple or severe violations of YouTube's policy prohibiting hate speech",<sup>617</sup> he had a massive following on YouTube, running into millions, in the months before the violence. Prompted by YouTube's internal algorithms, Narsinghanand's content would have been spread manifold among his followers and beyond, to anyone who may have accessed content along the same lines.

### Facebook and Twitter

As described in earlier chapters, BJP leaders, Parvesh Sahib Singh, Anurag Thakur, and Kapil Mishra, were vociferous in their positions against the anti-CAA protests. They also used social media platforms extensively to upload their speeches and rallies on Twitter and Facebook. One manifestation of the use of social media was the spread of slogans among their supporters and followers. A case in point is the slogan popularized by Kapil Mishra, "*Desh ke gaddaron ko, goli maaro saalon ko*" (What should we do to the traitors of the country? Shoot them), in a pro-CAA rally in New Delhi. He tweeted this video on December 20, 2019, with a caption in support of the pro-CAA rally.<sup>618</sup> Two days later, on December 22, Anupam Pandey, BJP President for Sonia Vihar Ward in North East Delhi, went live on Facebook, leading a march shouting the same slogan.<sup>619</sup> A few

609 Yati Narsinghanand Saraswati, <https://www.youtube.com/watch?v=3s5v2Sz30go><https://www.youtube.com/watch?v=3s5v2Sz30go>, 9 February 2020.

610 Yati Narsinghanand Saraswati, <https://www.youtube.com/watch?v=L3TyOtvUY9l>, 9 February 2020.

611 Yati Narsinghanand Saraswati, <https://www.youtube.com/watch?v=c5HDYFewDfg>, 11 February 2020.

612 Yati Narsinghanand Saraswati, <https://www.youtube.com/watch?v=nnjcmoz5rJg>, 22 February 2020.

613 Yati Narsinghanand Saraswati, <https://www.youtube.com/watch?v=yvCfeyU4Evc>, 22 February 2020.

614 Yati Narsinghanand Saraswati, [https://www.youtube.com/watch?v=sB1\\_UhvZceA&t=11s](https://www.youtube.com/watch?v=sB1_UhvZceA&t=11s), 25 February 2020.

615 YouTube's hate speech policy: <https://support.google.com/youtube/answer/2801939>.

616 YouTube's violent or graphic content policies: [https://support.google.com/youtube/answer/2802008?hl=en&ref\\_topic=9282436](https://support.google.com/youtube/answer/2802008?hl=en&ref_topic=9282436).

617 The termination message can be viewed here: <https://www.youtube.com/channel/UCA8QKLFx2UEYsbN6xqcdTyQ/videos>.

618 [https://twitter.com/KapilMishra\\_IND/status/1208031843074760704](https://twitter.com/KapilMishra_IND/status/1208031843074760704); See Note 100.

619 See Note 101.

days later, on January 27, 2020 Anurag Thakur voiced the first half of the slogan “*Desh ke gaddaron ko*” and urged the crowd to complete the slogan with, “*Goli maaro saalon ko*”.<sup>620</sup> This slogan became emblematic of the polarization sought.

Kapil Mishra continued to use Twitter to proliferate a divisive Hindu-Muslim binary in the period leading up to the violence. On January 23, 2020, he tweeted:

*Pakistan ki entry Shaheen Bagh mein ho chuki hain. Delhi mein chhote chhote Pakistan banaaye jaa rahe hain. Shaheen Bagh, Chand Bagh, Indralok mein desh ka kanoon nahi mana jaa raha hain. Pakistani dangayiyon ka Delhi ki sadko pe kabza.*<sup>621</sup>

(Pakistan has entered Shaheen Bagh. In Delhi various mini Pakistans are being erected. India's law is not being followed in places like Shaheen Bagh, Chand Bagh and Indralok. Pakistani rioters have captured the Delhi streets).

Kapil Mishra's speeches, from December 2019 marked by the slogan for “traitors of the nation” to be shot, to the ultimatum given at Maujpur on February 23, travelled widely through social media.

The decisive time of February 23, 2020 running into February 24, witnessed a frenzied and wide use of social media, as described in Chapter 3. The content of Facebook Live videos over these two days, broadcast by political leaders affiliated with the BJP and Hindu right-wing extremist groups, reveals more of the divisive Hindu-Muslim narratives, with much content amounting to hate speech and violent content. Select illustrations of the language and hate messaging circulating through some of these videos are reproduced below.<sup>622</sup> It is of note that these videos amassed upwards of thousands of views on Facebook.

On the morning of February 23, Sanjeev Sharma, a state executive in the BJP's Rohini mandal, addressed a Facebook Live event in which he asked his viewers to take to the streets: “We had been quiet so far. But now we will have to come out of our homes and stop them. Else, they will break into our homes. *Jai Shri Ram. Bharat Mata Ki Jai!*”<sup>623</sup>

Anjali Varma, who affiliates with BJP Delhi on her Facebook page, posted the following message on Facebook on the morning of 23 February, “*Grihayudhh ki karo tayyari, tab sudhrenge mulle topi dhaari.*”<sup>624</sup> (Prepare for the civil war, only then will the skull cap-wearing Mullahs learn their lesson).

In a Facebook Live video from Maujpur Chowk on February 23, Ragini Tiwari said:

*Bahut hua sanatan par vaar, ab nahi sahenge vaar. Sanataniyon baahar aao. Maaro ya maar daalo. Baad mein dekhi jayegi. Bahut hua. Ab jiska khoon na khaula, khoon nahi wo paani hai.*<sup>625</sup>

(Enough attacks on Hinduism. We won't tolerate such attacks anymore. Hindus, come out. Die or kill. Rest shall be seen later. If your blood hasn't boiled even now, it's not blood but it is water.)

In a live broadcast on Facebook in the afternoon of February 23, Akash Verma, a member of the BJP's youth wing, can be heard humming along to slogans by Hindu mobs at Maujpur Chowk: “*Modiji, tum latth bajao, hum tumhare saath hain; lambe-lambe latth bajao, hum tumhare sath hain.*”<sup>626</sup> (Modiji, you beat them with sticks, we are with you. Beat them with big sticks, we are with you.) His video clocked about 40,000 views.

During this livestream, Verma showed a wagon filled with stones being unloaded, indicating the gathering of stones by pro-CAA groups. He says, “See this, the stones have reached the roads”. A voice from the mob

620 See Note 126.

621 Kapil Mishra, [https://twitter.com/kapilmishra\\_ind/status/1220237373532848128?lang=en](https://twitter.com/kapilmishra_ind/status/1220237373532848128?lang=en), 23 January 2020.

622 Detailed descriptions can be found in Chapter 3.

623 Sanjeev Sharma, <https://www.facebook.com/100006134828023/videos/2605385106342625/>, 23 February 2020; see Note 166.

624 Anjali Varma, [https://www.facebook.com/permalink.php?story\\_fbid=233868020973236&id=100030501194533](https://www.facebook.com/permalink.php?story_fbid=233868020973236&id=100030501194533), 23 February 2020; see Note 168.

625 Aditya Menon and Aishwarya Iyer, 30 June 2020, Note 169.

626 See Note 172; Akash Verma's Facebook page was no longer available for viewing.

can be heard shouting, “*Vijay Park ke mullo ke liye yahin girao.*” (Drop them here for the Muslims of Vijay Park.) Vijay Park is a Muslim dominated neighborhood. As the wagon dropped all the stones to the ground, the mob, including Verma, cheered *Jai Shri Ram*. Verma appeals to his viewers to mobilize in more strength by the next day, February 24, “Friends, by morning, we must gather in large numbers. We must show our strength, the strength that we have.” He shifted his camera to a man who was blowing a conch and said, “The conch is being blown. This is our Hindu unity.”<sup>627</sup>

Anjali Verma went live on Facebook in the early hours of February 24 at Maujpur Chowk, where she had spent the night. Video footage shows Ragini Tiwari exhorting about a dozen men to shout, “*Modiji, lambe lambe latth bajao, hum tumhare sath hai. Zarurat padi toh humme bula lo, hum tumhare sath hain.*” (Modiji, beat them with sticks, we are with you; if needed then call us, we are with you.) Tiwari went on to say, “*Bharat mein yadi rehna hoga, Jai Shri Ram kehna hoga.*” (If you want to live in India, you have to chant *Jai Shri Ram*.) Following this, Verma addressed her viewers, “We have been at Maujpur the whole night. We didn't leave. I am invoking all Hindu brothers to reach here. *Aaj bahut bada tandav karna hai.*” (We have to create a huge ruckus here.) Verma ended her Facebook Live saying, “Now that the Hindu has awakened, we shall not retreat. Let it not become Pakistan.”<sup>628</sup> This video amassed over 49,000 views.

Under Facebook's community guidelines, the content of the videos and posts identified above would be considered hate speech, with incitement to violence. The guidelines define hate speech “as a direct attack against people – rather than concepts or institutions – on the basis of what we call protected characteristics: race, ethnicity, national origin, disability, religious affiliation”.<sup>629</sup> Recognizing the possibility of offline harm that could emanate from content on the platform, Facebook claims to remove any language that “incites or facilitates serious violence”.<sup>630</sup>

### WhatsApp

In the course of the Delhi violence, WhatsApp too was a conduit of incitement and hate speech. One known example is the formation of a WhatsApp group, called the “*Kattar Hindu Ekta*” (the name kept changing). This group was formed just after midnight on February 25, 2020 (described in Chapter 3) while the violence was ongoing. While the group chats reveal the planned nature of the acts of violence, they also point to the circulation of certain tropes and narratives justifying acts of violence against Muslims.

Some illustrations from the group chats sourced by journalists, including forwarded messages, are:

- *Kapil Mishra ki iss video ko sunein, samjhein, aur bahut mehnat kar ke poore Hindustan me bhejein kyunki ye bahut sahi hai hundred percent desh hith me hai, itna toh kar hi sakte hain mere dost.* (Listen to Kapil Mishra on this video, understand it and make the effort to send it across India because it is in favour of the nation. Friends, you can do this much at least),<sup>631</sup>
- *Wo apney chetra me ladies tailor ki dukaan kholengey ya chudi bechengey, aisey kaam karnengey jissey mahilaaon sey unka sampark badh sake aur love jihad ko badhaya jaa sake.* (They will open tailor shops in our areas or sell bangles, they will do such jobs that will ensure they can come in contact with Hindu women and love *jihad* will increase),<sup>632</sup>
- A Mathematical Sum, if you know math then tell me! Between 1947-2017, if the population of Muslims who stayed behind in India (instead of going to Pakistan after independence) has become ten times more, what will be their population during our sons' lifespan in the next 70 years? The answer given is ‘Ten times, again, meaning 300 crores...And think what will happen then. What will happen to our savings, our occupations, our work, our temples, our daughter who goes to school,

627 See Note 173; Akash Verma's Facebook page was no longer available for viewing.

628 See Notes 182-185.

629 Hate speech: <https://transparency.fb.com/en-gb/policies/community-standards/hate-speech>.

630 Violence and incitement: <https://transparency.fb.com/en-gb/policies/community-standards/violence-incitement>.

631 Ara, 6 July 2020, Note 272.

632 Ara, 6 July 2020, Note 272.

our constitution, our caste pride, our reservation, our leaders and the people of our caste? Is that when our selfish minds will be able to come up with a solution?'.<sup>633</sup>

These messages reveal the sharing of unverified and false assertions of potential “threats” from Muslims, to instill fears in Hindus – of being subjugated and overrun. With no regard for verifying the accuracy or credibility of the information being consumed, these manufactured threats are clearly being used to impose a sense of duty to resort to violence to avoid such consequences. It is quite probable that members of this WhatsApp group engaged in serious violence.

The longer harmful content remains on social media, the greater its circulation. A journalistic investigation into the effect and reach of Yati Narsinghanand's speeches and rhetoric in the build-up to the North East Delhi violence pointed out that videos of his speeches were being circulated not just through his own YouTube channel but also by other Hindutva networks.<sup>634</sup> This can be assumed to be true for other figures with large followings on social media such as Kapil Mishra. In this light, the digital trail of harmful content only magnifies as it is amplified not just by the actor concerned, but by affiliated groups and networks using the same social media platforms. In the absence of either social media platforms or law enforcement agencies taking notice of the hate speech by Narsinghanand in the time around the Delhi violence, he continued to convey anti-Muslim sentiment. In January 2022, Narsinghanand was named in an FIR and arrested by Uttarakhand Police for making calls for genocide against Muslims at a Hindu conclave in Haridwar between December 17 – 19, 2021.<sup>635</sup> This was live-streamed across social media channels. In summary, he communicated that an economic boycott against Muslims is not enough, that Hindus must mobilize with weapons against Muslims, and these weapons should be better than swords.<sup>636</sup> In April 2022, after the Delhi Police stated in an affidavit to the Supreme Court that the speakers at the December 2021 conclave had used no words which amounted to calls for genocide; the Court reprimanded the police and asked that they submit a “better” affidavit.<sup>637</sup> Subsequent to the Court's reproach, in May 2022, the Delhi Police changed course as revealed in a fresh affidavit in which it told the Court that it had examined the speeches and registered an FIR against the speakers for offences of hate speech.<sup>638</sup>

This focused analysis on the use of social media concludes that it must be considered a major vehicle in the spread of hate speech, sectarian division, Muslim hatred and other manner of extremist rhetoric before and during the communal violence in North East Delhi.

## Seeking Accountability

At least one social media platform – Facebook India – is being examined by legislative committees for its potential role in the Delhi violence. This is proving to be challenging. In March 2020, following the communal violence in North East Delhi, the Delhi Legislative Assembly constituted a nine-member Committee on Peace and Harmony, headed by AAP leader Raghav Chadha.<sup>639</sup> Foremost among the Committee's stated

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633 Ara, 6 July 2020, Note 272.

634 The Wire Staff, 3 March 2021, Note 103.

635 Milan Sharma, “Yati Narsinghanand arrested by Uttarakhand Police in Haridwar hate speech case”, *India Today*, 15 January 2022: <https://www.indiatoday.in/india/story/yati-narsinghanand-arrested-uttarakhand-police-haridwar-hate-speech-case-1900510-2022-01-15>.

636 Samarth Grover, “Narsinghanand Organises 3-Day Hate Speech Conclave in Haridwar”, *The Quint*, 22 December 2021: <https://www.thequint.com/news/india/haridwar-yati-narsinghanand-organises-hate-speech-conclave>.

637 The Quint, “‘Has the Officer Applied His Mind?’: SC on Delhi Police's ‘No Hate Speech’ Stand”, *The Quint*, 22 April 2022: <https://www.thequint.com/news/india/file-better-affidavit-sc-on-delhi-polices-no-hate-speech-at-dharam-sansad-stand>.

638 Ashish Tripathi, “After SC rebuke, Delhi Police make U-turn in ‘hate speech’ case”, *Deccan Herald*, 7 May 2022: <https://www.deccanherald.com/national/after-sc-rebuke-delhi-police-make-u-turn-in-hate-speech-case-1107258.html>.

639 Committee System in Legislative Assembly of National Capital Territory of Delhi, pg. 66: <http://delhiassembly.nic.in/Committee/CS-Eng.pdf>.

functions is to deal with circumstances which have a “potential to disturb communal peace and harmony” and “to examine in detail and identify the factors responsible” for communal violence.<sup>640</sup>

The Parliamentary Standing Committee on Information Technology, and the Peace and Harmony Committee, each requested Mr. Ajit Mohan, Vice President and Managing Director of Facebook India, to appear before them in separate summons. Mr. Mohan appeared before the Parliamentary Committee, but declined to appear before the Peace and Harmony Committee on the ground that the regulation of intermediaries like Facebook, as well as law and order in the National Capital Territory of Delhi, falls within the exclusive authority of the Union of India. Facebook India objected to the later summons issued by the Peace and Harmony Committee and moved the Supreme Court under Article 32 of the Constitution of India asking for a recall of the summons.

The controversy was settled by a three-judge bench of the Supreme Court in *Ajit Mohan v. Legislative Assembly, National Capital Territory of Delhi*<sup>641</sup> (*Ajit Mohan*). The Supreme Court, in its opinion, made prescient remarks on the nature of influence that Facebook has come to exercise on public discourse and the attempts of the platform to shirk consequent responsibility. The Supreme Court observed the following in this behalf:

149. We must begin our opinion by noticing at the inception itself, the vast and influential role of an intermediary like Facebook. In this modern technological age, it would be too simplistic for the petitioners to contend that they are merely a platform for exchange of ideas without performing any significant role themselves – especially given their manner of functioning and business model. Debate in the free world has shown the concern expressed by Governments across the board and the necessity of greater accountability by these intermediaries, which have become big business corporations with influence across borders and over millions of people. Facebook today has influence over 1/3<sup>rd</sup> population of this planet! In India, Facebook claims to be the most popular social media with 270 million registered users. The width of such access cannot be without responsibility as these platforms have become power centres themselves, having the ability to influence vast sections of opinions.

The Court underlined the disruptive role played by Facebook in being a purveyor of misinformation that may affect the governance of the state. The Supreme Court also censured the Facebook for employing a business model that is highly “privacy intrusive” and potentially polarizes public discourse. The Court held:

149. ...Without undermining the role performed by Facebook in giving a voice to various sections of society across the world, it has to be noted that their platform has also hosted disruptive voices replete with misinformation. These have had a direct impact on vast areas of subject matter which ultimately affect the governance of States. It is this role which has been persuading independent democracies to ensure that these mediums do not become tools of manipulative power structures. These platforms are by no means altruistic in character but rather employ business models that can be highly privacy intrusive and have the potential to polarize public debates. For them to say that they can sidestep this criticism is a fallacy as they are right in the center of these debates.

Furthermore, the Supreme Court refuted the stand taken by Facebook India that they are merely a social media platform and therefore bear no responsibility for regulating published content. In doing so, the Court held Facebook India to be in nature of “mass circulation media” and consequently enjoined the editorial responsibility on it. The Court has established that Facebook India exercises a “substantial degree of control over the content that is allowed to be disseminated on its platform”. The Supreme Court stated the following in this behalf:

150. Facebook as a platform is in the nature of a mass circulation media which raises concerns of editorial responsibility over the content circulated through its medium. The width of the reach of

640 Committee System in Legislative Assembly of National Capital Territory of Delhi, pg. 67: <http://delhiassembly.nic.in/Committee/CS-Eng.pdf>.

641 *Ajit Mohan v. Legislative Assembly, National Capital Territory of Delhi*, (2022) 3 SCC 529.

published material cannot be understated or minimised. Facebook has acknowledged in their reply that they removed 22.5 million pieces of hate speech content in the second quarter of 2020 itself, which shows that they exercise a substantial degree of control over the content that is allowed to be disseminated on its platform. To that extent, a parallel may be drawn with editorial responsibility cast on other mass circulation media.

151. The business model of intermediaries like the petitioner being one across countries, they cannot be permitted to take contradictory stands in different jurisdictions. Thus, for example, in the United States of America, Facebook projected itself in the category of a publisher,<sup>642</sup> giving them protection under the ambit of the First Amendment of its control over the material which are disseminated in their platform. This identity has allowed it to justify moderation and removal of content. Conspicuously, however, in India it has chosen to identify itself purely as a social media platform, despite its similar functions and services in the two countries. Thus, dependent on the nature of controversy, Facebook, having almost identical reach to population of different countries, seeks to modify its stand depending upon its suitability and convenience.

152. We are afraid we are not inclined to accept the simplistic approach sought to be canvassed by Mr. Salve on the role of Facebook. Forceful as it may be, it does not convince us. Developments around the world, as we have noted above, reflect rising concerns across borders. The concern is whether the liberal debate which these platforms profess to encourage has itself become a casualty. We have noticed in the beginning that algorithms, which are sequences of instructions, have human interventions to personalise content and influence opinions as part of the business model. As such, their primary objective is to subserve their business interests. It is first a business and then anything else. As per their own acknowledgement, they would only appear before any committee if it served their commercial and operational interests, as it did when they appeared before the Parliamentary Committee. But if their business interests are not served, they seek a right to stay away. Such a stand is completely unacceptable to us. Facebook has the power of not simply a hand but a fist, gloved as it may be.

Finally, the Supreme Court directed Facebook India to appear before the Peace and Harmony Committee and answer questions about the possible larger role played by Facebook India in the Delhi violence. The Court held:

153. We now turn to the incident at hand, that of an unfortunate violent eruption. The need to go into this incident both from a legal and social perspective cannot be belittled. The capital of the country can ill-afford any repetition of the occurrence and, thus, the role of Facebook in this context must be looked into by the powers that be. It is in this background that the Assembly sought to constitute a Peace and Harmony Committee – whether it has the legislative competence or not is an aspect and we will deal with it under the relevant head. The Assembly being a local legislative and governance body, it cannot be said that their concerns were misconceived or illegitimate. It is not only their concern but their duty to ensure that ‘peace and harmony’ prevails.

The Supreme Court in its judgment also noted a caveat that the Committee, in its questioning, shall not traverse the area pertaining to Entries 1 and 2 of List II in the Seventh Schedule, i.e., law and order and police, as the Delhi Assembly does not have the power to legislate on the said entries. In doing so, the Court acknowledged the “delicate balance” and clarified that they are not providing the Petitioners “an excuse” to not answer questions and frustrate the proceedings before it.<sup>643</sup>

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642 Facebook’s Motion to Dismiss Pursuant to Federal Rule Of Civil Procedure 12(B)(6) and Incorporated Memorandum of Law in *Laura Loomer v. Facebook Inc.*, Case No.9: 19-cv-80893-RS, accessible at <https://docs.reclaimthenet.org/Loomerv-Facebook-fb-response.pdf>.

643 Pg. 179, *Ajit Mohan*, Note 641.

## Conclusion

It is crucial for the parent companies of social media platforms to prioritize safeguarding against the multiplier harm emanating from the platform's mass use. The Indian context reveals that hate speech, biased narratives, and hate crimes, both at the personalized level for users as well as at societal levels, are intimately linked. The recent exposures of hate apps created to auction Indian Muslim women online are a serious indication of the extent to which bigotry and hate can manifest online in various forms, fueled by technology.<sup>644</sup> The examples above, as well as continuing revelations through independent research, such as on WhatsApp, are a stark reminder that the use of social media platforms are often part and parcel of episodes of violence, whether through spreading false rumors, circulating offensive inciting tropes, or facilitating the conduct of violent acts.

Social media is in dire need of a transformation in technological aspects and ramped up regulation to mitigate against socio-political harm.<sup>645</sup> The penal provisions in Indian laws have not been updated to adequately deal with hate speech spread through Internet and social media mediums. No doubt, any planning of increased regulation must preserve digital and freedom of expression rights. Also, it should be ensured that government does not overreach regulation through greater controls that veer into censorship or silence free speech, or violate the right to privacy.

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644 Alok Deshpande and Hemani Bhandari, "Sulli Deals, Bulli Bai and the young and educated hatemongers", *The Hindu*, 22 January 2022: <https://www.thehindu.com/news/national/sulli-deals-bulli-bai-and-the-young-and-educated-hatemongers/article38305009.ece>.

645 In July 2022, Meta (Facebook's parent company) released a summarised version of a long-awaited report on an assessment of its human rights impact in India (within its first global human rights report), which has been met with criticism. The report can be found here: <https://about.fb.com/news/2022/07/first-annual-human-rights-report>.



## Part III

# Delhi Police Investigations into the Violence: A Review in Three Parts

Part III consists of the following chapters:

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**7. A Comment on the Investigations into Indian Penal Code Offences**

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**8. An Analysis of the Investigation into the Terrorist Conspiracy**

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**9. The Application of the UAPA and Fair Trial Implications**

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### Scope of the Investigations

The Delhi Police began investigations into the North East Delhi violence as soon as the violence receded. In these initial days, the police registered approximately 755 FIRs. In March 2020, the Delhi Police Special Cell registered FIR No. 59/2020 (FIR 59) claiming that there was a pre-planned conspiracy behind the violence. In a few days, the Special Cell stated it had discovered evidence that the conspiracy involved terrorist acts, and invoked provisions of the UAPA.

As of January 2022, a total of 758 FIRs have been registered alleging a gamut of offences under the IPC and other laws.<sup>646</sup> At this two-year mark, investigations are ongoing in around 50 percent cases.<sup>647</sup>

Given the scale of the violence, the Delhi Police spread their investigations across several units and Police Stations. Of the total 758 FIRs registered, 695 cases are being investigated by North East District Police Stations; 62 cases by three Special Investigation Teams constituted by the Crime Branch; and FIR 59 by the Delhi Police Special Cell.<sup>648</sup>

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<sup>646</sup> Affidavit of Delhi Police in *Ajay Gautam*, dated 25.1.2022, pg. 2, para 4, Note 1.

<sup>647</sup> Affidavit of Delhi Police in *Ajay Gautam*, dated 25.1.2022, pg. 2, para 4, Note 1.

<sup>648</sup> Affidavit of Delhi Police in *Ajay Gautam*, dated 25.1.2022, pg. 2, para 5, Note 1.

## **Relevance**

Recognizing criminal investigation as a process that ought to resolve fundamental questions around the violence, the Committee included an analysis of the police investigation in its mandate. Effective investigation not only enables the determination of culpability, genesis and chronology of the criminal actions in question but also provides answers to those directly affected by the violence.

## **Chapters on Investigation**

The ensuing three chapters of this report examine the investigations being conducted by the Delhi Police. Chapter 7 comments on the investigations into the IPC cases, through an analysis of judicial orders. Chapter 8 comments on the investigation in FIR 59 as contained in the first chargesheet filed in the ongoing investigation into charges under the UAPA. Chapter 9 goes further to consider the wider implications that emerge from the application of the UAPA particularly for due process.

Chapters 7 and 8 largely contain legal analysis of judicial orders and police documents (FIRs and chargesheets) pertaining to cases emanating from the February violence or incidents that have a direct bearing on the violence. Considering that investigation and prosecutions in most of these cases continue beyond this report's publication, the Committee clarifies that these two chapters attend to judicial orders passed and police documents filed up to December 10, 2021. They do not examine material emanating from the police investigations beyond this time. It bears noting that Parts I and II, and Chapter 9, include references to court judgments and other material in support of the views expressed, which is distinct from the focus in Chapters 7 and 8 where the Committee analyses primary legal documents to opine on them.

The Committee does not seek to pass an early judgement or predict the outcome of trials. The evidence collected by the investigating agency will be adduced at trial and subjected to cross-examination, an exercise that cannot be simulated by us. Our overall aim is to assess the manner of investigation and evidence on the basis of well-established principles of criminal and evidence law, and offer an opinion on the quality of the investigation conducted so far.

# 7. A Comment on the Investigations into Indian Penal Code Offences

This chapter focuses on the investigations carried out into offences under the IPC registered in the aftermath of the violence. It relies on judicial orders passed in these cases to identify gaps in the quality of material being advanced, as well as problems with how the investigation is being conducted by the police. The chapter begins by providing a general overview of the status of investigation of all the criminal cases pertaining to the violence.

## Broad Overview

### First Information Reports

Of the total 758 FIRs, the Committee looked at 752 FIRs pertaining to IPC offences. These FIRs were registered across 11 Police Stations of North East Delhi district, namely, Khajuri Khas, Bhajanpura, Gokulpuri, Karawal Nagar, Jaffrabad, Dayalpur, Jyoti Nagar, Welcome, New Usmanpur, Shastri Park and Sonia Vihar. The maximum number of FIRs (153) were registered at Khajuri Khas Police Station, followed by Bhajanpura (136) and Gokulpuri (118) Police Stations, comprising 54 percent of the FIRs. This indicates that these areas are among the worst affected by the violence, and also perhaps that these particular Police Stations remained accessible. The majority of complainants are Muslims (418). 184 FIRs were registered based on complaints by Hindus, and 150 on the basis of complaints by police officials.

A majority of the FIRs have been registered against unknown accused persons for offences of unlawful assembly armed with weapons (Sections 142-145, 149 IPC), rioting with deadly weapons (Sections 146-148 IPC), theft (Section 380 IPC), robbery (Section 392 IPC), destruction of property with fire and explosive substances (Section 427, 435, 436 IPC), and trespass with the intention to cause hurt or assault (Section 452, 454, 455, 457, 458 IPC). The complainants are mainly affected residents of North East Delhi who sought FIRs for burning and looting of their houses, shops and businesses. In most cases, they were informed by their neighbors or friends that a mob had ransacked and burnt their property. In many FIRs, no accused person has been identified, and no identifying features of the mob have been mentioned.

The provisions of the Prevention of Damage to Public Property Act, 1984 were invoked in 51 FIRs. There are 48 FIRs registered under Section 302 IPC for murder. These have mostly been registered in the Police Stations of Gokulpuri (12 FIRs), Dayalpur (12) and Karawal Nagar (11). Out of the 12 FIRs registered in Gokulpuri Police Station, nine pertain to the 11 dead bodies that were found in the drains of Bhagirathi Vihar, Johripur and Gokulpuri.

### Status of Investigation

Preliminary data by the Delhi Police revealed that all investigating units – the district police, SITs, and Special Cell – had carried out a total of 1,430 arrests as of July 11, 2020, close to five months following the violence.<sup>649</sup> By February 2021, a senior police officer relayed to the Indian Express that arrests had gone up to 1,753, out of which 933 (53 percent) were of Muslims and 820 (47 per cent) were of Hindus.<sup>650</sup> It was further reported that out of these 1,753 total arrested, 1,204 were in judicial custody and 544 (31 percent) had been released on bail.<sup>651</sup> It was reported on the basis of data collected from courts that a total of 4,347 bail applications were filed, out of which 3,546 were allowed and 801 rejected.<sup>652</sup>

649 Affidavit of Delhi Police in *Ajay Gautam*, dated 13.7.2020, pg. 5, Note 1.

650 Express News Service, "Northeast Delhi riots: Chargesheets filed in 38 of 53 murder cases", *The Indian Express*, 25 February 2021: <https://indianexpress.com/article/india/northeast-delhi-riots-chargesheets-filed-in-38-of-53-murder-cases-7203506>.

651 For accused who were granted bail, data disaggregated on the basis of religion is not available. Express News Service, 25 February 2021, Note 650.

652 IANS, "Delhi riots: A year later, over 3,500 granted bail, 73 charge sheets filed", *Business Standard*, 28 February 2021: [https://www.business-standard.com/article/current-affairs/delhi-riots-a-year-later-over-3-500-granted-bail-73-charge-sheets-filed-121022800095\\_1.html](https://www.business-standard.com/article/current-affairs/delhi-riots-a-year-later-over-3-500-granted-bail-73-charge-sheets-filed-121022800095_1.html).

As of October 2021, an affidavit filed by Delhi Police in *Ajay Gautam v. GNCT of Delhi*<sup>653</sup> before the Delhi High Court stated that chargesheets have been filed in 361 out of 758 cases, i.e., in 48 percent cases.<sup>654</sup> The affidavit filed by Delhi Police in January 2022 states that chargesheets have been filed in 367 cases, while the investigation is pending in 384 cases.<sup>655</sup> Thus, between October 2021 to January 2022, Delhi Police filed chargesheets in only six cases. The affidavit also states that the police filed closure reports in three FIRs, while four FIRs have been quashed by the Delhi High Court.<sup>656</sup>

The Delhi High Court designated two sessions and two magisterial courts for the trial of the Delhi violence cases.<sup>657</sup> As of January 2022, trial has commenced in 92 cases, which are at the stage of recording the prosecution's evidence.<sup>658</sup> Accused persons have been discharged in five cases, and acquittals have taken place in four cases.<sup>659</sup>

## Emerging Trends

The orders of trial and appellate courts in pre-trial stages of bail and charge-framing proceedings, point to significant trends in the investigations of the IPC cases. This preliminary review will flag the gaps in the investigations noted by judicial orders.

### Belated Statements by Police and Public witnesses

Any person, including a police officer, is considered a witness in a criminal case if he testifies to having witnessed or heard any “fact” which is relevant to proving an offence in a trial. Courts have observed in many cases that witnesses to the commission of an offence have delayed disclosing identities of accused persons ranging from days to a few months, from the date of witnessing the incident, and have also failed to explain the delay in disclosure. While granting bail, courts have observed that it is suspicious when witnesses abruptly name and identify perpetrators after considerable delay while neglecting to do so in the first instance, as belated disclosures render a witness unreliable in law.

### Testimony of Police Witnesses

Courts have found identification by police witnesses to be unreliable due to the unaccounted delay in their naming and identifying of assailants. Additionally, the investigating agencies in these cases fail to explain why the police neglected to record relevant information in the police station daily diary. Section 44 of the Indian Police Act, 1861 mandates that the officer in-charge of a Police Station maintain a diary (commonly known as a station diary or daily diary) wherein all relevant details including the names of complainants and accused must be recorded. Police Manuals across states also mandate that all actions taken by police officers in the station be recorded promptly in the station diary. Delay in recording crucial information in the station diary casts doubt on the integrity of the version proffered by the police.

While hearing a bail application, the Delhi High Court in *Kasim v. State*<sup>660</sup> questioned the lack of any follow up action by Beat Constables on the day of the incident after identifying the accused. The police witnesses naming the accused only after the accused was identified by the injured victim was also noticed by the Court. Granting bail, the Court observed:

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653 Affidavit of Delhi Police in *Ajay Gautam* dated 7.10.2021, Note 1.

654 Affidavit of Delhi Police in *Ajay Gautam*, dated 7.10.2021, pg. 3, Note 1.

655 Affidavit of Delhi Police in *Ajay Gautam*, dated 25.1.2022, pg. 2, para 4, Note 1.

656 Affidavit of Delhi Police in *Ajay Gautam*, dated 25.1.2022, pg. 2, para 4, Note 1.

657 IANS, 28 February 2021, Note 652.

658 Affidavit of Delhi Police in *Ajay Gautam*, dated 25.1.2022, pg. 2, para 6, Note 1.

659 Affidavit of Delhi Police in *Ajay Gautam*, dated 25.1.2022, pg. 2, para 6, Note 1.

660 *Kasim v. State*, Bail Application No. 2925/2020, Delhi High Court. This case pertained to FIR No. 91/2020 (Dayalpur Police Station), where the accused was charged with being a part of a riotous mob on the terrace of Tahir Hussain's house, pelting stones, firing gun shots and petrol bombs from the terrace. The accused in this case was named by the injured victim and Beat Constables of the area.

It is not in dispute that the incident took place on 25.02.2020 and statements of Ct. Saudan and Ct. Pawan were recorded who were on duty at the spot on 25.02.2020 and they saw the incident and identified the petitioner being “BC” of the area along with other co-accused persons. There is no explanation as to why the said police officials did not make any PCR (Police Control Room) call/DD entry to the concerned police station regarding involvement of petitioner on 25.02.2020. The injured made his statement on 02.03.2020 wherein he named the petitioner and only thereafter, the Ct. Saudan and Ct. Pawan made their statements on 03.03.2020 stating that they were on duty at the spot on the date of incident and had seen the incident and identified the petitioner.<sup>661</sup>

The Delhi High Court noted likewise while granting bail to the accused in *Jubair @ Zuber v. State NCT of Delhi*<sup>662</sup> and *Liyakat Ali v. State Govt. of NCT of Delhi*.<sup>663</sup>

Similarly, in *Mohd. Danish v. State*,<sup>664</sup> while granting bail to an accused charged with murder and other offences (in FIR No. 60/2020, Dayalpur Police Station) the Delhi High Court pointed out the unexplained delayed disclosure of names by the police witnesses in supplementary statements, recorded days after their initial statement. The Court held:

It is pertinent to mention here that the initial statements under Section 161 Cr.PC. of beat Const. Gyan and Const. Sunil dated 27.02.2020 do not name petitioner herein. It is much later after a span of twelve days in their supplementary statement dated 10.03.2020, the name of petitioner appears and the petitioner was initially arrested by Nandnagri police officials on 10.03.2020 from there he was taken to Crime Branch office, Chanakyapuri.<sup>665</sup>

In the case of *Tanveer Malik v. State*,<sup>666</sup> the High Court inquired from the Investigating Officer as to whether any daily diary entries were made subsequent to the incident, to which the officer replied in the negative stating he was unable to convey information to the Police Station. The Court in the said matter noted:

In addition to above, Ct. Sodan and Ct. Pawan were also present on duty on 25.02.2020 and have identified the present applicant along with other co-accused persons. But the fact remains that the aforesaid Constables had not made any DD entry or any call to PCR by naming the petitioner or any other persons indulged in the crime at that point of time. It is also not in dispute that from 25.02.2020 to 02.03.2020, there is no proof on record that the police has taken any action or adopted any procedure to register FIR or to take down the statement of the injured except that on 29.02.2020 I.O visited the hospital however injured was not found.<sup>667</sup>

In multiple cases, the Sessions Court has also granted bail to the accused on similar grounds. For instance, the Court of Additional Sessions Judge, by way of a common order, granted bail to three accused in *State v. Shah Alam*,<sup>668</sup> *State v. Rashid Saifi*,<sup>669</sup> and *State v. Mohd. Shadab*,<sup>670</sup> all arising out of FIR No. 109/2020 (Dayalpur Police Station). The Court observed as follows:

<sup>661</sup> Order dated 13.10.2020, Note 660.

<sup>662</sup> Order dated 9.12.2020, *Jubair @ Zuber v. State NCT of Delhi*, Bail Application No. 3773/2020, Delhi High Court. Bail granted to accused in FIR No. 119/2020, Khajuri Khas Police Station, for rioting, murder and other IPC offences.

<sup>663</sup> Order dated 3.2.2021, *Liyakat Ali v. State Govt. of NCT of Delhi*, Bail Application No. 3202/2020, Delhi High Court. Bail granted in FIR No. 88/2020, Dayalpur Police Station, where the accused was charged with being a member of an unlawful assembly and pelting stones and instigating rioters to attack people from the other community.

<sup>664</sup> *Mohd. Danish v. State*, Bail Application No. 3550/2020, Delhi High Court.

<sup>665</sup> Order dated 16.2.2021, Note 664.

<sup>666</sup> *Tanveer Malik v. State*, Bail Application No. 3864/2020, Delhi High Court.

<sup>667</sup> Order dated 4.2.2021, Note 666.

<sup>668</sup> Order dated 28.10.2020, *State v. Shah Alam*, Bail Application No. 1502/2020, Additional Sessions Judge, Karkardooma District Court, Delhi.

<sup>669</sup> Order dated 28.10.2020, *State v. Rashid Saifi*, Bail Application No. 1504/2020, Additional Sessions Judge, Karkardooma District Court, Delhi.

<sup>670</sup> Order dated 28.10.2020, *State v. Mohd. Shadab*, Bail Application No. 1509/2020, Additional Sessions Judge, Karkardooma District Court, Delhi.

The identification of applicants by Beat Constable Pawan is hardly of any consequence, as this Court is not able to understand as to why said Beat Constable waited till 05.04.2020 (when his statement U/s 161 Cr.PC was recorded by the IO) to name the applicants, when he had categorically seen and identified the applicants indulging in riots on the date of incident, i.e 24.02.2020. There is gap of about 40 days between the date of incident and recording of statement of Beat Constable Pawan in the matter by the IO and no plausible explanation in this regard has been given by the IO. Being a police official, what stopped Beat Constable Pawan from reporting the matter then and there in the PS (Police Station) or to bring the same in the knowledge of higher police officers. This casts a serious doubt on the credibility of this witness.<sup>671</sup>

Bail was granted to the accused on similar grounds in *State v. Salim Malik @ Munna*.<sup>672</sup> In *State v. Kuldeep Singh*,<sup>673</sup> the Court of Additional Sessions Judge while granting bail to the accused in FIR No. 119/2020 (Khajuri Khas Police Station) charged with being a part of a riotous mob that assaulted a man leading to his death, noted the unexplained delay of 83 days in recording the statements of police witnesses. It held the following on the conduct of the Beat Constable:

As regards the identification of applicant by Constable Bhupender and HC Anil, it is noted that the said police officials in their initial statements did not identify the applicant and they went on to identify the applicant in their supplementary statement(s) recorded under Section 161 Cr.PC by the IO on 03.05.2020. Even Constable Amit had identified the applicant vide his statement recorded in the matter on 11.05.2020, whereas the incident in question happened on 25.02.2020. In my opinion, the identification of applicant by aforesaid police officials (who were stated to be posted as Beat Officers in the area in question at the relevant time) is hardly of any consequence, as this Court is not able to comprehend as to why said Beat Officers waited till the recording of their statements/supplementary statements under Section 161 Cr.PC to name the applicant, when they had categorically seen and identified the applicant indulging in riots on the date of incident, i.e 25.02.2020. Being police officials, what stopped them from reporting the matter then and there in the PS or to bring the same in the knowledge of higher police officers. This cast a serious doubt on the credibility of aforesaid two police witnesses.<sup>674</sup>

Recurring unexplained delays have led courts to flag the possibility of these witnesses being planted only to implicate the accused.

While discharging the accused in *State v. Shah Alam*,<sup>675</sup> the Court noted:

As a diligent police official, it was the duty of Constable Gyan Singh to have immediately reported the matter to IO/PS Dayalpur about the incident in question, which he never did. Instead he never bothered to himself report about the incident/accused persons at PS Dayalpur and it was only during the course of recording of his statement under Section 161 Cr.PC by the IO on 03.03.2020, that for the first time he inculpated the accused persons in the instant matter. This silence and delay on the part of Constable Gyan Singh is not only fatal to the case of investigating agency, but it also gives an impression that he has been “planted/ introduced” to solve the case in hand.<sup>676</sup>

In its Order dated October 7, 2020, the Delhi High Court, while granting bail to the accused in *Irshad Ahmed v. State of NCT of Delhi*<sup>677</sup> observed that the police witnesses in the case appeared to have been planted. The Court noted:

<sup>671</sup> Common Order dated 28.10.2020, Notes 668, 669 and 770.

<sup>672</sup> Order dated 25.11.2020, *State v. Salim Malik @ Munna*, Bail Application No. 1689/2020, Additional Sessions Judge, Karkardooma Court, Delhi. Bail was granted to the accused in FIR No. 136/2020 (Dayalpur Police Station) for being a part of an unlawful assembly that vandalised and set fire to a car showroom.

<sup>673</sup> *State v. Kuldeep Singh*, Bail Application No. 198/2021, Additional Sessions Judge, Karkardooma District Court, Delhi.

<sup>674</sup> Order dated 3.2.2021, Note 673.

<sup>675</sup> *State v. Shah Alam*, Sessions Case No. 68/2021, Additional Sessions Judge, Karkardooma District Court, Delhi.

<sup>676</sup> Order dated 2.9.2021, Note 675.

<sup>677</sup> *Irshad Ahmed v. State of NCT of Delhi*, Bail Application No. 2696/2020, Delhi High Court.

As per the statement of Constable Pawan and Constable Ankit (both are eye witnesses and were present at the spot), they had identified the petitioner and other co-accused. However, they have not made any complaint on the date of incident, i.e., 25.02.2020, whereas the FIR was lodged on 28.02.2020. **Thus, the said witnesses seem to be planted one.**<sup>678</sup> (Emphasis supplied)

In *Firoz Khan v. State*,<sup>679</sup> the Delhi High Court, while granting bail, questioned the very presence of the Police Constable at the scene of crime. The Court noted:

The constable accordingly names 2 persons, including the applicant. It is extremely important to note however, that in the complainant's statement upon which the FIR was recorded, the complainant says that when the rioters vandalised his shop, he telephoned the police but the police telephones were going busy; and that therefore he ran away to save his life. **In the teeth of this statement of the complainant that there was no police help on hand, Ct. Vikas claims that he was present at the scene of the offence and inter-alia saw the applicant commit the offences. Even on first blush, it is not understood as to why the complainant would say that he failed to reach the police by telephone, if Ct. Vikas was already present there.**<sup>680</sup> (Emphasis supplied)

In an Order passed on October 12, 2020, the Delhi High Court in *Mohd. Rehan @ Arshad Pradhan v. State NCT of Delhi*<sup>681</sup> granted bail to the accused in FIR No. 117/2020 (Dayalpur Police Station) charged for being part of an unlawful assembly which vandalized and burnt properties. The Court questioned the credibility of the police eyewitnesses' statements in the absence of any follow up calls to the Police Control Room or daily diary entries recorded by them. The Court stated that:

Statement of Constable Pawan and Constable Vikram recorded being eyewitnesses whereby, they identified the petitioner, however, they did not make any DD entry as the alleged incident is of 25.02.2020 whereas the present FIR was registered on 04.03.2020...Even the Constable Pawan and Constable Vikram, being the responsible officials of the police, did not make any DD entry or PCR call on the day of incident regarding the same.<sup>682</sup>

### Testimony of Public Witnesses

Courts have also questioned the credibility of public witnesses that the police relied on, for similar reasons. A common feature across these cases is the registration of an omnibus complaint<sup>683</sup> followed by the sudden identification of the accused by a public witness, after an unexplained delay of several days. This sudden identification has led courts to question the veracity of these witnesses' claims.

For instance, while granting bail to three accused in *State v. Shah Alam*,<sup>684</sup> *State v. Rashid Saifi*,<sup>685</sup> and *State v. Mohd. Shadab*,<sup>686</sup> in FIR No. 109/2020 (Dayalpur Police Station), the Court found the conduct of the witnesses in disclosing the names of the accused after an unexplained delay of several days suspicious. The Court held by way of a common Order in the three cases:

Furthermore, even the statements under Section 161 Cr.PC of public eye witnesses namely Rajbir Singh, Shabuddin Malik, Pradeep Kumar Verma, Surender Singh, Irshad and Nitin have been recorded by the IO recently much after the filing of chargesheet. Their statements identifying the applicants to be part of riotous mob is also doubtful, as a mute question still stares this Court as

<sup>678</sup> Order dated 7.10.2020, Note 677.

<sup>679</sup> *Firoz Khan v. State*, Bail Application No. 945/2020, Delhi High Court.

<sup>680</sup> Order dated 29.5.2020, Note 679.

<sup>681</sup> *Mohd. Rehan @ Arshad Pradhan v. State NCT of Delhi*, Bail Application No. 2849/2020, Delhi High Court.

<sup>682</sup> Order dated 12.10.2020, Note 681.

<sup>683</sup> An omnibus complaint is one which alleges involvement of a several number of known and unknown people as instigators/suspects without specifying the role of any of the accused.

<sup>684</sup> Note 668.

<sup>685</sup> Note 669.

<sup>686</sup> Note 670.

to why the aforesaid eye witnesses/public witnesses did not name the applicants on the date of incident itself and what made them to wait for so long.<sup>687</sup>

Similarly, in *State v. Salim Malik @ Munna*,<sup>688</sup> the Court while granting bail to the accused in FIR No. 136/2020 (Dayalpur Police Station), observed:

I have gone through the statement of said PW Zahid Hasan (recorded under Section 161 Cr.PC on 20.05.2020). Admittedly, by the time the statement of this witness under Section 161 Cr.PC was recorded, the main chargesheet in the matter had already been filed in the Court. Though, the investigative agency is within its right to record statement of any witness even after filing of main chargesheet, if specific evidence comes within its domain, however, this Court cannot lose sight of the timing of recording of statement of PW Zahid Hasan, which admittedly was recorded after almost expiry of three months of the date of incident. Even in his aforesaid statement, PW Zahid Hasan has not levelled specific allegations of putting on fire the showroom in question by the applicant and the same pertains to incendiary speeches being delivered by the riotous mob. Be that as it may, prima facie, his aforesaid statement appears to be general one, which may be useful for the prosecution in case FIRs No.59/2020 (investigated by Special Cell) and 60/2020, PS Dayalpur; however, on the basis of said statement of PW Zahid Hasan, applicant cannot be made to incarcerate in jail for infinity in the present matter.<sup>689</sup>

In *State v. Kuldeep Singh*,<sup>690</sup> while granting bail in FIR No. 119/2020 (Khajuri Khas Police Station), the Court highlighted an unexplained delay of about 83 days in recording the statement of the public eyewitnesses by the Investigating Officer. In *Devangana Kalita v. State of NCT of Delhi*,<sup>691</sup> the Delhi High Court noted that an unexplained delay of more than two months by witnesses to name the accused who was present since December 2019, rendered their testimony suspect. Similarly, in *State v. Khalid Saifi*<sup>692</sup> and *State v. Umar Khalid*,<sup>693</sup> the Court of Additional Sessions Judge noted:

Even the statement of PW Rahul Kasana recorded U/s 161 Cr.PC in the matter merely talks of some meeting between the applicant, co-accused Tahir Hussain and Khalid Saifi on 08.01.2020, however, the same does not disclose about the subject matter of such meeting. Be that as it may, it is relevant to note here that said PW Rahul Kasana is also a witness in case FIR No.59/2020, in which case also the “criminal conspiracy” angle is being investigated by Special Cell of Delhi Police. In the said case the statement under Section 161 Cr.PC of PW Rahul Kasana was recorded on 21.05.2020, on which date he did not utter a single word against the applicant qua “criminal conspiracy” and now all of a sudden, he vide his statement recorded under Section 161 Cr.PC in the matter on 27.09.2020 blew the trumpet of “criminal conspiracy” against the applicant. This prima facie does not appeal to the senses.<sup>694</sup>

In *Mohd. Rehan @ Arshad Pradhan v. State NCT of Delhi*,<sup>695</sup> the prosecution argued that the accused was arrested based on what public eyewitnesses saw, who had known the accused previously and had identified him

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687 Common Order dated 28.10.2020, Notes 668, 669 and 670.

688 Note 672.

689 Order dated 25.11.2020, Note 672.

690 Order dated 3.2.2021, *State v. Kuldeep Singh*, Bail Application No. 198/2021, Additional Sessions Judge, Karkardooma District Court, Delhi.

691 Order dated 1.9.2020, *Devangana Kalita v. State of NCT of Delhi*, Bail Application No. 2038/2020, Delhi High Court.

692 Order dated 4.11.2020, *State v. Khalid Saifi*, Bail Application No. 1460/2020, Additional Sessions Judge, Karkardooma District Court, Delhi.

693 Order dated 15.4.2021, *State v. Umar Khalid*, Bail Application No. 506/2021, Additional Sessions Judge, Karkardooma District Court, Delhi.

694 Order dated 4.11.2020, Note 692; also see Order dated 15.4.2021, Note 693.

695 *Mohd. Rehan @ Arshad Pradhan v. State NCT of Delhi*, Bail Application No. 2849/2020, Delhi High Court.



along with other accused persons in FIR No. 117/2020. The Delhi High Court questioned the testimony of the public eyewitnesses and stated:

Even the witness Irfan, Salim, Surender Singh and Pradeep Kumar Verma who claimed to know the petitioner, they also did not make any complaint to the police on 25.02.2020.<sup>696</sup>

Similar ground was taken by the Delhi High Court to grant bail in *Liyakat Ali v. State Govt. of NCT of Delhi*<sup>697</sup> in FIR No. 88/2020.

In *Pradeep Rai v. The State (NCT) of Delhi*,<sup>698</sup> the Delhi High Court questioned the credibility of the eyewitness and noted:

In the prima facie opinion of this Court, it is possible that the eye witness, who in the present case is resident of Gali No.8, might have seen the incident taking place in Gali No.10, which is close to his place but how he could see the present incident, which has taken place in Gali No.3, and away from Gali No.10 and Gali No.8, is doubtful.<sup>699</sup>

In *State v. Gurmeet*,<sup>700</sup> the Court questioned the conduct of the public witness while granting bail to the accused in FIR No. 61/2020 (Jyoti Nagar Police Station). The Court noted:

The prosecution relies upon an eye witness namely Rafiq. He had given a statement u/s. 161 Cr.PC that he is a vegetable seller and on 25.02.2020 while he was selling vegetables on his rehari from Kardam Puri Puliya to service road, communal riots took place and he saw that unlawful assembly of Hindus were beating some Muslim and some unknown persons were firing and doing rioting. He was able to identify 56 people including the present accused Gurmeet, as among the rioters, as he knew them and had seen them in the nearby area but does not know their address. The witness has given this statement on 24.04.2020 while the incident pertains to 25.02.2020. **The applicant was not arrested, in the present case, on the instance of any witness but was formally arrested at Mandoli Jail. If that is so, then how the witness Rafiq has identified the accused by his face, is still anyone's guess. There is a gaping hole between the said two aspects.**<sup>701</sup> (Emphasis supplied)

Notably, the courts have not taken a mechanical approach to the issue of delay, focusing their criticism on unexplained delays. In cases where the prosecution has given a plausible reason for the delay by the witness, the Courts have accepted the explanation. Courts have acknowledged that mass violence may give rise to trauma, and that such personal constraints may hinder individuals from acting immediately.

For instance, in *State v. Sonu Saifi*,<sup>702</sup> the Court noted:

As regards not naming the applicant by PW Rohit Solanki in his initial statement dated 26.02.2020, I find force in the submissions of learned Special PP that this witness could be under tremendous mental shock, pain and agony on account of sudden death of his brother, certain amount of cool off period is usually required by any human being in such an extra-ordinary situation to regain his composure and it is not expected from a man of common prudence to give fine blow-by-blow account of the incident in such a situation.<sup>703</sup>

<sup>696</sup> Order dated 12.10.2020, Note 692.

<sup>697</sup> Order dated 3.2.2021, Note 663.

<sup>698</sup> *Pradeep Rai v. The State (NCT) of Delhi*, Bail Application Nos. 969/2021 and 823/2021, Delhi High Court.

<sup>699</sup> Order dated 9.4.2021, Note 698.

<sup>700</sup> *State v. Gurmeet*, Bail Application No. 2114/2020, Additional Sessions Judge, Karkardooma District Court, Delhi.

<sup>701</sup> Order dated 19.11.2020, Note 700.

<sup>702</sup> *State v. Sonu Saifi*, Bail Application No. 1710/2020, Additional Sessions Judge, Karkardooma District Court, Delhi.

<sup>703</sup> Order dated 25.11.2020, Note 702.

Similarly, in *State v. Ashraf Ali*<sup>704</sup> while framing charges against the accused, the Court of Additional Sessions Judge noted:

Though, there is no CCTV footage/video-clip of the incident available on record, however, at this stage we have the statement dated 21.04.2020 of PW Ajeet Kumar Tomar, vide which he has not only given categorical account of the incident in question, but has also named/identified the accused persons to be part/member of the riotous mob taking active participation in the rioting activity. At this stage, his aforesaid statement cannot be brushed aside/discarded merely because there has been some delay in recording thereof or the complainant has not specifically named them. The learned Special PP has been able to accord cogent explanation with regard to delay in registration of FIR and recording the statements of witnesses in the matter.<sup>705</sup>

Recently, in *State v. Mithhan Singh*,<sup>706</sup> the Additional Sessions Court framed charges against two men for setting fire to private houses and Fatima Masjid. The Court stated that an atmosphere of terror and trauma prevailed in the area for several days even after the violence, and a delay of about one week in reporting the incident to the police was justified and could not be considered fatal to the prosecution's case. The Court held:

It is true that these witnesses had not come forward to lodge a complaint with the police or to get their statements recorded soon after the incident. However, it has to be borne in mind that this case is an off shoot of communal riots which erupted in North East District on 24.02.2021 and continued till 26.02.2020 when the situation was brought under control by the police and paramilitary force. There had been several instances of rioting, killing, vandalism, setting ablaze movable or immovable properties etc. by the members of each community. There was an atmosphere of terror and trauma which prevailed in the area for several days even after the riots. In these circumstances, the delay of about one week in reporting the incident to the police would appear justified to any prudent person and can not be considered fatal to the prosecution case at this stage.<sup>707</sup>

Similar delay was condoned by the Court of Additional Sessions Judge in framing charges of rioting and unlawful assembly in FIR No. 85/2020, against four men, in *State v. Mohd. Shahnawaz @ Shanu*.<sup>708</sup>

Belated statements by witnesses without any explanation for the delay gives rise to suspicion of fabrication or tutoring. This is more so for statements by police personnel, who understand the procedure of investigation and do not have the apprehensions that civilians may have. The Orders quoted above reflect a trend of chargesheets based primarily on belated statements. In some cases, courts have even commented that police witnesses have been deliberately planted to implicate the accused.

### **Scientific and Contemporaneous Records Exonerate the Accused**

The Delhi Police is reported to be using scientific investigative tools in tandem with analyzing CCTV footage towards better investigation of cases. However, in many of the cases where police have submitted CCTV footage, videos or photographs as evidence; these materials either exonerate the accused or fail to reveal any criminal actions by the accused.

### **CCTV Footage, Videos or Photographs**

Across many cases, courts have noted that there is no digital material available to establish the accused person's presence at the crime scene at the time of the alleged incident. For instance, in *Mohd. Danish v. State*

704 *State v. Ashraf Ali*, Sessions Case No. 115/2021, Additional Sessions Judge, Karkardooma District Court, Delhi.

705 Order dated 28.8.2021, Note 704.

706 *State v. Mithhan Singh*, Sessions Case No. 6/2021, Additional Sessions Judge, Karkardooma District Court, Delhi.

707 Order dated 20.11.2021, Note 706.

708 Order dated 2.11.2021, *State v. Mohd. Shahnawaz @ Shanu*, Sessions Case No. 49/2021, Additional Sessions Judge, Karkardooma District Court, Delhi.

(*NCT of Delhi*),<sup>709</sup> the Delhi High Court while granting bail to the accused in FIR No. 60/2020 for murder and other offences notes:

Undisputedly, there is no CCTV footage or viral video to implicate the present petitioner.<sup>710</sup>

Similar observations have been made by the High Court while granting bail in *Liyakat Ali v. State Govt. of NCT of Delhi*,<sup>711</sup> *Mohd. Rehan @ Arshad Pradhan v. State NCT of Delhi*,<sup>712</sup> and by the Court of Additional Sessions Judge in *State v. Ajay*.<sup>713</sup>

In some cases where CCTV footage or videos have been submitted by the police, courts have found them unreliable as the police have presented footage where the accused is not visible. In other cases where the accused is visible in videos and CCTV footage, the footage presented does not show them carrying out violent criminal acts, or inciting violence.

In *State v. Aarif @ Mota*,<sup>714</sup> while granting bail to the accused, the Court of Additional Sessions Judge noted that the accused is not visible in any CCTV/video footage of the incident submitted by the police. Similarly, in *Kasim v. State*,<sup>715</sup> while granting bail to the accused in FIR No. 91/2020, the Delhi High Court observed:

It is also not in dispute that as per the charge-sheet, in column 10 at page 23 it is stated that 11 video footages were received from different social media showing the incident or riot dated 24/25.02.2020 showing the rioting incident on the crime spot and house of accused Tahir Hussain... It is also not in dispute that co-accused Tahir Hussain and Liyakat were seen in the CCTV footage, however, petitioner is not seen in any of those 11 footages received from different social media.<sup>716</sup>

In *State v. Natasha Narwal*,<sup>717</sup> while granting bail to the accused in FIR No. 50/2020 (Jaffrabad Police Station), where the accused was stated to be a part of an unlawful assembly that committed riots, leading to the death of one person, the Additional Sessions Judge noted:

Moreover, certain videos were shown in the court by the IO and Ld. Special Prosecutor but the said videos show her being a part of unlawful assembly but do not show the accused indulging or inciting the violence.<sup>718</sup>

In *Devangana Kalita v. State NCT of Delhi*,<sup>719</sup> the Delhi High Court noted:

Moreover, I have gone through the inner case diary produced in a sealed cover along with pen drive and found that though her presence is seen in peaceful agitation, which is fundamental right guaranteed under Article 19 of the Constitution of India, **however, failed to produce any material that she in her speech instigated women of particular community or gave hatred speech due to which precious life of a young man has been sacrificed and property damaged.**<sup>720</sup> (Emphasis supplied)

709 Note 664.

710 Order dated 16.2.2021, Note 664.

711 Order dated 3.2.2021, Note 663.

712 Order dated 12.10.2020, *Mohd. Rehan @ Arshad Pradhan v. State NCT of Delhi*, Bail Application No. 2849/2020, Delhi High Court.

713 Order dated 17.11.2020, *State v. Ajay*, Bail Application No. 2058/2020, Additional Sessions Judge, Karkardooma District Court, Delhi.

714 Order dated 11.12.2020, *State v. Aarif @ Mota*, Bail Application No. 1810/2020, Additional Sessions Judge, Karkardooma District Court, Delhi.

715 Note 660.

716 Order dated 13.10.2020, Note 660.

717 *State v. Natasha Narwal*, Bail Application No. 1394/2020, Additional Sessions Judge, Karkardooma Court, Delhi.

718 Order dated 17.9.2020, Note 717.

719 Order dated 1.9.2020, Note 691.

720 Order dated 1.9.2020, Note 691.

This Bail Order was challenged by the prosecution in the Supreme Court on the grounds that relevant aspects had not been considered. The Supreme Court dismissed the appeal filed by the state.<sup>721</sup>

Further, the Delhi High Court in *Firoz Khan v. State*,<sup>722</sup> observed that the CCTV footage relied on by the prosecution was not even of the crime scene:

The State further says that in CCTV footage dated 24.02.2020 obtained from cameras installed at Rajdhani Public School, Mahalaxmi Enclave, which footage was seized in the connected case FIR No. 111/2020 registered at PS. Dayalpur, the applicant is clearly seen actively participating in and instigating others during the riots. A quick check of the walking distance between the complainant's shop at property No. A-126A Mahalakshmi Enclave and Rajdhani Public School, Mahalakshmi Enclave on Google Maps, which identifies property No. A-126 (though not A-126A) and **identifies the school, it is seen that the two places are at a distance of about 400 meters and a 5-minute walk but on two different sides of a turn in the road. It appears incredible therefore that cameras installed in the school would be able to 'see' the complainant's shop.**<sup>723</sup> (Emphasis supplied)

In the case of *Saiyad Iftikhar v. State NCT of Delhi*,<sup>724</sup> the High Court disregarded the CCTV footage on the ground that the applicant was a person with poor vision (-3.75), yet the CCTV footage submitted showed a person without glasses at night. The Court noted:

However, petitioner was arrested on the basis of CCTV footage along with co accused Ali Hasan but admitted fact is that in CCTV footage petitioner is not wearing spectacles. The alleged incident is dated 24.02.2020 at 21:31.50 hour. **Thus, it cannot be believed that a person having such weak eye-sight would have clear vision at night without spectacles. Moreover, CDR is not on record, whereby it could have been established that the petitioner was available at the site.**<sup>725</sup> (Emphasis supplied)

Similarly, in *State v. Anwar Hussain*,<sup>726</sup> the Court of Additional Sessions Judge noted that while the incident in question was on February 24, 2020, the CCTV footage relied upon was from February 23, 2020. Thus, no criminal liability could be imputed on this basis and the accused was released on bail. Even in *State v. Gurmeet Singh @ Sonu*,<sup>727</sup> while granting bail, the Court noted that the CCTV footage relied on was not of the place where the incident occurred, but of another location close to it.

In a detailed Bail Order in *Junaid v. State*,<sup>728</sup> on viewing the video footage relied on by the prosecution, the Delhi High Court noted that the investigation agency appears to have relied on only one part of the video which suited their narrative. The Court noted:

As submitted by learned counsel for petitioner that in the same video relied upon by police, at exact after running of video for 10 minutes, it is seen that Ravish Kumar, NDTV primetime anchor saying that a person is firing rifle from Mohan Nursing Home Hospital and is wearing helmet, there is another person who is covering the weapon with handkerchief and later on, they can be seen in the videos as well. But the investigating agency seems to have concentrated only on one side of the building, although it is an admitted case of prosecution that rioters from both the sides were

721 Order dated 28.10.2020, *State of NCT Delhi v. Devangana Kalita*, SLP (Crl.) No. 4543/2020, Supreme Court.

722 Note 679.

723 Order dated 29.5.2020, Note 679.

724 *Saiyad Iftikhar v. State NCT of Delhi*, Bail Application No. 2848/2020, Delhi High Court.

725 Order dated 12.11.2020, Note 724.

726 Order dated 11.11.2020, *State v. Anwar Hussain*, Bail Application No. 1624/2020, Court of Additional Sessions Judge, Karkardooma District Court, Delhi.

727 Order dated 19.11.2020, *State v. Gurmeet Singh @ Sonu*, Bail Application No. 2114/2020, Court of Additional Sessions Judge, Karkardooma District Court, Delhi.

728 *Junaid v. State*, Bail Application No. 3163/2020, Delhi High Court.

pelting stones at each other and were firing. Further, in this video, the firing is seen to be done only from Mohan Nursing Home and not from Saptarishi building.<sup>729</sup>

Where CCTV footage establishes the accused taking part in violence, the courts have denied bail. For instance, in *State v. Ashish Kumar*,<sup>730</sup> the Court while denying bail noted:

In the present case, we have clear identification of the applicant through the evidence of public/eye witnesses namely Neeraj Kumar. He is also clearly visible in the CCTV footage walking behind the riotous mob that was prodding deceased Suleman with “dandas”. Even in the photographs which were got developed from the CCTV footages, the applicant is clearly seen with co-accused Gaurav and apprehended juvenile being part of the ‘riotous mob’ and taking active part in the rioting.<sup>731</sup>

Moreover, in some instances, the courts accepted the contention of the police that the CCTVs and Digital Video Recorders (DVRs) were damaged by the mobs during the riots. In *State v. Ashraf Ali*,<sup>732</sup> the Court in its Order on charge in FIR No. 63/2020 noted:

As regards the contention of learned counsel(s) that accused persons are not seen/visible in any CCTV footage, I find substance in the submissions of learned Special PP that rioters had broken down virtually every CCTV in the vicinity and had damaged the DVRs thereof on 24.02.2020 and 25.02.2020 and as such, it is quite possible that on this account no CCTV footage is available in the matter.<sup>733</sup>

Similarly, dismissing the bail applications of Sameer Khan and Kasim in FIR No. 65/2020, (Dayalpur Police Station, Intelligence Bureau staffer, Ankit Sharma murder case), the Delhi High Court, noted:

It is a matter of fact, in such like cases where large mob is involved in riots and illegal activities causing harm to public property, peace and life, statement of eye witnesses and corroborative evidence plays a vital role and at the time of considering the bail application of accused, it would be too soon to analyse the testimony of eye witnesses and public witnesses to arrive at a conclusion as to whether any case is made out against the accused or not. Non availability of technical evidence such like CCTV footage etc. cannot be accepted as a ground for non-availability of direct evidence, as it is a matter of record that CCTV cameras installed in the areas in question were either broken or hidden by the mob. At the time of grant of bail only a prima facie opinion has to be formed and the facts and circumstances of this case do not persuade this Court to keep a lenient view towards the petitioners. Petitioners have been playing hide and seek with the prosecution. Charge sheet in the FIR in question has already been filed and trial is in progress. Petitioners will have an opportunity to make their case at the appropriate stage during the course of trial.<sup>734</sup>

### Call Detail Records

In many cases, courts have found that the Call Detail Records (CDR) location of the accused contradicts the prosecution's claims regarding the presence of the accused at the place of the offence. CDRs provide a record of the calls made from and received on a phone number including the date, time and duration of the calls, and the location of the phone at the time of these calls. These details can be used to corroborate or disprove a person's location on a specific day and time.

In *Mohd. Danish v. State (NCT of Delhi)*,<sup>735</sup> while granting bail to the accused in FIR No. 60/2020 (Dayalpur Police Station) for murder and other offences, the Delhi High Court noted that the CDR details contradict the prosecution's claims:

<sup>729</sup> Order dated 19.2.2021, Note 728.

<sup>730</sup> *State v. Ashish Kumar*, Bail Application No. 1934/2020, Court of Additional Sessions Judge, Karkardooma District Court, Delhi.

<sup>731</sup> Order dated 8.2.2021, Note 730.

<sup>732</sup> Note 704.

<sup>733</sup> Order dated 28.8.2021, Note 704.

<sup>734</sup> Order dated 3.5.2021, *Sameer Khan v. the State of Delhi*, Bail Application No. 1344/2021, Delhi High Court.

<sup>735</sup> Note 664.

It seems from the CDR details of the petitioner that on the date of incident, i.e. 24.02.2020, he was not even in the vicinity of the violence affected area i.e. Main Wazirabad Road. As per FIR, the incident happened in between 1:00 PM – 4:00 PM on 24.02.2020 and till 9:44 pm on 24.02.2020 the address was of Sharaft Ali S/o Mohd. Ishaq, Plot No.5A Gali No.1A, Khasra Number 123/21, Moonga Nagar, Karawal Nagar-110094. Therefore, it seems that the petitioner herein remained in the same area without any tangible change of location.<sup>736</sup>

In some cases where CDR show the accused to be present at the place of the offence, courts have noted that this is not consequential, because the accused were residents of the area where the violence took place.<sup>737</sup>

For instance, in *State v. Arif @ Mota*,<sup>738</sup> the Court of Additional Sessions Judge while granting bail to the accused in FIR No. 158/2020 held:

As regards the CDR location, it is relevant to mention here that applicant is resident of the same locality/area and as such, at this stage his CDR location being found at or around the spot is also not of much consequence to the prosecution.<sup>739</sup>

In *State v. Khalid Saifi*<sup>740</sup> and *State v. Umar Khalid*,<sup>741</sup> the sole evidence against the accused persons was that their CDR analysis revealed that they had been in regular touch with co-accused Tahir Hussain, and that their CDR location was at Shaheen Bagh on the evening of January 8, 2020. The Additional Sessions Court, in separate Orders, while granting bail to both accused in FIR No. 101/2020 held that:

The argument of learned Special PP that applicant had been in regular contact/touch with co-accused Tahir Hussain and Khalid Saifi over mobile phone and the same is evident from the fact their CDR location on 08.01.2020 has been found to be at Shaheen Bagh is hardly of any consequences, as prima facie that does not in any way go on to establish the criminal conspiracy alleged against the applicant in the matter.<sup>742</sup>

Contemporaneous digital footage of the offence is robust evidence to establish the identity of the offender. There have been cases where the prosecution case itself is falsified by the CCTV footage or the CDR. This is a serious indication of false implication by the investigating agency. The failure to collect CCTV footage despite it being available gives rise to the possibility of deliberate suppression of material exonerating the accused by the investigating agency. In law, the suppression of evidence imputes an adverse inference against the party suppressing the material.

### **Addition of Serious Offences without any Supporting Material**

Courts have also commented on the unsubstantiated inclusion of grave IPC offences only to prejudice the accused. For instance, in *Firoz Khan v. State*,<sup>743</sup> the Delhi High Court called into question the application of provisions of rioting (Sections 147-149, IPC) which require the participation of a minimum of five persons when the prosecution itself pointed at the involvement of only two persons. In another case, the Court of Additional Sessions Judge questioned the application of Section 307, IPC as well as the Arms Act, 1959 while allowing an application for discharge in *State v. Imran @ Teli and Babu*.<sup>744</sup> The Court noted that the entire chargesheet had no statement of the injured victim and the police had produced nothing to establish that someone had sustained a gunshot wound. The police not only failed to locate the victim, but no firearms

<sup>736</sup> Order dated 16.2.2021, Note 664.

<sup>737</sup> See common Order dated 28.10.2020. Notes 668, 669 and 670.

<sup>738</sup> Note 714.

<sup>739</sup> Order dated 11.12.2020, Note 714.

<sup>740</sup> Order dated 4.11.2020, Note 692.

<sup>741</sup> Order dated 15.4.2021, Note 693.

<sup>742</sup> Order dated 15.4.2021, Note 693.

<sup>743</sup> Order dated 29.5.2020, Note 679.

<sup>744</sup> Order dated 1.3.2021, *State v. Imran @ Teli and Babu*, Sessions Case No. 70/2021, Court of Additional Sessions Judge, Karkardooma District Court, Delhi.

were seized from the accused either. In another instance, the Court discharged accused persons under Section 436, IPC (mischief by fire or explosive substance with intent to destroy house), after taking note of the fact that there was not a single word in the statements of complainants showing that the riotous mob had committed the offence of mischief by fire.<sup>745</sup> Similarly, in *State v. Mohd. Shahnawaz @ Shanu*,<sup>746</sup> the Court of Additional Sessions Judge discharged 10 accused persons of graver offences under Section 436, IPC finding no ingredients for the same in the initial complaints.

While granting bail to accused Khalid Saifi and Umar Khalid in FIR No. 101/2020, the Court of Additional Sessions Judge observed that chargesheeting them in the case reflects non-application of mind by the police “going to the extent of vindictiveness”.<sup>747</sup>

Scattered instances of invoking provisions with a higher punishment could have been taken as non-application of mind or incompetence, however, a recurring trend indicates a deliberate attempt to prejudice the accused by invoking non-bailable offences.

### **Evidence Incompatible with the Prosecution's Narrative**

It is the prosecution's case that the Delhi violence was the product of a grand conspiracy by certain groups and organizations primarily constituted of Muslims protesting against the CAA in order to compel the government to repeal the law. However, the evidence produced in various chargesheets contradicts this narrative.

In one case, the Court of Additional Sessions Judge found the prosecution's narrative of a Muslim accused joining an unlawful assembly that consisted of members of the Hindu community beating a Muslim boy to death, “obfusatory”.<sup>748</sup> Similarly, in *Junaid v. State of NCT*,<sup>749</sup> the Delhi High Court pointed out the absurdity of the accused persons causing communal riots by killing persons of their own community, especially in light of the statement of Hindu witnesses that the accused were threatened by a Hindu mob to leave the crime scene to save themselves. In another case the complainant and victim, the Imam of a mosque, was arrested for burning the mosque.<sup>750</sup>

The Court of Additional Sessions Judge in *State v. Shah Alam*,<sup>751</sup> while discharging three accused noted:

After investigating this matter for so long, the police has shown up only five witnesses in the matter; one is the victim, other is Constable Gyan Singh, one Duty Officer, a formal witness and the IO. I cannot restrain myself from observing that this case is a colossal wastage of the hard earned money of taxpayers without there being real intent of investigating the matter.<sup>752</sup>

### **Conduct of the Investigating Agency**

The courts repeatedly raised concerns over the conduct of the Delhi Police in investigating these cases. For instance, more than a year after violence took place, the Court of Additional Sessions Judge while framing charge in *State v. Ashraf Ali*,<sup>753</sup> criticized the Delhi Police for filing “half-baked chargesheets”. It also commented on the non-appearance of Investigating Officers before the Court, that enabled continued incarceration of accused persons. The Court directed the DCP, North East District to take immediate remedial measures.

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<sup>745</sup> Order dated 7.9.2021, *State v. Javed*, Sessions Case No. 224/2021, Court of Additional Sessions Judge, Karkardooma District Court, Delhi.

<sup>746</sup> Order dated 22.9.2021, *State v. Mohd. Shahnawaz @ Shanu*, Sessions Case No. 44/2021, Court of Additional Sessions Judge, Karkardooma District Court, Delhi.

<sup>747</sup> Order dated 4.11.2020, Note 692.

<sup>748</sup> Order dated 11.12.2020, Note 714.

<sup>749</sup> Note 729.

<sup>750</sup> Order dated 20.7.2021, *State v. Haji Hashim Ali*, Criminal Revision No. 7/21, Court of Additional Sessions Judge, Karkardooma District Court, Delhi.

<sup>751</sup> Note 675.

<sup>752</sup> Order dated 2.9.2021, Note 675.

<sup>753</sup> Order dated 28.8.2021, Note 704.

An example of such conduct is a case where after disputing the occurrence of an offence and the need to file an FIR in the proceedings before the Magistrate, the Delhi Police turned a complete *volte face* and informed the Sessions Court that an FIR had been filed much earlier and investigation was ongoing. The Additional Sessions Judge observed that it was “preposterous” the police did not know that they were investigating the case.<sup>754</sup>

In *State v. Dinesh Yadav @ Michael*,<sup>755</sup> the Chief Metropolitan Magistrate criticized the investigating agency's inaction, particularly, the Delhi Police filing supplementary chargesheets sequentially. This has the effect of prolonging the investigation. Accordingly, the Court directed the Commissioner of Police to ensure that the investigations are concluded in one month, such that the trials can commence soon.

Following these strong observations from the courts in a slew of cases, the Delhi Police Commissioner issued an Order on September 19, 2021, setting up a Special Investigation Cell headed by Special Commissioner of Police (Central Zone), to review and monitor the investigation in all pending Delhi violence cases, and to develop a time-bound strategy to expedite the investigation and prosecution. Joint Commissioner of Police (East), DCP North East, and Additional DCP North East were appointed as members of the Special Investigation Cell, and retired police officer and former Assistant Commissioner of Police, K.G. Tyagi was appointed as a consultant to monitor the cases in the Court.<sup>756</sup> On September 20, another circular was issued by the DCP (North East), creating ten special teams, headed by an Assistant Commissioner of Police or inspector-rank officer, to review the pending investigations in Delhi violence cases and to guide officers to bring more scientific and technical evidence on record.<sup>757</sup>

However, even after this, courts passed adverse orders against Investigating Officers for their lackadaisical approach. For instance, in *State v. Komal Mishra*,<sup>758</sup> the Court of the Chief Metropolitan Magistrate imposed a cost of Rs. 5,000 on the Investigating Officer for not complying with the Court's Order and for seeking an adjournment in a casual manner.<sup>759</sup> Similarly, in *State v. Neeraj @ Kashi*,<sup>760</sup> the Chief Metropolitan Magistrate imposed a cost of Rs. 25,000 on the Delhi Police for delay in moving an application regarding segregation of a complaint and for further investigation, causing undue harassment to the accused persons, two of whom were in judicial custody. The Court further directed the Commissioner of Police, Delhi to furnish a detailed report regarding steps taken by him to ensure proper investigation and prosecution of cases and their expeditious trial.<sup>761</sup> Similar orders have been passed by the courts in multiple cases including *State v.*

754 Order dated 25.7.2021, *State v. Salim*, CrI. Revision No. 102/2020, Court of Additional Sessions Judge, Karkardooma District Court, Delhi.

755 Order dated 1.9.2021, *State v. Dinesh Yadav @ Michael*, Cr. Case No. 1274/2020, Court of Additional Sessions Judge, Karkardooma District Court, Delhi.

756 Express News Service, “Delhi riots: After court rap, special police cell set up to monitor probe”, *The Indian Express*, 24 September 2021: <https://indianexpress.com/article/cities/delhi/delhi-riots-after-court-rape-special-police-cell-set-up-to-monitor-probe-7530677>.

757 Express News Service, “Following court rap, Delhi police constitute special teams for riot investigations”, *The Indian Express*, 22 September 2021: <https://indianexpress.com/article/cities/delhi/following-court-rape-delhi-police-constitute-special-teams-for-riot-investigations-7528060>.

758 Order dated 25.9.2021, *State v. Komal Mishra*, Cr. Case No. 1024/2020, Court of Chief Metropolitan Magistrate, Karkardooma District Court, Delhi.

759 The Court waived the cost imposed in the next hearing held in this case on 21.10.2021. The Court, however, cautioned the DCP (North East) and Commissioner of Police that it will hold them personally responsible for imposition of cost in case the Investigating Officers seek adjournment for compliance of the orders passed by the Court in these cases. The orders passed by the Court of Chief Metropolitan Magistrate were set aside by the Sessions Court in *SHO PS Dayalpur Delhi v. Komal Mishra* (Orders dated 21.10.2021, 25.10.2021 and 02.11.2021, CrI. Revision No. 42/2021).

760 Order dated 12.10.2021, *State v. Neeraj @ Kashi*, Cr. Case No. 807/2020, Court of Chief Metropolitan Magistrate, Karkardooma District Court, Delhi.

761 Orders dated 16.10.2021 and 1.12.2021, *SHO PS Bhajanpura v. Neeraj @ Kashi*, Cr. Case No. 41/21, Court of District and Sessions Judge, Karkardooma District Court, Delhi. By orders dated 16.10.2021 and 1.12.2021, the Court stayed and subsequently set aside the impugned order in a revision petition filed by the SHO PS Bhajanpura. The Court, however, directed the concerned Deputy Commissioner of Police to ensure expeditious trial of the Delhi violence cases and to sensitize subordinates police officials to ensure no further delay in trial of these cases.



*Pintu @ Anand Kishore*,<sup>762</sup> *State v. Manish*,<sup>763</sup> *State v. Raj Kumar @ Gullu*<sup>764</sup> and *State v. Raj Kumar*.<sup>765</sup> It seems that the steps taken by the Delhi Police is a case of too little, too late.

## Omissions in Investigation

This Committee notes that several hate speeches immediately before the violence, particularly on 22-23 February, 2020 do not feature in the Delhi Police's investigation. We have also perused judicial orders commenting on other instances of possible misdirection in investigation. This section discusses an illustrative list of these omissions.

### Failure to Investigate Instances of Incitement to Violence

It is well settled in law that a police officer is duty bound to register an FIR on a complaint of a cognizable offence.<sup>766</sup> However, the Delhi Police refused to register FIRs against several highly publicized instances of hate speech and criminal intimidation. Earlier chapters of this report document the inception and spread of the “shoot the traitors” slogan referring to anti-CAA protesters and minorities. It is known that Anurag Thakur shouted the slogan “*Desh ke gaddaron ko*” multiple times, and each time received the response “*Goli maaro saalon ko*” from the crowd, at an election rally for a BJP candidate in North West Delhi's Rithala on January 27, 2020.<sup>767</sup>

Similar speeches with violent content, and exhortations to violence were made, over February 23 and February 24 regarding protesters at Maujpur Chowk. On February 23, 2020, Kapil Mishra openly gave an ultimatum to the Delhi Police to remove the protesters at Jaffrabad, or he and his supporters would take matters into their own hands.<sup>768</sup> On the same day, Ragini Tiwari shared incendiary content against anti-CAA protesters on Facebook Live. In the video, Ragini Tiwari can be seen amidst a crowd at Maujpur Chowk, saying, “Enough attacks on Sanatana [Hinduism]. We won't tolerate such attacks anymore. Hindus, come out. Die or kill. Rest shall be seen later. If your blood hasn't boiled even now, it's not blood but it is water.”<sup>769</sup>

While these statements on the face of it make out an offence under Section 153, IPC (wantonly giving provocation with intent to cause riot), it appears that no FIR has been filed against Kapil Mishra or Ragini Tiwari for these statements. Notably, Ragini Tiwari has subsequently spoken of her role in inducing violence relating to North East Delhi in the context of another set of mass protests. On December 12, 2020, she made a statement about the farmers' protests taking place in Delhi at that time. Tiwari said, “I am telling all my sisters that prepare for [December] 17...If the government does not free us from the farmers' movement in

762 Order dated 10.12.2021, *State v. Pintu @ Anand Kishore*, Cr. Case No. 54/21, Court of District and Sessions Judge, Karkardooma District Court, Delhi. The Court directed the DCP, North East district to sensitize subordinate police officers to comply with the judicial orders and directions of the Trial Court in Delhi violence cases.

763 Order dated 9.10.2021, *State v. Manish*, Cr. Case No. 728/2020, Court of Chief Metropolitan Magistrate, Karkardooma District Delhi. The Court imposed a cost of Rs. 5,000 on Delhi Police and directed the Commissioner of Police, Delhi to conduct an inquiry while ordering deduction of the said cost from the salary of responsible officer.

764 Order dated 23.10.2021, *State v. Raj Kumar @ Gullu*, Cr. Case No. 939/2020, Court of Chief Metropolitan Magistrate, Karkardooma District Court, Delhi. The Court issued show cause notice to the Investigating Officer and Deputy Commissioner of Police, North East over their failure to comply with the court's orders to supply colored photographs and CCTV footages to the accused person in the present case. The order passed by the Court of Chief Metropolitan Magistrate was stayed by the Sessions Court vide Order dated 27.10.2021, *State of NCT of Delhi v. Vinod*, CrI. Revision No. 46/21, Court of Sessions and District Judge, Karkardooma District Court, Delhi.

765 Order dated 22.11.2021, *State v. Raj Kumar*, Sessions Case No. 284/2021, Court of Additional Sessions Judge, Karkardooma District Court, Delhi. The Court of Additional Sessions Judge while discharging five accused persons directed the Deputy Commissioner of Police concerned to conduct an enquiry into the manner in which the investigation was conducted by the Investigating Officer to “find out whether or not there had been any deliberate attempt to shield the offenders”. In the instant case, as per the chargesheet, the accused were identified by only one witness *i.e.*, the complainant Firoz Khan, who had identified them from their photographs shown to him in the Police Station.

766 See Section 154, CrPC; *Lalita Kumari v. Govt. of U P*, (2014) 2 SCC 1.

767 Note 126.

768 Note 170.

769 Note 169.

Delhi then Ragini Tiwari will once again create Jafrabad and whatever happens the Centre, state government and Delhi police will be responsible.<sup>770</sup> However, even as she refers to *another Jaffrabad* with oblique inference to the violence, her statements, and their implications, prior to the Delhi violence, are yet to be investigated. In contrast, the Delhi Police have registered a FIR against her under Section 153 IPC for her statement on the farmers' protest.<sup>771</sup>

These speeches and statements attract offences under Sections 153A (promoting enmity between groups), 503 (criminal intimidation) and 505 (statements conducive to public mischief) of the IPC. On February 26, 2020, the Delhi High Court in the case of *Harsh Mander v. Government of NCT Delhi*<sup>772</sup> ordered the Delhi Police to "take a conscious decision" on filing an FIR within a day against those seen to be making the hate speeches in the videos viewed by the Court. The Court also observed that the four speeches "ex facie appear to be answering the description of the crime of hate speech in terms of Section 153A(a) and (b), IPC".<sup>773</sup> Despite the Delhi Police's assurances to look into the matter, more than two years later, no FIR has been filed against the political leaders responsible for making hate-speeches.

### Misdirecting the Investigation

This Committee has studied publicly available information and judicial orders commenting on specific instances of the police misdirecting investigation in sensitive cases of murder, grievous hurt and vandalism of religious sites that occurred during the violence. In some of these cases, police personnel are named as alleged perpetrators of violence.

For instance, on February 25, 2020, victim Mohammad Nasir was blinded in his left eye by a close-range gunshot wound.<sup>774</sup> In an interview to the *Caravan* magazine, Mohammad Nasir stated that the assailant was his neighbor.<sup>775</sup> On the other hand, FIR No. 64/2020 registered by a police official at Bhajanpura Police Station states that Mohammad Nasir who was shot in the eye and undergoing treatment at GTB Hospital refused to give any information regarding the assault, forcing the attendant police officer to register the FIR on the basis of his own complaint.<sup>776</sup> Nasir claims that on March 18, 2020, he made repeated attempts to register a complaint naming his assailants and giving a detailed account of the assault. However, police officials at Bhajanpura Police Station refused to record his statement. Thereafter, on April 18, 2020, Nasir wrote another letter to Station House Officer of Bhajanpura Police Station and copied the National Human Rights Commission protesting against the police's refusal to register his FIR.<sup>777</sup> Subsequently, the Magistrate passed an Order on Nasir's application, directing the Delhi Police to register a separate FIR within 24 hours.<sup>778</sup>

The Delhi Police challenged the same in a revision application before the Sessions Court. While rejecting the revision application, the Additional Sessions Judge commented on the "shocking state of affairs" in investigation in FIR No. 64/2020.<sup>779</sup> The Additional Sessions Judge observed that the case diary was not maintained as mandated by law,<sup>780</sup> and that the investigation had been conducted in a "casual, callous

770 Vijayta Lalwani, "Who is Ragini Tiwari whose video threatening protesting farmers has gone viral?", *Scroll.in*, 13 December 2020: <https://scroll.in/article/981110/who-is-ragini-tiwari-whose-video-threatening-protesting-farmers-has-gone-viral>.

771 Mahender Singh Manral, "FIR against Ragini Tiwari over video 'threatening' protesters", *The Indian Express*, 23 December 2020: <https://indianexpress.com/article/cities/delhi/fir-against-ragini-tiwari-over-video-threatening-protesters-7115970/>.

772 Note 368.

773 Note 364.

774 Ahan Penkar and Shahid Tantray, "Glaring gaps in Delhi Police investigation into gun attack on riot victim Mohd Nasir", *The Caravan*, 25 July 2020: <https://caravanmagazine.in/conflict/delhi-riots-mohammad-nasir-police-fir-64-statement>.

775 Penkar and Tantray, 25 July 2020, Note 774.

776 Penkar and Tantray, 25 July 2020, Note 774.

777 Penkar and Tantray, 25 July 2020, Note 774.

778 Order dated 21.10.2020, *Mohammad Nasir v. State*, CIS No. 1210/2020, Court of Metropolitan Magistrate, Karkardooma District Court, Delhi.

779 Para 20, Order dated 13.7.2020, *State v. Mohammad Nasir*, CrI. Revision No. 23/2020, Court of Additional Sessions Judge, Karkardooma District Court, Delhi.

780 Para 21, Order dated 13.7.2020, Note 779.

and farcical” manner lacking both “efficacy and fairness”.<sup>781</sup> The Additional Sessions Judge imposed costs of Rs. 25,000 on the police.<sup>782</sup> Nasir’s complaints against the police gain significance and credibility in light of the substandard investigation conducted in FIR No. 64/2020.

In the case of the murder of Mohammad Furkan, three eyewitnesses came on record, in an article by the Caravan magazine, to state that they were within 20 feet of Mohammad Furkan at the anti-CAA protest site in Kardampuri and saw him being shot and killed by a Delhi Police Sub-Inspector from the Okhla Police Station.<sup>783</sup> FIR No. 53/2020 and the chargesheet filed by the Delhi Police allege that Mohammad Furkan was killed in a firing by four Muslim residents of the area.<sup>784</sup> A perusal of the chargesheet against the Muslim accused reveals that it contains innocuous CCTV footage, inadmissible confessional statements to police officers, and belated statements of police witnesses present at the time of the offence. The complete lack of evidence against the arrested accused casts a cloud of doubt over the line of investigation being pursued and further validates the version narrated by the three witnesses.

In another incident, on February 24, 2020 at about 4 p.m., five Muslim youths were brutally assaulted and publicly humiliated by police officers who taunted the young men saying “yeh lo azadi” (here, take your freedom) and forced them to sing the national anthem. One of these young men, 23-year-old Faizan, was wrongfully confined in Jyoti Nagar Police Station after the incident till about 11 p.m. on February 25, 2020. He died on February 26, 2020 at Lok Nayak Hospital, Delhi after his release.<sup>785</sup> As per the post-mortem report, Faizan’s cause of death was a cerebral injury along with multiple injuries all over his body caused by blunt force impact.<sup>786</sup> Further, the medical board of Lok Nayak Hospital opined that the injuries on Faizan’s head could have been caused by a hard and blunt object such as a lathi.<sup>787</sup> The post mortem report makes it clear that Faizan died on account of the injuries suffered during the assault or whilst he was wrongfully confined in Jyoti Nagar Police Station for about 31 hours. Though an FIR for the offence of murder has been registered under Section 302, IPC, the Delhi Police have not yet arrested the assailants. In response to the Writ Petition filed by the deceased’s mother seeking a time-bound, court-monitored investigation by a Special Investigation Team, the Delhi Police filed a status report admitting that the video footage available in the media showed Faizan and others being beaten by police officers.<sup>788</sup> However, the police claim that as the videos were blurred and the assailants are wearing helmets and safety gear, they were unable to identify their own officers responsible for the atrocity.<sup>789</sup> It is perplexing to note that despite two years having elapsed since the offence and a closely watched investigation, the Delhi Police have failed to identify and arrest the assailants.

A fact-finding report published by the DMC states that the Delhi Police failed to prevent the vandalism of Muslim places of worship. In the case of the burning of Madina Masjid, the complainant Haji Hashim Ali, the care-taker of the mosque, approached the Metropolitan Magistrate, under Section 156(3), CrPC, as the police were refusing to register his FIR regarding the damage to the mosque. Hashim Ali, in his application claimed that no action had been taken on his written complaint dated May 26, 2020, naming 15 assailants who were involved in the burning of the mosque.<sup>790</sup>

<sup>781</sup> Para 26-27, Order dated 13.7.2020, Note 779.

<sup>782</sup> Para 28, Order dated 13.7.2020, Note 779.

<sup>783</sup> Sumedha Mittal and Amir Malik, “Three eyewitnesses accuse Delhi Police official of murder during Delhi violence”, *The Caravan*, 21 February 2021: <https://caravanmagazine.in/crime/three-eyewitnesses-accuse-delhi-police-official-murder-during-delhi-violence>.

<sup>784</sup> Mittal and Malik, 21 February 2021, Note 783; PTI, “Delhi Violence: Police Files 3 Chargesheets Before Court in Cases Related to Murder, Rioting”, *News18*, 9 June 2020: <https://www.news18.com/news/india/delhi-violence-police-files-3-chargesheets-before-court-in-cases-related-to-murder-rioting-2661357.html>.

<sup>785</sup> Note 224.

<sup>786</sup> Para 5(j), First Status Report of Delhi Police, *Kismatun v. State*, WP (Cr.) No. 2195/2020, Delhi High Court.

<sup>787</sup> Note 786.

<sup>788</sup> Paras 19-20, Note 786.

<sup>789</sup> Paras 10, 19-20, Note 786.

<sup>790</sup> Paras 1-7, Order dated 20.7.2021, Note 750.

In February 2021, the Magistrate directed Karawal Nagar Police Station to register a FIR as Hashim Ali's complaint gave *prima facie* information regarding the commission of a cognizable offence.<sup>791</sup> Despite this, the Station House Officer, Karawal Nagar, filed a revision application challenging the directions to register a FIR before the Sessions Court. During the course of the revision hearings, the Station House Officer informed the Sessions Judge in a status report that a FIR (FIR No. 55/2020) had been registered on February 26, 2020 regarding the desecration of the mosque and that investigation was ongoing in the same.<sup>792</sup> The Additional Sessions Judge observed that the fact that the Delhi Police was unaware that an FIR regarding the desecration of the mosque had been registered and had even challenged an Order directing registration of a FIR reflected its "callous, negligent and lackadaisical attitude".<sup>793</sup>

This deliberate and studied refusal to register FIRs, maintain case diaries and identify police personnel responsible for violence indicates a deeply biased investigation. Furthermore, we find that the Delhi Police has desisted from investigating the tell-tale events that appear to have a clear link with the February violence. The police have refused to investigate speeches (imbued with sentiments of hate, exhortation and incitement) made in close proximity to the onset of violence. This is wholly contrary to the case of a conspiracy by the anti-CAA protesters to defame the Indian Government as proffered by the Delhi Police in FIR 59, which will be discussed in Chapter 8. A thorough and impartial investigation alone can shed light on the truth. In law, the suppression of evidence, gives rise to an adverse inference against the party suppressing the material.

## Conclusion

Though investigating 758 FIRs is no small task, and some errors are expected, the courts have noted some concerns. Insufficient evidence in a few cases would not raise lingering doubts when the investigations are being carried out on such a wide scale. However, an analysis of the above orders points out concerning patterns. The reoccurring feature of police and public witnesses being discovered and added belatedly indicates possible fabrication. Vital omissions and lacunae in the investigation as illustrated above calls into question the impartiality of the investigation. The February violence was one of the worst instances of large-scale communal violence the capital has seen since 1984. In the aftermath of this terrible violence, a competent investigation is needed to hold the real perpetrators accountable. We feel constrained to repeat the lament of the Court in *State v. Shah Alam*.<sup>794</sup>

I am not able to restrain myself from observing that when history will look back at the worst communal riots since partition in Delhi, it is the failure of investigating agency to conduct proper investigation by using latest scientific methods, will surely torment the sentinels of democracy. The sort of investigation conducted in the instant case and the lack of supervision thereof by the superior officers clearly depicts that the investigating agency has merely tried to pull the wool over the Court's eyes and nothing else.<sup>795</sup>

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791 Order dated 1.2.2021, *Haji Hashim Ali v. North East Delhi*, CC No. 1390/20, Court of Additional Chief Metropolitan Magistrate, Karkardooma District Court, Delhi.

792 Para 12, Order dated 20.7.2021, Note 750.

793 Para 15, Order dated 20.7.2021, Note 750.

794 Note 675.

795 Order dated 2.9.2021, Note 675.

## 8. An Analysis of the Investigation into the Terrorist Conspiracy

This chapter comments on the investigation carried out in FIR 59. The chargesheet filed in FIR 59 forms the basis of the Delhi Police's claims that the violence in North East Delhi was not spontaneous, but orchestrated through a well-planned conspiracy. A few weeks into investigating this FIR, the police applied the UAPA, an anti-terror legislation, drastically changing the complexion of the criminality alleged. Allegations of a core conspiracy to commit terrorist acts form the heart of the police's investigation to determine the genesis of the Delhi violence.

In examining the UAPA investigation, the Committee limited its analysis to the first chargesheet dated September 16, 2020. The effect and implications of adding a UAPA charge to a prosecution is discussed in the next chapter. We comment on the material contained in the chargesheet on the basis of well-established principles of criminal law. It is important to clarify that this exercise is not an endeavor in unearthing the truth. No attempt has been made to contact either the witnesses or the victims and verify the statements made to the police. The material collected by the investigating agency will be adduced at trial and subjected to cross-examination which remains the exclusive domain of the Trial Court.

Matters of investigation, just like other actions of the police machinery, ought to be subjected to public debate. A chargesheet, being a public document, can be scrutinized. After all, even court decisions are analyzed and discussed threadbare in the public domain. In a democracy, open discussion on the narrative produced by any arm of the state is a preeminent sign of its health. We have not considered the totality of the material against any particular accused and are not commenting on the merits of that person's guilt or innocence. Names of accused have been anonymized wherever necessary.

### FIR 59: Registration and Early Investigation

FIR 59 was registered on March 6, 2020 at the Lodhi Road Police Station on the basis of a complaint by Sub-Inspector Arvind Kumar, an officer of the Special Cell, against accused Umar Khalid and Danish under sections of the IPC for conspiring to riot with deadly weapons.<sup>796</sup> In his complaint, Arvind Kumar states that he was notified by a *secret informant* that the violence that took place in February in Delhi was pre-planned and orchestrated by Umar Khalid and his associates. The complaint elaborates that Umar Khalid along with his associates had (i) incited protesters to riot; (ii) organized and distributed weapons such as sticks, petrol bombs, acid bottles and bricks; and (iii) arranged for women to crowd outside Jaffrabad metro station and initiate the violence.

Initially, this FIR invoked only bailable offences of unlawful assembly, rioting and criminal conspiracy. Notably, Umar Khalid was not arrested pursuant to the filing of this FIR. Initial arrests in FIR 59 were of Danish on March 9, 2020, and of Mohammad Ilyas and Parvez Alam (who were not named in the FIR) on March 11, 2020. On March 13, 2020, they were released on bail due to all offences being bailable.<sup>797</sup> Significantly, no further investigation regarding Danish, Mohammad Ilyas and Alam was conducted in this FIR and no chargesheet has been filed against them. On March 15, 2020, two days after Danish and the others were granted bail, charges of conspiracy to murder (Section 302 read with Section 120B), attempt to murder (Section 307), sedition (Section 124A), promoting enmity between groups (Section 153A) under the

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<sup>796</sup> Sections 120B (punishment for criminal conspiracy), 147 (punishment for rioting), 148 (rioting, armed with deadly weapon) and 149 (every member of unlawful assembly guilty of offence committed in prosecution of common object), IPC. See pg. 21-22 of the first chargesheet filed in FIR 59.

<sup>797</sup> A bailable offence is one where the accused has a statutory right to be released on bail on fulfilling the bail conditions. See Section 2(a) and Section 50, CrPC.

IPC along with other provisions, were added to the FIR.<sup>798</sup> It bears noting that the charges of conspiracy to murder and sedition are non-bailable.<sup>799</sup>

## Addition of UAPA Charge

Between March 21, 2020 and April 13, 2020, Ishrat Jahan<sup>800</sup>, Khalid Saif<sup>801</sup>, Meeran Haider,<sup>802</sup> Tahir Hussain,<sup>803</sup> Gulfisha Khatoon,<sup>804</sup> and Safoora Zargar<sup>805</sup> were arrested in FIR 59. In this same period, some of these accused were granted bail in IPC FIRs pertaining to individual instances of violence, as courts found that there was no material to substantiate the charge of rioting or assault against them.<sup>806</sup> However, while investigating FIR 59, the Special Cell purportedly discovered evidence of a conspiracy to commit terrorist acts. Subsequently, on April 19, 2020, Section 13 (punishment for unlawful activities), Section 16 (punishment for terrorist act), Section 17 (punishment for raising fund for terrorist act) and Section 18 (punishment for conspiracy) of the UAPA were added to FIR 59.<sup>807</sup> The standard for bail for a terrorist act under the UAPA is far more stringent than the threshold for bail applicable for IPC offences.

Till date, 21 persons have been arrested and four chargesheets have been filed in the course of investigation. Of the 21 persons arrested, chargesheet was filed against 18 persons and the UAPA was invoked against all 18 accused.<sup>808</sup> While six persons have been granted bail, 12 persons remain in custody as of August 2022.<sup>809</sup>

### Adequacy of Foundational Material Justifying Invoking of UAPA

The chargesheet shows that prior to April 19, 2020, the Special Cell had recorded confessional statements of the arrested accused and the statements of eight protected witnesses. It is crucial to note that these confessional statements made before police officers are inadmissible in evidence.<sup>810</sup> There is a constitutional embargo on considering the same in evidence. The rationale for this principle is rooted in the possibility of coercion, or undue influence being applied on the accused person in the police station to incriminate himself. We have perused the statements to assess the merits of the initial investigation done by the Special Cell that prompted invocation of the UAPA.

We find that the material canvassed in the chargesheet does not disclose any new offence nor advance the case beyond what is claimed in Sub-Inspector Arvind Kumar's complaint. A letter dated April 21, 2020 from the Special Cell informing the Central Government of the addition of the UAPA to FIR 59 also merely repeats the recitals in the FIR. Thus, even as per the Special Cell, the investigation did not reveal any further material that necessitated the invocation of UAPA on April 19, 2020. While the Investigating Officer may offer an explanation at trial, there appears to be no new material in the chargesheet that justifies the sudden inclusion of the UAPA one month after the registration of the FIR. It is also perplexing that the Special Cell

798 Sections 186, 353, 395, 427, 435, 436, 452, 454, 109, 114 read with Section 120B, IPC; Sections 3, 4 of the Prevention of Damage of Public Property Act, 1984; Sections 25, 27 of the Arms Act, 1959.

799 Non-bailable offences are those where the accused does not have a statutory right to be released bail on fulfilling the bail conditions. However, courts have the power to grant accused bail in non-bailable offences. See Sections 436-439, CrPC.

800 Date of arrest: 21.3.2020.

801 Date of arrest: 21.3.2020.

802 Date of arrest: 1.4.2020.

803 Date of arrest: 6.4.2020.

804 Date of arrest: 11.4.2020.

805 Date of arrest: 13.4.2020.

806 For example, on 21.3.2020 Ishrat Jahan was granted bail in FIR No. 44/2020 (Jagatpuri Police Station).

807 Section 341, IPC was also added on 4.6.2020; Section 201, IPC was added on 26.7.2020; Sections 420, 468 and 471, IPC were added on 29.7.2020.

808 Mekhala Saran, "2 Years of Delhi Riots: What's the Status of UAPA-Accused Named in FIR 59?", *The Quint*, 23 February 2022, <https://www.thequint.com/news/law/2-years-of-delhi-riots-what-is-the-status-of-the-uapa-accused-named-in-fir-59>.

809 Saran, 23 February 2022, Note 808.

810 Except for the limited portion that leads to the discovery of an incriminating material fact in terms of Section 27 of the Indian Evidence Act, 1872.

did not arrest Umar Khalid, named as the chief conspirator and organizer of the riots, even after the addition of the UAPA. He was eventually arrested six months later in September 2020. The Special Cell's delay in arresting Umar Khalid for six months after invoking the UAPA belies its own belief in the commission of a terrorist offence.

## Analysis of the First Chargesheet in FIR 59

This chapter analyses the first chargesheet dated September 16, 2020, filed against original Accused Nos. 1-16 in FIR 59. Constrained by time and resources, this Committee had to limit its analysis to the first chargesheet filed as part of the ongoing investigation into FIR 59.

### Evidence of the Larger Terrorist Conspiracy

In this chargesheet, the Special Cell claims that the accused persons conspired to execute riots as a means of forcing the government to repeal the CAA. It goes on to state that the overarching conspiracy was planned over about twenty conspiracy meetings by the key conspirators between December 2019 and February 2020.

It is the case of the prosecution that witnesses who overheard what was discussed at these conspiracy meetings, or were present at the meetings, informed the police of the same. Some of the listed meetings are individually innocuous and do not involve any element of criminality. These meetings only discuss the organization of protests and forming a body to coordinate them. Preparatory meetings to organize protests by themselves would not meet the legal threshold for a criminal conspiracy. It is well settled that the right to peaceful protest is a fundamental right guaranteed under Article 19 of the Constitution of India.<sup>811</sup>

As regards the meetings where criminal activities were discussed, a perusal of the content shows that the evidence of an agreement to commit criminal activities comes either from (i) confessional statements made by the accused to the police, or (ii) witness statements of persons who either attended the conspiracy meetings or overheard the discussions. As stated above, confessional statements made by accused persons to the police are inadmissible in law. On the other hand, witness statements providing details of an offence, when recorded promptly after the incident, constitute strong evidence of the commission of criminal offences. While the veracity of the witness statements recorded by the Special Cell will be tested at trial, it is noteworthy that every public witness who claims to have heard explicit details of the preparations for the riots (including distribution of weapons) has voluntarily reported the same to the police more than two months after the violence and much after the initial arrests in FIR 59.

For instance, Protected Witness (PW) JUPITER claims to have attended a meeting on January 2, 2020 where the use of protests to overthrow the government was discussed.<sup>812</sup> PW JUPITER first reports this only on August 3, 2020, i.e., six months after the riots and much after Accused Nos. 1-16<sup>813</sup> were arrested in FIR 59. PWs SMITH,<sup>814</sup> and SIERRA,<sup>815</sup> claim to have attended a meeting on January 23, 2020 where Umar Khalid allegedly disclosed to his co-accused the plan of inciting riots to force the government to repeal the CAA. PWs ECHO<sup>816</sup> and YANKEE<sup>817</sup> also mention a meeting held towards the end of January where Umar Khalid allegedly disclosed his plans to incite riots. While ECHO disclosed this to the police only on April 16, 2020, SIERRA and YANKEE came forward in June (on June 23, 2020 and June 24, 2020 respectively) and SMITH came forward as late as September 2, 2020.

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811 *Ramlila Maidan Incident, In Re*, (2012) 5 SCC 1.

812 Pg. 1739 (Section 161 statement), first chargesheet in FIR 59.

813 The first accused of these, Khalid Saifi, was arrested on 21.3.2020, the last accused of these, Faizan Khan, was arrested on 29.7.2020.

814 Pg. 1929 (Section 161 statement), pg. 1956 (Section 164 statement), first chargesheet in FIR 59.

815 Pg. 1554-1555 (Section 161 statement), first chargesheet in FIR 59.

816 Pg. 1434 (Section 164 statement), first chargesheet in FIR 59.

817 Pg. 1561-1562 (Section 161 statement), first chargesheet in FIR 59.

While all the above-mentioned participants disclose their knowledge of the conspiracy for the first time months after the riots, PW BRAVO sent messages on a WhatsApp chat group on February 22, 2020 accusing certain individuals of conspiring to incite violence through road blocks and distribution of red chilli powder.<sup>818</sup> While this message lends credibility to PW BRAVO's statement, it is notable that PW BRAVO did not go the police at the time of sending this message or immediately after, but only on June 8, 2020, four months after the offence.

Another conspiracy meeting held in a basement to allegedly discuss the purchase of weapons and ammunition and the presence of sharpshooters was overheard by PW PLUTO (a delivery boy) while awaiting payment.<sup>819</sup> However, PLUTO himself reported this conversation to the police only on August 13, 2020, 5 months after the riots.

It appears that these witnesses chose to report these conversations months after the violence and much after the accused were arrested. Courts have held that when witnesses do not report impending violence to the police, their coming forward months later gives rise to suspicions of tutoring and fabrication. It is unnatural, that a witness who did not report criminal activity to the police when he first witnessed it, or after the riots took place, or even after the accused were arrested, would suddenly decide to report months later. In such circumstances the possibility that false witnesses are coming forward at someone else's instigation, or because they have been tutored, cannot be ruled out. Therefore, in law, witnesses who come forward after considerable delay and are unable to explain the reason for this delay, are considered unreliable.<sup>820</sup>

Significantly, the Sessions Court acknowledges the possibility of fabrication in the case of PW SATURN who speaks of a crucial conspiracy meeting that took place on January 8, 2020 between Khalid Saifi, Umar Khalid and Tahir Hussain. PW SATURN had spoken of the same conspiracy meeting in another FIR (relating to acts of rioting in Khajuri Khas), FIR 101/2020 (Khajuri Khas Police Station). While enlarging Khalid Saifi on bail in FIR No. 101/2020,<sup>821</sup> the Sessions Judge remarked as follows:

15. ...Even the statement of PW Rahul Kasana recorded U/s 161 Cr.PC. in the matter merely talks of some meeting between the applicant, co-accused Tahir Hussain and Umar Khalid on 08.01.2020, however, the same does not disclose about the subject matter of such meeting. Be that as it may, it is relevant to note here that said PW Rahul Kasana is also a witness in case FIR 59, in which case also the "criminal conspiracy" angle is being investigated by Special Cell of Delhi Police. In the said case the statement under section 161 Cr.PC. of PW Rahul Kasana was recorded on 21.05.2020, on which date he did not utter a single word against the applicant qua "criminal conspiracy" and now all of a sudden, he vide his statement recorded under Section 161 Cr.PC. in the matter on 27.09.2020 blew the trumpet of "criminal conspiracy" against the applicant. This prima facie does not appeal to the senses.<sup>822</sup>

Barring these belated statements, there is no other evidence of a pre-planned conspiracy in the chargesheet. It is significant that the arrest of the accused persons in FIR 59 and the investigation of the riots were widely publicized and extensively covered by the national and regional press. These witnesses therefore had ample notice to come forward promptly. Even more so, the possibility of tutoring and fabrication cannot be ruled out and to that extent these statements, by themselves, inspire little confidence.

In *Asif Iqbal Tanha v. State of NCT of Delhi*,<sup>823</sup> (*Asif, Bail Order in FIR 59*) the Delhi High Court while granting bail to Asif Tanha, an accused in FIR 59, noted the stark absence of factual material in the chargesheets to

818 Pg. 1519 (Section 161 statement), first chargesheet in FIR 59.

819 Pg. 1972-1975, [Section 161 statement (main and supplementary) and Section 164 statement], first chargesheet in FIR 59.

820 See *Balakrishna Swain v. State of Orissa*, AIR 1971 SC 804, paras 5, 6, 8; *Ganesh Bhuvan Patel v. State of Maharashtra*, (1978) 4 SCC 371, paras 15, 18; *State of Orissa v. Bhraman Nanda*, 1976 SCC (Cri) 596, para 2.

821 Order dated 4.11.2020, Note 692.

822 Order dated 4.11.2020, Note 692.

823 *Asif Iqbal Tanha v. State of NCT of Delhi*, 2021 SCC OnLine Del 3253. This judgment can be accessed at [http://164.100.69.66/jupload/dhc/AJB/judgement/15-06-2021/AJB15062021CRLA392021\\_105447.pdf](http://164.100.69.66/jupload/dhc/AJB/judgement/15-06-2021/AJB15062021CRLA392021_105447.pdf). An appeal against the Delhi High Court judgment granting bail is pending before the Supreme Court.



substantiate the allegation that the anti-CAA protests were part of a larger conspiracy to cause terror in the country. The Delhi High Court noted the following:

58. ... (j) It has been a recurrent theme, repeatedly urged by the State, that what was contemplated and in fact brought to fruition was not a typical protest but an aggravated protest which was intended to disrupt the life of the community in Delhi. We find ourselves unpersuaded and unconvinced with this submission since we find it is not founded on any specific factual allegation and we are of the view that the mere use of alarming and hyperbolic verbiage in the subject charge-sheet will not convince us otherwise. In fact, upon a closer scrutiny of the submissions made on behalf of the State, we find that the submissions are based upon inferences drawn by the prosecuting agency and not upon factual allegations.<sup>824</sup>

The Delhi High Court in its judgment dated June 15, 2021 passed in *Natasha Narwal v. State*,<sup>825</sup> (*Natasha, Bail Order in FIR 59*) further observed:

35. Allegations relating to inflammatory speeches, organising of chakka jaam, instigating women to protest and to stock-pile various articles and other similar allegations, in our view, at worst, are evidence that the appellant participated in organising protests, but we can discern no specific or particularised allegation, much less any material to bear out the allegation, that the appellant incited violence, what to talk of committing a terrorist act or a conspiracy or act preparatory to the commission of a terrorist act as understood in the UAPA.<sup>826</sup>

Further the absurdity of “Muslim persons” organizing riots in Muslim dominated areas, killing largely Muslim victims and burning mosques in order to protest against a law that is allegedly discriminatory towards Muslims has been widely commented on, not just by commentators, but also the courts.<sup>827</sup>

While this chapter focuses on the quality of the material gathered, the next chapter analyzes the applicability of UAPA assuming this material to be true.

### **Contradictions between Investigation as carried out in IPC FIRs and FIR 59**

While the investigation in FIR 59 focuses on the over-arching “larger conspiracy” to cause riots, the other cases registered in Police Stations across North East Delhi under various provisions of the IPC relate to specific instances of violence reported during the riots. The accused persons arrested in FIR 59 have also been arraigned in many of these IPC FIRs for conspiring or participating in individual instances of violence. The allegations and material canvassed against the accused in the IPC FIRs overlap with the allegations and the material canvassed in FIR 59. A comparison of the investigation in the IPC FIRs with the investigation into the same allegations in FIR 59 reveal certain contradictions and inconsistencies. These contradictions and inconsistencies are illustrated below. The names of accused persons in this section have been anonymized.

### **Discrepancies vis-à-vis FIRs No. 48/2020 & 50/2020**

In its chargesheet for FIR No. 48/2020 (FIR 48), the Delhi Police claims that accused X and Y incited mobs to riot near Jaffrabad Metro Station at about 8 p.m. on February 22, 2020 and prevented police from controlling the mob.<sup>828</sup>

<sup>824</sup> Para 58(j), *Asif, Bail Order in FIR 59*, Note 823.

<sup>825</sup> *Natasha Narwal v. State of Delhi NCT*, 2021 SCC OnLine Del 3254. This judgment can be accessed at [http://164.100.69.66/jupload/dhc/AJB/judgement/15-06-2021/AJB15062021CRLA822021\\_105732.pdf](http://164.100.69.66/jupload/dhc/AJB/judgement/15-06-2021/AJB15062021CRLA822021_105732.pdf). An appeal against the Delhi High Court judgment granting bail is pending before the Supreme Court.

<sup>826</sup> Para 35, *Natasha, Bail Order in FIR 59*, Note 825.

<sup>827</sup> Order dated 11.12.2020, Note 714. While remarking on the peculiarity of the situation, Court remarks:

It is very obfusatory that a Muslim boy would become part of an “unlawful assembly” which mostly consisted of members of Hindu community, the common object whereof was to cause maximum damage to the property, life and limb(s) of the other community.

<sup>828</sup> This FIR was filed under Sections 147, 186, 188, 353, 283, 109, 341 and 34, IPC.

In its chargesheet in FIR No. 50/2020 (FIR 50), X and Y have been arraigned for rioting near Jaffrabad Metro Station between 9 p.m. on February 22, 2020 and 7 p.m. on February 25, 2020.<sup>829</sup> The prosecution specifically claims that on February 25, 2020, they instigated the crowd at Jaffrabad Metro station to pelt stones and fire bullets resulting in the death of a Muslim boy.<sup>830</sup>

In FIR 59, the Special Cell claims that in pursuance of a larger conspiracy, X and Y amongst others, (i) provoked and incited the women sitting in protest at Jaffrabad Metro Station to violence, and (ii) equipped them with acid, sticks, stones, and red chilli powder. The specific accusation of distributing acid, chilli powder and other weapons features only in FIR 59, even though all three FIRs pertain to the identical allegation of instigating riots at Jaffrabad Metro Station.

### Evidence of Inciting Violence

In granting bail to X and Y arraigned in FIR 48 and FIR 50, courts have held that there is no evidence of the accused inciting violence at Jaffrabad Metro Station.

While granting X and Y bail in FIR 48, the Metropolitan Magistrate, after perusing the case diary and inquiring with the Investigating Officer, observed that there was no material to show that the accused had indulged in any violence.<sup>831</sup> The Magistrate further observed that the accused were only seen to be peacefully protesting against the CAA and the offence of obstructing a police officer in his lawful duty was not made out.<sup>832</sup>

While granting X bail in FIR 50, the Delhi High Court observed after scrutinizing material produced by the prosecution in sealed cover, as well as the case diary, that there was nothing to show that the accused had indulged in any violence or that X had instigated the protesters.<sup>833</sup> The High Court went on to categorically state:

...though her presence is seen in peaceful agitation, which is fundamental right guaranteed under Article 19 of the Constitution of India, however, failed to produce any material that she in her speech instigated women of particular community or gave hatred speech due to which precious life of a young man has been sacrificed and property damaged. Admittedly, agitation was going on since long, print and electronic media was present throughout in addition to cameras of police department, but there is no such evidence which establishes that the alleged offence has taken place on the act done by the petitioner.<sup>834</sup>

The High Court further notes that the statements of witnesses speaking of violence were recorded belatedly even though they were present at the spot throughout:

It is pertinent to mention here that as per the Inner Case Diary (produced in sealed cover), statements of witnesses (identity withheld) were recorded much belatedly on 30.06.2020, 03.07.2020 and 08.07.2020 including statements recorded under section 164 Cr.PC. on 08.07.2020, whereas that witness is claimed to be present throughout, since December, 2019 when the agitation initially started against CAA.<sup>835</sup>

829 FIR 50 was registered under Sections 147, 148, 149, 186, 188, 353, 283, 332, 427, 323, 307, 120-B and 34, IPC; Sections 25 and 27, the Arms Act, 1959; Sections 3 and 4, the Prevention of Damage of Public Property Act, 1984. In the chargesheet filed in this case, Section 333, IPC was also added.

830 Chargesheet in FIR 50.

831 Order dated 24.5.2020, *Natasha Narwal and Devangana Kalita v. State*, Court of Metropolitan Magistrate, Karkardooma District Court, Delhi.

832 Order dated 24.5.2020, Note 831.

833 Order dated 15.6.2021, CrI. A. 90/2021, Delhi High Court.

834 Para 21, Order dated 15.6.2021, CrI. A. 90/2021, Delhi High Court.

835 Para 22, Order dated 15.6.2021, CrI. A. 90/2021, Delhi High Court.

Subsequently, the Trial Court after perusing videos of the protest provided by the Delhi Police granted Y bail in FIR 50 while observing that there was no evidence of her inciting any violence.<sup>836</sup>

Since the investigating agencies have failed to gather any evidence of the accused inciting violence at Jaffrabad Metro Station in both FIR 48 and FIR 50, this raises doubts over the discovery of new evidence of incitement of violence while investigating FIR 59. The allegations of X and Y inciting violence in FIR 59 are based on statements of PWs DELTA, GAMA, SMITH, SIERRA and ECHO who claim to have been present at Jaffrabad metro station.<sup>837</sup> In the case of each of these witnesses, their statements were recorded after April 2020 and in the case of SMITH only in September 2020. The above quoted observations of the Delhi High Court in FIR 50 regarding belated statements apply with equal force to these statements. Barring statements of the protected witnesses recorded months later; the investigating agencies have not been able to cite any evidence of *actions of incitement*. This by itself is unusual when the alleged actions were committed in full public view during protests that were constantly video-taped and covered by the press and the police.

### **Allegations of Distributing Chilli Powder and other Weapons**

While two witnesses in FIR 59, BRAVO and HELIUM give detailed information regarding the distribution of chilli powder, acid, and other weapons by the accused, there are no witnesses in the chargesheets filed in FIR 48 and FIR 50 who speak of the accused arming or providing any protester with the said items. The witnesses in the chargesheets filed in FIR 48 and FIR 50 who claim to have been present at the protests at Jaffrabad metro station during the relevant period and had allegedly witnessed the accused inciting and provoking the crowd are conspicuously silent about the distribution of weapons. It is significant that FIR 48 and FIR 50 were registered for the offences of rioting under the IPC whereas FIR 59 pertains to Section 15, UAPA which defines a terrorist offence as an “act done with the intent to strike terror in the people by using explosive substances or other lethal weapons”.<sup>838</sup> While witnesses in FIR 48 and FIR 50 speak only of inciting riots, witnesses in FIR 59 speak of distribution of weapons. It appears that the investigating agencies have tailored the witness statements to suit the offences invoked in a particular FIR, instead of recording the facts as the witness saw them.

It is noteworthy that the chargesheet in FIR 59 as well as the chargesheets filed in FIR 48 and FIR 50 do not contain a single complaint or MLC of injuries caused by chilli powder. In fact, there is not a single victim who speaks to the use of chilli powder. There is no seizure or recovery of chilli powder either from the spot or the accused persons themselves. Nor is there any video or CCTV footage of the distribution of acid and chilli powder. These are all aspects that the Investigating Officer should have explored. At the very least, the circumstances of procurement and distribution of the chilli powder should have been investigated.

The stark absence of any evidence towards the distribution of chilli powder or any injuries caused by it casts a cloud of suspicion on the claims made in the chargesheet. This further corroborates the possibility that the witness statements adduced may have been fabricated.

### **Procuring 300 Women to Trigger the Riots**

In FIR 59, PW HELIUM<sup>839</sup> claims that on February 23, 2020, 300 women protesters were transported *via* bus from Jahangirpuri to Jaffrabad and were received by X, Y and W.<sup>840</sup> It is the prosecution's case that these 300 women were being provided acid bottles and mirchi powder by X, Y and W, on their arrival at Jaffrabad. As per the prosecution, it is these women who started the riots between 11:00 p.m. on February 23, 2020

836 Order dated 17.9.2020, Note 717.

837 All page numbers mentioned below refer to the first chargesheet in FIR 59: Section 161 and Section 164 statements of SMITH can be found at pg. 1927-1930 and pg. 1955-1957 respectively; Section 161 and Section 164 statements of DELTA can be found at pg. 1386-1389 and pg. 1423-1426 respectively; Section 161 and Section 164 statements of GAMA can be found at pg. 1406-1407 and pg. 1430-1432 respectively; Section 161 statement of SIERRA can be found at pg. 1552-1557; Section 161 and Section 164 statements of ECHO can be found at pg. 1407-1410 and pg. 1432-1435 respectively.

838 Sections 147, 148 and 149, IPC, among others, were invoked against the accused persons in that chargesheet.

839 HELIUM's statement under Section 161 is recorded only on 15.9.2020, and can be found at pg. 1965-1968 of the first chargesheet in FIR 59.

840 Pg. 2525, first chargesheet in FIR 59.

and 12:54 a.m. on February 24, 2020, on the instigation of X and Y. However, we find that these women have neither been identified nor examined by the investigating agency. None of them have been arrested or arraigned in any of the cases (FIR 48 or FIR 50) arising out of individual incidents of rioting at Jaffrabad. The chargesheets offer no explanation for the said gaps.

The chargesheet in FIR 59 includes extracts of messages exchanged by officers of the Special Branch of Delhi Police on WhatsApp groups “North West Zone” (NWZ) and “SB/ops”. A perusal of these messages reveals that the bus with 300 women protesters was under constant surveillance of the police since the start of its journey from Jahangirpuri. One of the messages posted on “North West Zone” by one Abdul Aziz states:

सर, C ब्लॉक (sic) जहाँगीरपुरी से कुछ लोग बसों में बैठकर शाहीन बाग जा रहे हैं जिनकी गेदरिंग करीब 250/300 है (sic) जिनमे (sic) करीब 80% औरते (sic) है इस्त्राफील (sic), तबरेज (sic) की लीडरशिप में शाहीन बाग चली गयी (sic) है (sic) (Sir, a gathering of 250/300 people is heading towards Shaheen Bagh on a bus of which 80% are women. They are being led by Istrafeel and Tabrez.)

The messages exchanged on “SB/ops” reveal that the protesters were kept under surveillance at least until 9:55 p.m., when the bus carrying the women protesters reached Jahangirpuri. A WhatsApp message from the “SB/ops” group posted by an Inspector of the North West Zone at 9:55 p.m. reads:

Respected Sir good evening. Sir the all (sic) protesters who went to Shahin Bagh today in the morning in 6 buses from Jahangir Puri has (sic) returned to Jahangir Puri and went (sic) to their houses right now. In other areas of NWZ, the situation is normal and peace (sic). Regards Inspr NWZ.<sup>841</sup>

As per the first chargesheet in FIR 59, the rioting at Jaffrabad metro station began between 11:00 p.m. on February 23, 2020 and 12:54 a.m. on February 24, 2020.<sup>842</sup> Chats from the aforementioned groups show that the protesters were surveilled through the day till they returned to their homes by 9:55 p.m. Yet, the Special Cell claims that these women armed with weapons, acid bottles, and chilli powder precipitated the riots at 11:00 p.m.

More importantly, it is clear that these 300 women were under surveillance till they returned home, and the Delhi Police would therefore know where they lived. Since the Special Cell believes that these women participated in the riots, their identity and participation should have been investigated. Their testimony would have been the best evidence of the role played by the accused X and Y. Not interrogating them is a serious lacuna in the investigation which cannot be overlooked as mere incompetence or an oversight.

### Discrepancies vis-à-vis FIR 101/2020

Z was arrested on March 21, 2020 in FIR 59 for conspiring, planning, funding and executing the Delhi violence. Three months later on June 6, 2020, he was arrested in FIR No. 101/2020 (FIR 101) registered at Khajuri Khas Police Station for conspiring with another person and inciting mobs to riot near Chand Bagh Bridge, Karawal Nagar road on February 24, 2020.<sup>843</sup>

The allegation of conspiracy in FIR 101 is substantiated solely by the statement of a witness identified as PW SATURN in FIR 59. While granting Z bail in FIR 101,<sup>844</sup> the Sessions Court observed:

Be that as it may, it is relevant to note here that said PW \*\* is also a witness in case FIR No. 59/2020, in which case also the “criminal conspiracy” angle is being investigated by Special Cell of Delhi Police. In the said case the statement under Section 161 Cr.PC of PW \*\* was recorded on 21.05.2020, on which date he did not utter a single word against the applicant qua “criminal conspiracy” and now all of a sudden, he vide his statement recorded under Section 161 Cr.PC in the matter on 27.09.2020

<sup>841</sup> Pg. 2639, first chargesheet in FIR 59.

<sup>842</sup> Pg. 2451-2452, first chargesheet in FIR 59.

<sup>843</sup> That FIR was registered under Sections 109, 114, 147, 148, 149, 153A, 186, 212, 353, 395, 427, 435, 436, 452, 454, 505, 34 and 120B IPC; Sections 3 and 4, the Prevention of Damage to Public Property Act, 1984; Sections 25 and 27, the Arms Act, 1959.

<sup>844</sup> Order dated 4.11.2020, Note 692.

blew the trumpet of “criminal conspiracy” against the applicant. This prima facie does not appeal to the senses.<sup>845</sup>

Noting the insufficiency of material in the chargesheet, the Sessions Court while granting bail to Z in FIR 101 remarked:

I fail to understand from the aforesaid statement how a lofty claim of conspiracy can be inferred. In my humble opinion, chargesheeting the applicant in this case on the basis of such an insignificant material is total non-application of mind by the police which goes to the extent of vindictiveness.<sup>846</sup>

A perusal of the chargesheet in FIR 59 also makes it clear that the primary material substantiating the allegation of conspiracy is once again a belated statement by PW SATURN. The Sessions Court found no reason to believe his statement in FIR 101. Likewise, he does not inspire confidence in FIR 59.

It is noteworthy that the Delhi Police has included PW SATURN as a protected witness in FIR 59 while having made no effort to protect him or his identity in FIR 101. Under Section 44(2), UAPA, the identity and address of a witness may be kept a secret if the court is satisfied that his life is in danger. Even in cases where the UAPA has not been invoked, the identity of a witness may be protected under the Witness Protection Scheme, 2018. It cannot be that PW SATURN'S life was threatened only by his testimony in FIR 59 and not in FIR 101. There is no explanation as to why the prosecution needed to withhold the identity of the witness in FIR 59.

### Procurement of Weapons

A comparison of the chargesheet filed against U and Z in FIR 59 with the chargesheet filed in FIR No. 44/2020, Jagatpuri Police Station (FIR 44) brings to light another significant contradiction. In FIR 59, the Special Cell claims that U provided Z funds to buy the gun used by accused V.<sup>847</sup> In FIR 44, the prosecution claims that Z purchased a *desi katta*<sup>848</sup> and instructed V to use it to fire at police officers stationed at *masjid walli galli*. U, though arraigned in FIR 44, is only charged with inciting the protesters. In FIR 44, there is no allegation that U had in any manner funded, procured, or assisted in procuring a gun. Conflicting claims regarding the same offence by different investigating agencies cast doubt on the version proffered by at least one of the investigating agencies, if not both.

The above-mentioned contradictions and inconsistencies raise grave concerns regarding the credibility of the Special Cell's investigation in FIR 59. The courts have found the same material unworthy of credence in bail proceedings in IPC cases. We find that the conflicting claims by different agencies, the belated discovery of evidence of violence by the Special Cell in contrast with the Delhi Police's investigation of the same, and the Special Cell's refusal to investigate crucial witnesses cumulatively compromises the prosecution case.

### Identical Disclosure Statements

Another troubling feature of the chargesheet filed in FIR 59 are identical disclosure statements by different accused. In the first chargesheet, there are 38 disclosure or confessional statements by different accused. A confessional statement made by an accused to a police officer is inadmissible in law. However, should such a confessional statement lead to a material discovery, the part of the confession that leads to the discovery is admissible under Section 27 of the Indian Evidence Act, 1872.

In a review of these disclosure statements, some degree of similarity was found in about twenty of the thirty-eight statements. While some disclosure statements are identical from beginning to end, others have identical paragraphs though the entire statement is not identical. Disclosure statements are meant to be verbatim transcriptions of a voluntary confession given by an accused person during interrogation. Since

<sup>845</sup> Para 15, Order dated 4.11.2020, Note 692.

<sup>846</sup> Para 19, Order dated 4.11.2020, Note 692.

<sup>847</sup> All page numbers mentioned below refer to the first chargesheet in FIR 59: Section 161 and Section 164 statements of PETER can be found at pg. 1697 and pg. 1704-1705; also relevant are disclosure statements dated 30.3.2020 at pg. 1328 and 4.4.2020 at pg. 1353-1354 and disclosure statement dated 4.4.2020 at pg. 1346.

<sup>848</sup> Improvised gun.

it is not possible for two people being interrogated at different points to have made identical statements, identical disclosure statements give rise to the presumption of tutoring, or even fabrication.

For instance, Meeran Haider's disclosure statement recorded on April 8, 2020 and Safoora Zargar's disclosure statement recorded on April 14, 2020 are word-for-word copies of each other barring the difference in their names. Disclosure statements of Shadab Ahmed, Salim Malik, Athar Khan, recorded on May 27, 2020, June 28, 2020, July 3, 2020 respectively, and Mohammad Salim Khan's undated disclosure statement, are also identical to each other. Similarly, Shadab Ahmed's and Athar Khan's disclosure statements recorded on August 28, 2020 are identical to Natasha Narwal's and Devangana Kalita's disclosure statements recorded on June 7, 2020.

Portions of Khalid Saifi's and Ishrat Jahan's disclosure statements recorded on April 4, 2020 are also identical. These also match portions of Meeran Haider's disclosure statement recorded on April 4, 2020.

... छात्र संघठन जैसे AISA, SIO, NSUI, मुस्लिम स्टूडेंट फ़ोरम, कैम्पस फ्रंट ओफ़ इंडिया, कई political leaders व advocates भी उनका साथ दे रहे हैं जो ना केवल सोशल मीडिया पर हमें support करेंगे बल्कि सरकार को भी कटघरे में खड़ा करते रहेंगे ताकि मुसलमान लोग एकजुट रहे (sic) और ज़ख़रत पड़ने पर इक्कठे (sic) होकर हिंसात्मक प्रदर्शन भी कर सकें इसके अलावा PFI से funding भी मिलेगी।<sup>849</sup>

Further, the same grammatical errors are made in all the three statements. Peculiarities of grammar, and the manner in which a sentence is phrased are unique to each speaker. The fact that identical grammatical errors have been made in different disclosure statements indicate that they have been made by the same person and not by different accused at different points of time.

Though confessional statements that do not lead to a recovery are inadmissible in law, as per the decision of the Supreme Court in *National Investigation Agency v. Zahoor Ahmad Shah Watali*<sup>850</sup> (*Watali*) the inadmissibility of material mentioned as evidence in the chargesheet is irrelevant at the stage of bail. Therefore, these statements which are gravely prejudicial are sufficient to deny the accused bail under the UAPA even if they cannot be relied on to convict an accused at trial.

## Conclusion

The investigation in FIR 59 commenced two years ago and is presently ongoing. This Committee has not perused the three supplementary chargesheets filed in FIR 59 and hence cannot comment on the totality of the prosecution case. Specific pieces of evidence implicating individual accused may to the individual reader seem *prima facie* credible, and will have to be proved at trial. However, we find that the substratum of the prosecution case, i.e., the allegation of an overarching premeditated conspiracy, is based on grossly belated statements which are inherently unreliable in law. Other features of the investigation such as identical disclosure statements, inconsistencies between the investigations in FIR 59 and the IPC FIRs, and the non-examination of crucial witnesses only strengthen the suspicion of fabrication. Since material aspects of the investigation in FIR 59 suggest falsity, the integrity of the entire prosecution case appears to be cloaked in doubt.

849 Khalid Saifi's disclosure statement dated 4.4.2020 found at pg. 1352; Ishrat Jahan's disclosure statement dated 4.4.2020 found at pg. 1347; Meeran Haider's disclosure statement dated 4.4.2020 found at pg. 1357 - all page numbers refer to first chargesheet in FIR 59.

850 *National Investigation Agency v. Zahoor Ahmad Shah Watali*, (2019) 5 SCC 1.

# 9. The Application of the UAPA and Fair Trial Implications

In this chapter, we examine the legal implications of the application of the UAPA on due process and the accused's right to fair trial. As mentioned before, the UAPA is India's premier anti-terrorism law. Similar to terrorism laws around the world, it creates extraordinary exceptions to ordinary criminal law, with bearing on both substantive and procedural standards. Our analysis draws from UAPA provisions, legal safeguards enshrined in criminal law, judgments of various courts and comparative standards from other countries. This chapter also looks at the effect of the application of the UAPA in FIR 59.

Any reference to pending cases made in this section does not reflect on the merit of the prosecution's case against an accused person as that is a matter of trial. References made here are illustrative for the purposes of examining a pattern of use of the UAPA by investigating agencies.

## Brief background on the UAPA

India has a long history of special laws to deal with terrorism. The Terrorist and Disruptive Activities (Prevention) Act, 1985 (TADA), enacted against the backdrop of the Punjab insurgency in 1985 after the assassination of the then Prime Minister, Indira Gandhi, was the first special law to tackle “terrorist offences”.<sup>851</sup> TADA marked the beginning of a consistent pattern of departure from existing procedures and evidentiary rules to deal with terrorist offences. Amongst other provisions, TADA made confessions to police officers admissible as evidence (Section 15 TADA), something which is otherwise prohibited under Sections 25-26 of the Indian Evidence Act, 1872, and reversed the burden of proof at bail (Section 20 TADA), severely prejudicing the accused and enabling long periods of undertrial incarceration on flimsy evidence. While the conviction rate under TADA was reported to be less than 2 percent, more than 76,000 persons faced incarceration under it at different points of time.<sup>852</sup> The misuse of TADA has been carefully documented.<sup>853</sup> The review committees set up to examine instances of misuse and misapplication of TADA recommended withdrawal of more than 50,000 cases. Coming under severe criticism for rampant abuse,<sup>854</sup> TADA was allowed to lapse in 1995. Six years later, pursuant to the 9/11 attacks in the United States of America and the attack on the Indian Parliament in 2001, the Prevention of Terrorism Act, 2002 (POTA) was enacted in 2002 with many similar provisions as TADA.<sup>855</sup> The experience with POTA did not prove to be any different, eventually leading to its repeal in 2004 on account of its gross abuse.<sup>856</sup>

The Unlawful Activities (Prevention) Act, 1967 (UAPA) was first introduced in the third Lok Sabha pursuant to the passage of the sixteenth amendment to the Constitution which introduced “the sovereignty and integrity of India” as one of the “reasonable restrictions” to the freedoms guaranteed under Article 19. The

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851 Note that the Armed Forces Special Powers Act was first codified in 1958 to counter secessionist demands in Nagaland, and for that reason may not strictly fall in the category of terrorism laws.

852 Singh, Ujjwal, 2007, *The State, Democracy and Anti-Terror Laws in India*, New Delhi, Sage Publications, pg. 104. Also see Black Law and White Lies: A Report on TADA, 1985-199, *Economic and Political Weekly* Vol. 30, No. 18/19 (May 6-13, 1995), pg. 977-9815.

853 Amnesty International, 1995, *India: The Terrorist and Disruptive Activities (Prevention) Act: the lack of “scrupulous care”*, <https://www.amnesty.org/en/documents/asa20/039/1994/en>.

854 See letter dated 20 February 1995 from the Chairperson, NHRC to all the members of Parliament noting that the law was “incompatible with our cultural traditions, legal history and treaty obligations” - Letter from Justice Ranganath Misra (Feb. 20, 1995), in NHRC, Annual Report 1994-95, available at <https://nhrc.nic.in/sites/default/files/Annual%20Report%201994-95.pdf>; S.B. Chavan, the then Minister of Home Affairs, admitted to the large scale misuse of the Act on several occasions, including in Rajya Sabha - Rajya Sabha Debate, Vol. 172, No. 3, 9 December 1996, pg. 393-422.

855 Kalhan, A et. al., 2006, ‘Colonial Continuities: Human Rights, Terrorism, and Security Laws in India’, *Columbia Journal of Asian Law*, 20, pg. 151-152.

856 Pg. 152, Kalhan, Note 855.

parliamentary debates make clear that the UAPA was an exercise in preventing persons and organizations from making secessionist demands.<sup>857</sup> The Act as it stood in 1967, therefore, was primarily a restriction on the exercise of free speech and other rights guaranteed under Article 19 in the interest of preserving the *sovereignty and integrity of India*. However, after the repeal of POTA in 2004, UAPA was amended in 2004 to include provisions penalizing the commission of a “terrorist act”, making it the country’s primary anti-terror law.<sup>858</sup> Following the terrorist attacks in Mumbai in 2008, the UAPA was further amended to widen the definition of a “terrorist act” and include other offences associated with terrorism in the chapter on terrorist offences, significantly expanding its scope.<sup>859</sup> In 2019, UAPA was further amended allowing individuals to be declared terrorists and subject to various restrictions.<sup>860</sup> Substantive issues relating to UAPA are discussed below.

## Scope of Penal Offences under the UAPA

The UAPA is meant to apply to a very narrow category of offences that legally constitute a “terrorist act”. Overbroad application of this legislation can lead to grave implications for fair trial guarantees. In this section, we will delineate the narrow range of offences that would attract the UAPA.

### Meaning of Terrorist Offence under UAPA

The essence of the substantive offences created by the UAPA in Chapter IV of the Act is “terrorist activity”. While the UAPA does not define the term “terror” leaving the same amenable to ambiguous application, Section 15 describes the elements of a “terrorist act”.

#### Selected text of Section 15, UAPA

15. Terrorist act.—[(1)] Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security [, economic security,] or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country,—

(a) by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substances (whether biological radioactive, nuclear or otherwise) of a hazardous nature or by any other means of whatever nature to cause or likely to cause—

(i) death of, or injuries to, any person or persons; or

(ii) loss of, or damage to, or destruction of, property; or

(iii) disruption of any supplies or services essential to the life of the community in India or in any foreign country; or

[(iiia) damage to, the monetary stability of India by way of production or smuggling or circulation of high quality counterfeit Indian paper currency, coin or of any other material; or]

857 See Rajya Sabha Debate, Vol. 61, No. 18, 16–18 August 1967, pg. 4313–4369; Lok Sabha Debate, Vol. VIII, No. 60, 10 August 1967, pg. 18595–18719; Lok Sabha Debates, Vol. XI, No. 26, 18 December 1967, pg. 7824–7925; Lok Sabha Debates, Vol. XI, No. 26, 19 December 1967, pg. 8134–8263; Lok Sabha Debates, Vol. XI, No. 26, 20 December 1967, pg. 8449–8560.

858 The Unlawful Activities (Prevention) Amendment Act, 2004, available at <https://www.mha.gov.in/sites/default/files/The%20Unlawful%20Activities%20%28Prevention%29%20Amendment%20Act%2C%202004%20%28English%29.pdf>.

859 Chapter IV, UAPA. The Unlawful Activities (Prevention) Amendment Act, 2008, available at <https://www.mha.gov.in/sites/default/files/The%20Unlawful%20Activities%20%28Prevention%29%20Amendment%20Act%2C%202008%20%28English%29.pdf>.

860 The Unlawful Activities (Prevention) Amendment Act, 2019, available at <https://egazette.nic.in/WriteReadData/2019/210355.pdf>.



- (iv) damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies; or
- (b) overawes by means of criminal force or the show of criminal force or attempts to do so or causes death of any public functionary or attempts to cause death of any public functionary; or
- (c) detains, kidnaps or abducts any person and threatens to kill or injure such person or does any other act in order to compel the Government of India, any State Government or the Government of a foreign country or [an international or inter-governmental organisation or any other person to do or abstain from doing any act; or] commits a terrorist act.

It is clear from the above-mentioned definition that for an act to qualify as a terrorist act under Section 15, it must satisfy two elements:

- (i) The act must be done with the intention to:
  - (a) Threaten or likely to threaten the unity, integrity, security, economic security, or sovereignty of India; or
  - (b) Strike terror or likely to strike terror in any section of the people in India
- (ii) Further the act must fall within the ambit of Section 15(1)(a), (b), or (c). It should therefore involve:
  - (a) Use of the substances or weapons mentioned in Section 15(1)(a),
  - (b) Use of criminal force against a public functionary,
  - (c) Involve the kidnapping or abduction of a person to compel the Central or State Government to do or abstain from doing an act.

Many criminal offences may fall within the range of physical acts described in Section 15(1)(a), (b), and (c). However, these acts despite resulting in death, injury, damage to government property, and grave public disorder, would not constitute a terrorist act unless accompanied with the intention enumerated in Section 15(1).

In criminal law, both *mens rea* (the intention to commit an offence) and *actus reus* (the actual offending act) must be proved. The element of *mens rea* or intention assumes critical importance in proving a terrorist act, for it is only the intention behind the offence that in most cases differentiates an act of terror from an otherwise serious offence. In *Hitendra Vishnu Thakur v. State of Maharashtra*,<sup>861</sup> (*Hitendra Vishnu Thakur*), the Supreme Court laid emphasis on the element of *mens rea* in a terrorist offence (as obtained under TADA). The Court noted:

15. Thus, the true ambit and scope of Section 3(1) is that no conviction under Section 3(1) of TADA can be recorded unless the evidence led by the prosecution establishes that the offence was committed with the intention as envisaged by Section 3(1) by means of the weapons etc. as enumerated in the section and was committed with the motive as postulated by the said section. Even at the cost of repetition, we may say that where it is only the consequence of the criminal act of an accused that terror, fear or panic is caused, but the crime was not committed with the intention as envisaged by Section 3(1) to achieve the objective as envisaged by the section,

<sup>861</sup> *Hitendra Vishnu Thakur v. State of Maharashtra*, (1994) 4 SCC 602.

an accused should not be convicted for an offence under Section 3(1) of TADA. To bring home a charge under Section 3(1) of the Act, the terror or panic etc. must be actually intended with a view to achieve the result as envisaged by the said section and not be merely an incidental fall out or a consequence of the criminal activity. **Every crime, being a revolt against the society, involves some violent activity which results in some degree of panic or creates some fear or terror in the people or a section thereof, but unless the panic, fear or terror was intended and was sought to achieve either of the objectives as envisaged in Section 3(1), the offence would not fall stricto sensu under TADA.**<sup>862</sup> (Emphasis supplied)

### “Defence of India” as the Defining Context for UAPA Offences

In the last few decades, the Supreme Court has interpreted the scope of *terrorist activity* in the context of various special laws. It has observed that terrorist acts are targeted to affect the nation at large. The Supreme Court further observes that terrorist acts are targeted at symbols of national pride, democratic institutions, economic nerve centers, the government, or to create fear in a specific community.<sup>863</sup> Such acts, which challenge the nation as a whole, are, therefore, considered distinct from ordinary law and order problems in a state.

There is another way to look at this issue. The Constitution in Seventh Schedule divides subjects between the States and Central Government to pass laws. Entries that may be relevant for passage of an anti-terror law such as the UAPA would be the following:

#### LIST I. UNION LIST

1. Defence of India and every part thereof including preparation for defence and all such acts as may be conducive in times of war to its prosecution and after its termination to effective demobilisation.
93. Offences against laws with respect to any of the matters in this List.

#### LIST II. STATE LIST

1. Public order (but not including [the use of any naval, military or air force or any other armed force of the Union or of any other force subject to the control of the Union or of any contingent or unit thereof] in aid of the civil power).

#### List III. CONCURRENT LIST

1. Criminal law, including all matters included in the Indian Penal Code at the commencement of this Constitution but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of naval, military or air forces or any other armed forces of the Union in aid of the civil power.

While List I is the sole domain of the Central Government, States alone have the power to legislate on subjects mentioned in List II, and both the State and the Central Government have concurrent powers to legislate on subjects mentioned in List III. It is important to identify the appropriate entry under the Seventh Schedule that enables the Central Government to pass anti-terror laws.

A bare reading of the entries shows that while the Central Government does not have the power to legislate on matters pertaining to *public order*, it may legislate on matters that affect the *defence of India*.

<sup>862</sup> Para 15, *Hitendra Vishnu Thakur*, Note 861.

<sup>863</sup> Paras 7-15, *Hitendra Vishnu Thakur*, Note 861; *People's Union for Civil Liberties v. Union of India*, (2004) 9 SCC 580, paras 7-9.

The Supreme Court in *Zameer Ahmed Latifur Rehman Sheikh v. State of Maharashtra*,<sup>864</sup> noted Entry 1 as the only item in List I which empowers the Parliament to legislate on matters pertaining to terrorism, which is the stated aim and purpose of the UAPA.<sup>865</sup>

The relevant legislative entry in the Seventh Schedule that enables the passage of a given law provides a contextual paradigm to interpret the provisions of the said legislation. Thereby, the content of the relevant entry will control the meaning of the penal provisions contained in it. In the case of the UAPA, Entry 1 of List I will be the interpretative lodestar whenever the scope of a penal provision contained therein comes under dispute. Such an interpretation is necessary for the presumption of the Parliament's competence to pass the UAPA to endure.

It is clear from the Act's amended long title, preamble, and from other modifications made in the 2004 and 2008 amendments, that the UAPA is a legislative response to the issue of terrorism as it affects the *defence of India*. Thus, it would be impermissible for the UAPA to be invoked to target ordinary penal offences or *public order*. The Delhi High Court while granting bail to the three accused persons in FIR 59, employed a similar interpretative approach for isolating the precise domain of "terrorist activity" as arising in Section 15, UAPA.<sup>866</sup>

Here, it is critical to point out the jurisprudence contrasting terrorism related offences with ordinary offences, or other species of specialized offences. In *Ram Manohar Lohia v. State of Bihar*,<sup>867</sup> the Supreme Court distinguished incidents affecting the *security of state* from *public order* in the following terms:

55. It will thus appear that just as "public order" in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting "security of State", "law and order" also comprehends disorders of less gravity than those affecting "public order". One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State. By using the expression "maintenance of law and order" the District Magistrate was widening his own field of action and was adding a clause to the Defence of India Rules.

Furthermore, the UAPA in the First Schedule lists certain organizations engaging in terrorist activity as terrorist organizations. Based on the serious nature of these "terrorist organizations", the Supreme Court in *Zameer Ahmed Latifur Rehman Sheikh v. State of Maharashtra*<sup>868</sup> reiterated that terrorist activity stands on a different footing from activity that merely affects law and order and must undermine and prejudicially affect the integrity and sovereignty of India.<sup>869</sup>

What emerges from the above is that for an act to constitute a terrorist offence it must extend beyond the scope of an ordinary penal offence. Politically motivated crimes, or even offences targeting the government, would not amount to a terrorist act unless accompanied by an intention enumerated in Section 15(1). It is

864 *Zameer Ahmed Latifur Rehman Sheikh v. State of Maharashtra*, (2010) 5 SCC 246.

865 The Supreme Court held the following in *Zameer Ahmed Latifur Rehman Sheikh v. State of Maharashtra*, (2010) 5 SCC 246:

77. The offence of terrorist act under Section 15 and the offence of unlawful activity under Section 2(1)(o) of UAPA have some elements in commonality. The essential element in both is the challenge or threat or likely threat to the sovereignty, security, integrity and unity of India. While Section 15 requires some physical act like use of bombs and other weapons, etc., Section 2(1)(o) takes in its compass even written or spoken words or any other visible representation intended or which supports a challenge to the unity, sovereignty, integrity and security of India. **The said offences are related to the defence of India and are covered by Entry 1 of the Union List.** (Emphasis supplied)

866 Para 21, *Natasha, Bail Order in FIR 59*, Note 825; Para 58, *Asif, Bail Order in FIR 59*, Note 823. Also see *Devangana Kalita v. State of Delhi NCT*, 2021 SCC OnLine Del 3255, para 33 (*Devangana, Bail Order in FIR 59*), this judgment can be accessed at [http://164.100.69.66/jupload/dhc/AJB/judgement/15-06-2021/AJB15062021CRLA392021\\_105447.pdf](http://164.100.69.66/jupload/dhc/AJB/judgement/15-06-2021/AJB15062021CRLA392021_105447.pdf).

867 *Ram Manohar Lohia v. State of Bihar*, AIR 1966 SC 740.

868 Note 865.

869 The UAPA in the first schedule itself lists certain organisations engaging in terrorist activity as terrorist organisations.

not sufficient that an offence has *resulted* in striking terror in a section of the people or even for that matter purportedly affected the unity of India. This must have been the express intention prior to the commission of the act.

The above discussion in terms of the scope and interpretation of Section 15 will apply equally to other offences under the UAPA including Unlawful Activities [as defined in Section 2(o) and punishable under Section 13]. However, we will not enter into a detailed analysis of the offence of Unlawful Activities at this juncture.

### **Whether a Terrorist Offence is made out in FIR 59**

In this section, we will examine whether the criminal actions *alleged* in FIR 59 qualify as “terrorist acts” and thereby invite the application of the UAPA. For the said purpose, we will assume the allegations regarding the existence of an overarching conspiracy to execute riots made in the chargesheet to be true. We proceed on this assumption to assess whether the allegations, when taken at their highest, meet the definition of Section 15, UAPA in the facts of the case. The test will be whether the two central elements of Section 15 that qualify whether an act is a terrorist act are satisfied; that the act was done with the intention to:

- Threaten or likely to threaten the unity, integrity, security, economic security, or sovereignty of India; or
- Strike terror or likely to strike terror in any section of the people in India

### **“Threatening the unity, integrity...of India” under Section 15**

It is the prosecution's case that the accused conspirators procured weapons and incited riots in order to force the government to repeal the CAA and spread false propaganda regarding atrocities against minority communities during Donald Trump's visit to India. The chargesheet dated September 16, 2020 (FIR 59) states as follows:

It is evident that it was violent protest meant to paralyze, destabilise and disintegrate Delhi by undertaking unlawful activity. Further, it is crystal clear and categorical that they intended to paralyse the governance of Delhi by violent means to force the Union Govt. to withdraw CAA.<sup>870</sup>

The prosecution claims that the acts of the accused were:<sup>871</sup>

- (i) directed at a wider audience,
- (ii) involved attacks on symbolic targets including civilians,
- (iii) entailed acts of violence seen by the society as “extra normal” intended to provoke an overreaction serving as a catalyst for more general conflict and publicized as a political cause inducing both fear and a sense of insecurity.

The Special Cell has cited as evidence numerous statements of witnesses who allegedly participated in key conspiracy meetings, or were privy to provocative speeches given by the accused. Despite this supposed wealth of material regarding the conspiracy, there is none that suggests any intention to *threaten the unity, integrity, security, economic security, or sovereignty* of India. The prosecution may claim that the accused wanted to defame the government of India by publicizing a false narrative of atrocities committed against minorities by the ruling party. However, this does not meet the legal threshold of an offence that *threatens the unity, integrity, security and sovereignty of India*.

There is copious jurisprudence, some of it excerpted in the previous section, illustrating the difference between actions breaching public order and those affecting the *security of India*.<sup>872</sup> Assuming that the alleged conspiracy led to the present violence, it only disrupted law and order. It would be a stretch to argue that the

<sup>870</sup> Pg. 2040, first chargesheet in FIR 59.

<sup>871</sup> Para 28, *Asif, Bail Order in FIR 59*, Note 823.

<sup>872</sup> Para 55, *Ram Manohar Lohia*, Note 867.

present violence, which was restricted to certain localities in North East Delhi was *likely to affect the unity, integrity, security or sovereignty of India*. Further, the material in the chargesheet does not reflect any assault on any symbolic target such as a government institution or on a person or landmark of any significant public importance. The prosecution's case that the present offence affected the economic security of India does not hold either. The actions of the accused were not such that are likely to have ramifications on India's territorial borders.

#### **“To Strike terror...in people” under Section 15**

The other question is whether the accused conspired to strike terror in a section of people, or whether their actions were likely to strike terror in a section of people.

As held by the Supreme Court in the context of TADA, a myriad set of criminal activities has the effect of creating fear and insecurity in people.<sup>873</sup> For instance, different states have laws that allow the police to extern history-sheeters with a serious criminal record on the ground that they are members of a gang and have terrorized the residents of a specific geographical area.<sup>874</sup> While these actions have the consequence of spreading fear, terror, or dread in the local population residing at the site of an offence, they do not have any national ramifications and therefore would not constitute a terrorist offence in law. In *CBI v. Nalini*,<sup>875</sup> Justice Wadhwa observed as follows:

554. ...Though it could be said that terror was struck by the assassination of Rajiv Gandhi but the question is if striking of terror was intended and for that again there is no evidence.

Further, in his opinion Justice K.T. Thomas observed as follows:

59. From the aforesaid circumstances it is difficult for us to conclude that the conspirators intended, at any time, to overawe the Government of India as by law established. Nor can we hold that the conspirators ever entertained an intention to strike terror in the people or any section thereof. The mere fact that their action resulted in the killing of 18 persons which would have struck great terror in the people of India has been projected as evidence that they intended to strike terror in the people. We have no doubt that the aftermath of the carnage at Sriperumbudur had bubbled up waves of shock and terror throughout India. But there is absolutely no evidence that any one of the conspirators ever desired the death of any Indian other than Rajiv Gandhi. Among the series of confessions made by a record number of accused in any single case, as in this case, not even one of them has stated that anybody had the desire or intention to murder one more person along d with Rajiv Gandhi except perhaps the murderer herself. Of course they should have anticipated that in such a dastardly action more lives would be vulnerable to peril. But that is a different matter and we cannot attribute an intention to the conspirators to kill anyone other than Rajiv Gandhi and the contemporaneous destruction of the killer also.

60. Alternatively, even if Sivarasan and the top brass of LTTE knew that there was likelihood of more casualties that cannot be equated to a situation that they did it with an intention to strike terror in any section of the people.

61. In view of the paucity of materials to prove that the conspirators intended to overawe the Government of India or to strike terror in the people of India we are unable to sustain the conviction of offences under Section 3 of TADA.<sup>876</sup>

Merely causing panic or the feeling of terror may not be sufficient to meet the legal definition of a “terrorist act”. The action must be intended or likely to cause terror to a *specific* community or section of people such that it affects *the unity and integrity of the nation*.

873 See *State v. Nalini*, (1999) 5 SCC 253, paras 59-62, 554-559, 650-651; *Hitendra Vishnu Thakur*, para 7, Note 861.

874 For instance, see Section 63-AA, the Bombay Police Act, 1951.

875 *State v. Nalini*, (1999) 5 SCC 253, para 554.

876 Paras 57-62, Note 875.

In the first chargesheet in FIR 59, the Special Cell claims that the accused persons conspired to execute riots as a means of forcing the government to repeal the CAA. The material in the chargesheet does not credibly canvass the proposition that persons advocating the repeal of the CAA, a law that purportedly discriminates against Muslims, intended to *strike terror* in the Hindu community. On the contrary, as demonstrated through the official data in earlier chapters, an overwhelming number of victims who were killed, physically assaulted, and suffered loss and damage of property were Muslims. Further, a large number of mosques were damaged and there was a disproportionate impact on the minority community. The incongruity of “Muslim persons” organizing riots in Muslim dominated areas, killing largely Muslim victims and burning mosques in order to protest against a law that is allegedly discriminatory towards Muslims has been noted by the courts.<sup>877</sup>

Even if one were to accept the prosecution case to be true, the offences committed by the accused persons would range from a conspiracy to riot with deadly weapons, arson, destruction of property, causing grievous hurt, and even a conspiracy to murder. The IPC specifically penalizes the creation of an imminently dangerous situation leading to death or bodily injury.<sup>878</sup> The prosecution case at its highest would be that the conspirators, in their zeal to force the repeal of CAA, participated in various criminal acts and created a situation so imminently dangerous “leading to death and bodily injury” in a localized area. These acts do not constitute a terrorist offence. Applying Section 15, UAPA to the present case is not merely stretching the law, but a perversion of the law.

## UAPA and Due Process

In this section, we examine the extraordinary departures made by the UAPA from the CrPC that make prosecution under the UAPA excessively punitive and erodes an accused's right to fair trial and due process.

### Enabling Prolonged Custody

On being arrested on the allegation of having committed a crime, an accused may be kept in the custody of the police or the court for the duration of the investigation subject to statutory stipulations. On completion of investigation, the investigating agency submits a report commonly known as a chargesheet, containing all the incriminating material gathered during investigation before the court. If the material in the chargesheet is sufficient to frame charge against the accused, the court may remand the accused to further judicial custody and commence the trial. If the material in the chargesheet does not make out any charge against the accused, he is immediately released.

The state's power to curtail a person's liberty, the most precious fundamental right, is its most expansive power and must be exercised with great responsibility. This power assumes even more significance when it is exercised to secure pre-chargesheet detention, as the state is detaining a person without having adduced substantial material of him having committed an offence. Investigating agencies may no doubt require custody of an accused for interrogation and to prevent an accused from hampering the investigation. However, the law does not allow a person to be detained for an indefinite period, while the investigation continues.

Under the CrPC, an accused can be kept in custody without the filing of the chargesheet by the investigating agency for a maximum of 60-90 days.<sup>879</sup> If the prosecution fails to file a chargesheet in 60 or 90 days respectively, i.e., fails to produce material to substantiate the intended charge, the accused is entitled to be released on statutory bail by virtue of Section 167(2). Significantly, if an accused is entitled to statutory bail, the subsequent filing of a chargesheet after 60 or 90 days will not result in the cancellation of the bail.<sup>880</sup>

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<sup>877</sup> Note 827.

<sup>878</sup> Section 300 4thly, IPC.

<sup>879</sup> Section 167, CrPC.

<sup>880</sup> *M Ravindran v. Directorate of Revenue*, (2021) 2 SCC 485, para 18.5.

Under the UAPA, the period of investigation i.e., time to file chargesheet has been increased from 90 days to 180 days for offences punishable with death, imprisonment for life, or imprisonment for a term not less than 10 years.

#### **Selected text of Section 43D(2), UAPA**

43D(2). Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that in sub-section (2),—

(a) the references to “fifteen days”, “ninety days” and “sixty days”, wherever they occur, shall be construed as references to “thirty days”, “ninety days” and “ninety days” respectively; and

(b) after the proviso, the following provisos shall be inserted, namely:— “Provided further that if it is not possible to complete the investigation within the said period of ninety days, the Court may if it is satisfied with the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of ninety days, extend the said period up to one hundred and eighty days: Provided also that if the police officer making the investigation under this Act, requests, for the purposes of investigation, for police custody from judicial custody of any person in judicial custody, he shall file an affidavit stating the reasons for doing so and shall also explain the delay, if any, for requesting such police custody.

This is a drastic departure from the period provided in the CrPC and gravely prejudices the accused.

#### **Impeding Defence from Contesting Extension of Custody**

In order to provide a check against casual extension of custody beyond the first 90 days, Section 43D(2), UAPA requires the Public Prosecutor to justify the need for such an extension.

This check operates on the presumption that a public prosecutor, being an independent officer of the court, will independently and fairly scrutinize the progress of the investigation and consider whether a person's continued detention is justified. Emphasizing the value of this independent application of mind, the Supreme Court in *Hitendra Vishnu Thakur* held the following while discussing an identical provision in TADA.

**23. ...The Legislature (sic) did not purposely leave it to an Investigating Officer to make an application for seeking extension of time from the court.** This provision is in tune with the legislative intent to have the investigations completed expeditiously and not to allow an accused to be kept in continued detention during unnecessary prolonged investigation at the whims of the police. **The Legislature (sic) expects that the investigation must be completed with utmost promptitude but where it becomes necessary to seek some more time for completion of the investigation, the investigating agency must submit itself to the scrutiny of the public prosecutor in the first instance and satisfy him about the progress of the investigation and furnish reasons for seeking further custody of an accused.** A public prosecutor is an important officer of the State Government and is appointed by the State under the Code of Criminal Procedure. He is not a part of the investigating agency. **He is an independent statutory authority. The public prosecutor is expected to independently apply his mind to the request of the investigating agency before submitting a report to the court** for extension of time with a view to enable the investigating agency to complete the investigation. He is not merely a post office or a forwarding agency. **A public prosecutor may or may not agree with the reasons given by the Investigating Officer for seeking extension of time and may find that the investigation had not progressed in the proper manner or that there has been unnecessary, deliberate or avoidable delay in completing the**

**investigation. In that event, he may not submit any report to the court under clause (bb) to seek extension of time.**<sup>881</sup> (Emphasis supplied)

Given the drastic consequences of such an extension on an accused's liberty, the Supreme Court in *Hitendra Vishnu Thakur* found it necessary to enable the accused to scrutinize and challenge the state's request for extending custody:

21. ...**when a report is submitted by the public prosecutor to the Designated Court for grant of extension under clause (bb), its notice should be issued to the accused before granting such an extension so that an accused may have an opportunity to oppose the extension on all legitimate and legal grounds available to him. ...**

30. ...However, no extension shall be granted by the court *without notice* to an accused to have his say regarding the prayer for grant of extension under clause (bb).<sup>882</sup> (Emphasis supplied)

### Prosecutor's Report in Sealed Envelope

Subsequently the Supreme Court in *Sanjay Dutt v. State, through C.B.I., Bombay (II)*,<sup>883</sup> (*Sanjay Dutt*) took a drastically narrow approach to the defence's role in contesting the extension of custody. The Supreme Court held as follows:

53. (2)(a) Section 20(4)(bb) of the TADA Act only requires production of the accused before the court in accordance with Section 167(1) of the Code of Criminal Procedure and this is how the requirement of notice to the accused before granting extension beyond the prescribed period of 180 days in accordance with the further proviso to clause (bb) of sub-section (4) of Section 20 of the TADA Act has to be understood in the judgment of the Division Bench of this Court in *Hitendra Vishnu Thakur*. The requirement of such notice to the accused before granting the extension for completing the investigation is not a written notice to the accused giving reasons therein. Production of the accused at that time in the court informing him that the question of extension of the period for completing the investigation is being considered is alone, sufficient for the purpose.<sup>884</sup>

Taking a cue from *Sanjay Dutt*, in a series of cases challenging the extension of custody under the UAPA, the courts have whittled down the accused person's ability to contest the extension of his custody.

In *Syed Shahid Yousuf v. National Investigation Agency*,<sup>885</sup> (*Syed Shahid Yousuf*) the Delhi High Court held that at the stage of extension of custody, the accused would not be entitled to a copy of the public prosecutor's report as the report was akin to a case diary meant only for the court to satisfy itself regarding the progress of the investigation. The Court held the following in this behalf:

42. As regards providing the Appellant with copies of the reports of the PP, the Court is inclined to agree with the learned ASG that at the stage of extension of time for completion of investigation or extension of the period of detention in terms of the proviso to section 167 Cr PC, the Appellant cannot ask to see the reports of the PP. Those reports, like the case diary maintained under section 174 CrPC, are to satisfy the Court about the progress of investigation and the justification for seeking extension of time to complete the investigation.

Relying on *Syed Shahid Yousuf*, the Delhi High Court in the case of *Sharjeel Imam v. State of NCT of Delhi*<sup>886</sup> (*Sharjeel Imam*) (an accused in FIR 59) also held that an accused did not have the right to oppose the report

881 Para 23, *Hitendra Vishnu Thakur*, Note 861. Further, the Supreme Court in *Sanjay Kumar Kedia v. Narcotics Control Bureau*, (2009) 17 SCC 631, para 12 held that the public prosecutor must demonstrate "compelling reasons" and independent application of mind for an extension of time beyond 180 days.

882 Paras 21, 30, *Hitendra Vishnu Thakur*, Note 861.

883 *Sanjay Dutt v. State, Through C.B.I., Bombay (II)*, (1994) 5 SCC 410.

884 Para 53(2)(a), *Sanjay Dutt*, Note 883.

885 *Syed Shahid Yousuf v. National Investigation Agency*, 2018 SCC OnLine Del 9329.

886 *Sharjeel Imam v. State of NCT of Delhi*, 2020 SCC OnLine Del 734, para 59.



moved by the prosecutor as he is not entitled to a copy of the same. In the case of a co-accused *Khalid v. State*,<sup>887</sup> the Delhi High Court further elucidated the rationale for such a prohibition:

42. ...The reasons for concealing the report of the Public Prosecutor and the case diaries from the accused during the period of the investigation is to ensure that the investigation is not frustrated. As discussed hereinabove, the manner in which the investigation is progressing and further inquiries that are proposed to take place need not be disclosed to the accused as such disclosure may have the propensity to adversely affect the investigation. It is for this reason that neither the case diaries nor the report submitted by the public prosecutor are required to be furnished to the accused nor are the reasons required to be set out in any detail in the order granting extension of time for completion of the investigation.<sup>888</sup>

In *Ishrat Jahan v. State*,<sup>889</sup> (another accused in FIR 59) the Court adopted the same reasoning.

#### **Audi Alteram Partem: Contesting Extension of Custody**

Even this basic right to contest one's own incarceration under anti-terror laws has been significantly diluted. While the Delhi High Court has recently tried to find a middle path, it has been to little avail. The Court in *Khalid v. State*<sup>890</sup> clarified that the dictum in *Syed Yusuf and Sharjeel Imam* was restricted only to the prosecutor's report. The accused retained a right to notice under Section 43D of the UAPA and to oppose the Investigating Officer's application for an extension in custody.<sup>891</sup> In the case of another co-accused *Shifa-Ur-Rehman v. State of NCT of Delhi*,<sup>892</sup> the Delhi High Court further clarified that even though the accused cannot be given a copy of the prosecutor's report, he had a right to consult his counsel and oppose the application for extension. Ironically, in the case of *Shifa-Ur-Rehman*, the Court held that even though the accused was prejudiced by the absence of his counsel, the same did not vitiate the order granting extension of custody.

The right to be heard is rendered redundant if the accused is in the dark regarding the reasons pressed by the prosecution to seek extension of his custody beyond 90 days. Knowing the grounds of arrest is a right guaranteed to the accused both under the statute<sup>893</sup> and the Constitution.<sup>894</sup> More importantly, violation of this right breaches a basic principle of procedural fairness that is fundamental to how an adversarial proceeding ought to be conducted. By analogy, it is equally vital that an accused be informed of the reasons and grounds of his continued detention. Under the UAPA, an accused's custody cannot be extended on the basis of the application of the Investigating Officer alone. It is the report produced by the prosecutor that forms the basis of the court's decision to extend custody. Producing the accused in court without giving him an effective opportunity to challenge the basis of his detention, that is the prosecutor's report, mocks even the semblance of a fair hearing.

It is crucial to keep in mind that the UAPA itself does not carry any statutory bar against providing a copy of the public prosecutor's report to the accused. This is in contrast to the CrPC which contains several provisions that enable the prosecution to not disclose material collected during investigation in the interest of justice.

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887 *Khalid v. State*, 2020 (3) Crimes 276 (Del.).

888 Para 42, Note 887.

889 *Ishrat Jahan v. State*, 2020 SCC Online Del 882, para 19.

890 Note 887.

891 Para 42, Note 887.

892 *Shifa-Ur-Rehman v. State of NCT of Delhi*, 2021 SCC OnLine Del 2500, paras 43, 58.

893 Section 50(1), CrPC.

894 Article 22(1), the Constitution of India.

**Selected text of Section 173(6), CrPC**

173(6). If the police officer is of opinion that any part of any such statement is not relevant to the subject-matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.

While empowering the court to peruse the case diary, Section 172(3), CrPC specifically bars an accused from accessing the case diary except in certain specific circumstances such as when a police officer refers to the case diary to refresh his memory.

**Selected text of Section 172(3), CrPC**

172(3). Where a superior officer of police has been appointed under section 158, the report shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation.

No such bar exists in relation to the public prosecutor's report under the UAPA. Section 44, UAPA specifically allows for the identity of a witness to be protected from the accused in certain circumstances. Had the legislature intended to protect the public prosecutor's report, they would have specifically inserted an appropriate bar. To impose a judicial restriction that severely prejudices the accused by drawing an analogy to the case diary, when the statute does not provide for the same, flies in the face of the guarantee of substantive due process and principles of natural justice.

**Increased Police Custody under UAPA**

In addition to increasing the time period for investigation and custody prior to framing of charge, Section 43D, UAPA, also increases the amount of time for which an accused person can be remanded to police custody. While the CrPC allows for 15 days police custody,<sup>895</sup> Section 43D(2) allows for 30 days of police custody.<sup>896</sup> The impact of 30 days of uninterrupted police custody on an accused cannot be overstated. Unlike the semblance of personal liberty and free will that is maintained in judicial custody, police custody erodes every vestige of liberty. Granting 30 days police custody is a significant infringement of rights by the legislature and a substantial leeway given to the police in furtherance of effective investigation.

The Supreme Court has in recent times emphasized that interrogation of the accused can continue even when he is in judicial custody. Increased police custody and greater access to the accused should exponentially aid efficient and speedy investigation. In light of this increased police custody, an increased period of pre-chargesheet detention should not be necessary. However, despite having increased police custody the investigating agencies in the Delhi violence cases have routinely sought 180 days to file a chargesheet.<sup>897</sup> In accordance with the interpretation of the law adopted by the Delhi High Court, the accused remains a mute spectator in these proceedings. This, therefore, marks the beginning of the mechanical incarceration of persons accused under the UAPA.

**Bail**

An accused person arrested during the course of investigation is innocent in the eyes of law unless proven guilty in a trial. This right to be presumed innocent is a fundamental right guaranteed under Article 21. He

<sup>895</sup> Section 167(2), CrPC.

<sup>896</sup> Section 43D(2), UAPA.

<sup>897</sup> Bhadra Sinha, "Detention of Delhi riots accused extended under UAPA for police to finish probe", *The Print*, 14 August 2020: <https://theprint.in/judiciary/detention-of-delhi-riots-accused-extended-under-uapa-for-police-to-finish-probe/481941>.

is kept in custody not because he is guilty but because there is sufficient evidence to warrant his trial, and detention is necessary to ensure his presence for such a trial. Thus, the legal principle is that bail must not be withheld as a punishment but only to secure the presence of the accused at trial.<sup>898</sup> It is therefore, commonly said that bail is the rule and jail the exception.<sup>899</sup> However, provisions in anti-terror laws display a pattern of severely restricting recourse to bail.

### Provision of Bail under the CrPC

Section 439, CrPC governs the grant of bail by the Court of Session and the High Court.

#### Selected text of Section 439, CrPC

439. Special powers of High Court or Court of Session regarding bail.—

(1) A High Court or Court of Session may direct,—

(a) that any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in sub-section (3) of section 437, may impose any condition which it considers necessary for the purposes mentioned in that sub-section;

(b) that any condition imposed by a Magistrate when releasing any person on bail be set aside or modified:

Provided that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Session or which, though not so triable, is punishable with imprisonment for life, give notice of the application for bail to the Public Prosecutor unless it is, for reasons to be recorded in writing, of opinion that it is not practicable to give such notice.

(2) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody.

The CrPC prescribes unfettered power to the Sessions Court and High Court to grant bail. In *Emperor v. Hutchinson*,<sup>900</sup> the Allahabad High Court observed that it was unwise to fetter or control judicial discretion in granting bail when the legislature had deliberately left the same unfettered.

While considering the grant of bail under the CrPC, courts evaluate whether a *prima facie* case is made out against the accused. Further, courts invoke the “triple test” to assure against any potential consequences that may impede the conduct of a fair trial.<sup>901</sup> The triple test considers whether the accused is (i) a flight risk, or (ii) likely to tamper with evidence, or (iii) likely to influence witnesses.<sup>902</sup> In evaluating the issue of flight risk, it is commonly understood that in the face of substantial evidence and harsh punishment, no amount of bail may compel an accused to attend trial.<sup>903</sup>

898 *Arnab Maoranjana Goswami v. State of Maharashtra*, (2021) 2 SCC 427, para 70. The Supreme Court tracing the lineage of this principle noted the following in *Dataram Singh v. State of UP*, (2018) 3 SCC 22:

5. The historical background of the provision for bail has been elaborately and lucidly explained in a recent decision delivered in *Nikesh Tarachand Shah v. Union of India*, (2018) 11 SCC 1 going back to the days of the Magna Carta. In that decision, reference was made to *Gurbaksh Singh Sibbia v. State of Punjab*, (1980) 2 SCC 565 in which it is observed that it was held way back in *Nagendra Nath Chakravarti, In re*, AIR 1924 Cal 476 that bail is not to be withheld as a punishment. Reference was also made to *Emperor v. H.L. Hutchinson*, AIR 1931 All 356 wherein it was observed that grant of bail is the rule and refusal is the exception. The provision for bail is therefore age-old and the liberal interpretation to the provision for bail is almost a century old, going back to colonial days.

899 *State of Rajasthan v. Balchand*, (1977) 4 SCC 308, para 2.

900 *Emperor v. Hutchinson*, 1931 SCC OnLine All 14, pg. 939.

901 *Sanjay Chandra v. Central Bureau of Investigation* (2012) 1 SCC 40.

902 See *P Chidambaram v. Directorate of Enforcement*, (2020) 13 SCC 791, para 17.

903 Paras 23-24, *Sanjay Chandra*, Note 901.

### Bail under Special Laws, including Terror Laws

The CrPC standard of bail has been severely curtailed in terror laws such as TADA<sup>904</sup> and POTA<sup>905</sup>, and other special laws such as the Maharashtra Control of Organized Crime Act, 1999<sup>906</sup> (MCOCA) and the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS).<sup>907</sup> These legislations allow for the grant of bail only if “the court is satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and that the accused is not likely to commit any offence while on bail.”

These bail provisions make it virtually impossible for an accused to secure bail due to their unreasonably high threshold. The impossibility of this threshold is best illustrated by comparing it to the standard of acquittal. In order to secure a conviction, the prosecution must prove the accused's guilt beyond all reasonable doubt. If the court harbors a reasonable doubt regarding the accused's guilt, he must be acquitted. However, to grant bail under the above-mentioned laws, the *court must have reasonable grounds to believe that the accused is not guilty*. The threshold of believing that the accused is not guilty is far higher than entertaining a reasonable doubt that he is not guilty. Thus, under the above-mentioned laws, the standard for bail is stricter than what is required for an acquittal. As a consequence, in most cases under special laws, the accused are denied bail and they remain in custody even if they are subsequently acquitted.

It is noteworthy that the bail provision under the UAPA [Section 43D(5)] was inserted in 2008 after the repeal of POTA. The UAPA's standard for bail departed from the formulation used in TADA and POTA.

#### Selected text of Section 43D(5), UAPA

43D(5). Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release:

Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under section 173 of the Code is of the opinion that there are **reasonable grounds for believing that the accusation against such person is prima facie true**. (Emphasis supplied)

Being much lower than under the TADA<sup>908</sup> and the POTA, the threshold for granting bail under the UAPA is closer to the standard under Section 439, CrPC.<sup>909</sup> Under both the CrPC and the UAPA, the court may deny bail if there is a *prima facie* case against the accused. The only difference is that under Section 439 the power of the court is unfettered, and even if a *prima facie* case is made out, courts have granted bail to accused persons who satisfy the above-mentioned triple test. Under the UAPA a literal reading of Section 43D(5) excludes the consideration of the triple test, since it only mentions the *prima facie standard*. Further, even though the UAPA imposes the same standard of *prima facie* as used by the courts in granting bail under CrPC, *prima facie* has been interpreted very differently under the UAPA by the Supreme Court in the *Watali* case.

#### Watali: Considering Admissibility and Probative Value of Evidence at the stage of Bail

The Supreme Court in *Watali* has explained the standard of *prima facie* truth in the UAPA as follows:

904 Section 20(8), TADA.

905 Section 49(7), POTA.

906 Section 21(4), MCOCA.

907 Section 37(1)(b), NDPS.

908 *Shaheen Welfare Association v. Union of India*, (1996) 2 SCC 616, paras 12-15.

909 *Union of India v. KA Najeeb*, (2021) 3 SCC 713, paras 12-19.

23. ...By its very nature, the expression “prima facie true” would mean that the materials/evidence collated by the Investigating Agency in reference to the accusation against the concerned accused in the first information report, must prevail until contradicted and overcome or disproved by other evidence, and on the face of it, shows the complicity of such accused in the commission of the stated offence. It must be good and sufficient on its face to establish a given fact or the chain of facts constituting the stated offence, unless rebutted or contradicted.

The Court holds that “*prima facie*” in Section 43D(5) mandates that the material collected by the investigating agency must be presumed to be true unless contradicted by other evidence in the chargesheet itself. The probability, or the reasonable possibility of its truth, cannot be considered at the stage of granting bail. Also, the question of admissibility, particularly if any material amassed is not considered admissible as evidence, is not to be addressed at this stage.

In *Watali*, the Supreme Court further clarifies the manner in which courts may come to a conclusion of *prima facie* true for an offence under the UAPA as follows:

24. ...A priori, the exercise to be undertaken by the Court at this stage of giving reasons for grant or non-grant of bail is markedly different from discussing merits or demerits of the evidence. The elaborate examination or dissection of the evidence is not required to be done at this stage. The Court is merely expected to record a finding on the basis of broad probabilities regarding the involvement of the accused in the commission of the stated offence or otherwise...

27. For that, the totality of the material gathered by the Investigating Agency and presented along with the report and including the case diary, is required to be reckoned and not by analysing individual pieces of evidence or circumstance. **In any case, the question of discarding the document at this stage, on the ground of being inadmissible in evidence, is not permissible. For, the issue of admissibility of the document/evidence would be a matter for trial.** The Court must look at the contents of the document and take such document into account as it is. (Emphasis supplied)

*Watali*, therefore, states that the court must presume the prosecution case to be true and then determine whether a *prima facie* case is made out. This amounts to a critical dilution of judicial discretion. The *prima facie* threshold in common law is a discretionary standard allowing the judge to arrive at an overall satisfaction as to whether the material against the accused inspires confidence and is sufficient for conviction. The judge is to examine multiple factors to arrive at the judicial satisfaction required, from the quality of material, its probative value in law, to the explanation or defence offered by the accused. This weighing of material and thereby developing a sense of the overall case against the accused at the stage of bail is a matter of judicial prudence.

The Court in *Watali* has made the *prima facie* standard into a straightjacketed test, ridding it of its essential discretionary core. In doing so, it commits the misstep of assuming the material to be true unless contradicted. This is a stark departure from the understanding of *prima facie* developed over decades of case law on the subject.

As per *Watali*, in a case where the only material against an accused is a confession to a police officer, the inadmissibility of the same cannot be gone into at the stage of bail. This creates an untenable situation in which the accused languishes in custody through the trial only to be finally acquitted on the basis that the evidence presented, that was relied on to deny him bail, was in fact inadmissible. In IPC cases, the Supreme Court has granted bail on the ground that the evidence comprised of inadmissible documents,<sup>910</sup> and even considered inadmissibility as a ground for quashing of cases.<sup>911</sup> Further, in being unable to consider the probative value i.e., the weight of the material included in the chargesheet, courts are unable to consider factors such as belated witness statements. Belated witness statements have been the primary ground for granting bail in IPC cases of Delhi violence, and in countless others. The question that arises is if the

910 *Vasanthi v. State of A.P.*, 2005 5 SCC 132, paras 5-7.

911 *Dipakbhai Jagdishchandra Patel v. State of Gujarat*, (2019) 16 SCC 547, paras 23, 27-45.

prosecution's chargesheet is presumed to be true, and its documents presumed to be admissible, what is left to argue in a bail application? The divergence that has developed between the CrPC and the UAPA threshold of *prima facie* case for grant of bail is leading to worrying inconsistencies in judicial orders. Persons accused under the IPC are being released on bail, whereas persons accused on the basis of identical evidence under the UAPA are denied bail.

There is nothing in the UAPA to support this constriction of judicial discretion. In fact, *Watali* has had the effect of negating the progressive statutory position adopted in the UAPA wherein the UAPA discarded the almost impossible standard contained in the predecessor anti-terror laws of POTA and the TADA.

### Granting Bail under UAPA

Strict application of the *Watali* standard would permit grant of bail to an accused in only two scenarios:

- (i) If the material collected by the investigating agency itself contradicts the accusations; and
- (ii) If the court considering the grant of bail comes to the conclusion that the material adduced does not make out any offence, *i.e.*, the accused is entitled to be discharged or acquitted.

Interestingly, this is a consequence that the Supreme Court itself had warned against while interpreting the provision governing the grant of bail under MCOCA in *Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra*<sup>912</sup> (*Ranjitsing*). The Court held the following in *Ranjitsing*:

44. ...The wording of Section 21(4), in our opinion, does not lead to the conclusion that the court must arrive at a positive finding that the applicant for bail has not committed an offence under the Act. If such a construction is placed, the court intending to grant bail must arrive at a finding that the applicant has not committed such an offence. In such an event, it will be impossible for the prosecution to obtain a judgment of conviction of the applicant. Such cannot be the intention of the legislature. Section 21(4) of MCOCA, therefore, must be construed reasonably. It must be so construed that the court is able to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. Similarly, the court will be required to record a finding as to the possibility of his committing a crime after grant of bail.

The concern expressed by the Supreme Court in *Ranjitsing* has come true with respect to UAPA. It seems that courts in light of the practical bar against bail laid down in *Watali* are constrained to conclude that UAPA is *inapplicable* in order to release the accused on the strength of merits in a particular case. The study of judicial orders granting bail by various High Courts and the Supreme Court after *Watali* makes it clear that the only circumstance in which bail has been given is when the UAPA itself has been held to be inapplicable, and in cases of violation of Article 21.

In the case of *Thwaha Fasal v. Union of India*,<sup>913</sup> (*Thwaha Fasal*) the Supreme Court while granting bail to the accused, held that UAPA was not attracted to the case, as the offence of membership of a terrorist organization was not made out. In FIR 59 while granting bail to three of the accused, the Delhi High Court came to the conclusion that the UAPA itself was not applicable to their case as the acts alleged did not meet the ingredients of an offence under the UAPA (Section 15 in this case).<sup>914</sup> The Gauhati High Court in granting Akhil Gogoi bail in similar cases relating to anti-CAA protests has also come to a similar conclusion.<sup>915</sup>

In *Union of India v. K.A. Najeeb*,<sup>916</sup> (*Najeeb*) the Supreme Court held that Section 43D(5) is not the sole repository of powers for grant of bail under the UAPA. A constitutional court can, therefore, grant bail for a violation

912 *Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra*, (2005) 5 SCC 294.

913 *Thwaha Fasal v. Union of India*, 2021 SCC OnLine SC 1000.

914 See *Asif, Bail Order in FIR 59*, Note 823; *Natasha, Bail Order in FIR 59*, Note 825; *Devangana, Bail Order in FIR 59*, Note 866.

915 Order dated 9.4.2021, *State v. Akhil Gogoi*, CrI. A. 192/2020, Gauhati High Court, available at <https://indiankanoon.org/doc/155704009>.

916 Para 17, *Najeeb*, Note 909.

of Article 21.<sup>917</sup> In *Najeeb*, the Court granted bail to an accused who had already served more than half his sentence with no prospect of the trial concluding in the near future. *Najeeb* is a reminder of the importance of due process considerations to also be weighed while deciding the question of bail.

Following *Najeeb*, the Bombay High Court granted interim medical bail to an undertrial prisoner arraigned under the UAPA on account of severe ill-health.<sup>918</sup> However, it is hardly a saving grace that courts are willing to sidestep *Watali* and grant bail if an undertrial accused is on his deathbed.

Though welcome, these judgments remain an exception. For instance, despite the above-mentioned precedents, the National Investigation Agency Court refused to grant undertrial accused Stan Swamy, who was 84 years old and suffering from Parkinson's disease, interim medical bail.<sup>919</sup> While the High Court permitted him to go to a hospital of his choice, it refused to engage with Stan Swamy's express prayer for bail. Subsequently, Stan Swamy contracted Covid-19 in prison and was shifted to Holy Family Hospital where he died of post-Covid complications.<sup>920</sup>

It is also important to bear in mind that designated high powered committees<sup>921</sup> did not extend the benefit of Covid bail and parole to undertrial or convict prisoners arraigned under the UAPA.<sup>922</sup> Thus, even in the face of impending death and severe illness, courts have hesitated to exercise judicial discretion and grant bail to persons under UAPA.

### Phenomenon of Staggered Arrests

The standard of bail combined with the ability to get extended custody of an accused have incentivized another peculiar phenomenon in UAPA prosecutions. In a visible pattern, investigating agencies are staggering arrests of different accused persons over several years. This has the effect of prolonging the pre-trial phase indefinitely. Investigations in recent conspiracy cases under the UAPA reflect that it is only when the 180 days limit for filing of chargesheet for the initially arrested accused is ending that a second set of accused are arrested. A further period of 180 days is then sought to file a chargesheet against the second set of accused. This is then followed by a third round of arrests and so on. With every arrest, the investigation gets protracted and the commencement of trial pushed further into the future. Without the possibility of bail, the arrested accused continues to be in custody without trial for several years.

In the case of FIR 59, the first arrest was made in March 2020,<sup>923</sup> and the first chargesheet filed after 179 days on September 16, 2020. Around that time, Sharjeel Imam and Umar Khalid were arrested on August 25, 2020 and September 13, 2020 respectively. Extension of custody from 90 to 180 days was sought for both these accused. Thereafter, a supplementary chargesheet against them was filed in November 2020. A second supplementary chargesheet was filed on February 24, 2021 with the caveat that investigation was still continuing. It has now been more than two years since the first arrest. Similarly, in another UAPA case,

917 Para 17, *Najeeb*, Note 909.

918 *Dr. PV Varavara Rao v. National Investigation Agency*, 2021 SCC OnLine Bom 230.

919 Special Correspondent, "Court rejects bail plea of Stan Swamy", *The Hindu*, 23 October 2020: <https://www.thehindu.com/news/national/court-rejects-bail-plea-of-stan-swamy/article32932596.ece>.

920 Order dated 28.5.2021, *Father Stan Swamy v. the State of Maharashtra*, Criminal Appeal No. 444/2021, Bombay High Court. Order is available at <https://indiankanoon.org/doc/13201558>; Sonam Saigal, "Fr. Stan Swamy passed away in custody", *The Hindu*, 5 July 2021: <https://www.thehindu.com/news/national/other-states/fr-stan-swamy-passes-away/article35143941.ece>.

921 *Contagion Of Covid 19 Virus In Prisons, In Re*, 2020 SCC OnLine SC 344, para 12. The Supreme Court directed State Governments and Union Territories to form High Powered Committees for determining norms for decongesting prisons due to COVID conditions.

922 For example, see the Minutes of the High Powered Committee of Rajasthan, available at <http://www.rlsa.gov.in/pdf/Minutes%20Updated130521.pdf>; the Minutes of the High Powered Committee of Punjab and Haryana, available at <http://www.hslsa.gov.in/sites/default/files/May%2C2021/Proceedings%20of%20HPC.pdf>; Minutes of High Powered Committee of Himachal Pradesh, available at <https://districts.ecourts.gov.in/sites/default/files/Minutes%20of%20the%20Meeting%20of%20the%20High%20Powered%20Committee%20held%20on%2013th%20May%202021%20at%201100%20AM.pdf>.

923 Khalid Saifi and Ishrat Jahan were arrested on 21.3.2020.

there have been over four rounds of arrests staggered over three years.<sup>924</sup> While the first set of accused were arrested on June 6, 2018, the last arrest was on October 7, 2020.

A possible explanation for staggered arrests could be the challenges in investigating widespread conspiracies and that arrests are being made as and when incriminating material against different accused persons is discovered. However, in many instances, the facts of the case itself falsify this explanation.

For instance, though Umar Khalid was named in the FIR (in FIR 59) as the chief conspirator, he was arrested six months later in September 2020 just as the first chargesheet against the first 15 arrested accused was filed. The case of Sharjeel Imam is even more curious. Sharjeel Imam was arrested on January 28, 2020 in FIR No. 22/2020 (Crime Branch Police Station) in relation to a speech he had given about the CAA on December 13, 2019.

Despite being in custody one month prior to the riots, Sharjeel Imam was arrested in FIR 59, six months after the violence, and five and a half months after the registration of FIR 59 on August 25, 2020. The first chargesheet filed on September 16, 2020 did not arraign Sharjeel, even though it was filed 22 days after his arrest in FIR 59. Subsequently, on November 22, 2020 a supplementary chargesheet was filed against him. The entire material produced against Sharjeel in the supplementary chargesheet was on the basis of material already collected in the first chargesheet, including Protected Witnesses whose statements had been recorded over two months earlier. Even the mobile chats included in the supplementary chargesheet were received by the Special Cell and analyzed on June 4, 2020, two months before his arrest in FIR 59. The Special Cell's decision to arrest Sharjeel Imam five months after the filing of the first chargesheet, and request for an extension of time beyond 90 days to file a supplementary chargesheet against him, appears to be inexplicable.

In another UAPA case, 3 persons who were named in the original FIR were the last to get arrested, that too approximately two years after the first arrest.<sup>925</sup> These belated arrests appear to be by design and not the product of the bona fide discovery of an accused at a belated stage.

A recurring pattern of staggered arrests and protracted investigation may be a sign of the serious challenges implicit in investigating cases under the UAPA but the examples above also suggest gaps and frailties in police investigations. Ultimately, it is important to analyze if certain UAPA prosecutions are launched only with a view to impose the excessively punitive conditions enabled by the UAPA on the accused persons.

Staggered arrests and the impossibility of bail, combined with delayed trials, has made the UAPA an excessively punitive legislation. The stringent conditions of bail create an incentive for the investigating agencies to invoke the UAPA even if there is insubstantial evidence only to ensure long periods of undertrial custody. The Supreme Court noted this tendency with respect to TADA and commented:

It is true that on many occasions, we have come across cases wherein the prosecution unjustifiably invokes the provisions of the TADA Act with an oblique motive of depriving the accused persons from getting bail and in some occasions when the courts are inclined to grant bail in cases registered under ordinary criminal law, the Investigating Officers in order to circumvent the authority of the courts invoke the provisions of the TADA Act.<sup>926</sup>

924 In the first round of arrests, Sudhir Dhawale, Rona Wilson, Surendra Gadling, Mahesh Raut and Shoma Sen were arrested on 6.6.2018. Varavara Rao, Gautam Navlakha, Vernon Gonsalves, Sudha Bharadwaj and Arun Ferreira were arrested in the second round on 28.8.2018. Anand Teltumbe was arrested on 14.4.2020 and Hanybabu Musaliyavirtil Tarayil on 28.7.2020. Sagar Taytyaram Gorkhe and Ramesh Murlidhar Gaichor were arrested on 7.11.2020, with Jyoti Raghoba Jagtap being arrested on 8.11.2020. See Sonam Saigal, "Bhima Koregaon accused languishing in jail for 3 years", *The Hindu*, 27 August 2021: <https://www.thehindu.com/news/national/three-years-since-bhima-koregaon-arrests/article36141816.ece>; Special Correspondent, "Bhima Koregaon case | Arrested activists allege NIA pressure to apologise", *The Hindu*, 8 September 2020: <https://www.thehindu.com/news/national/bhima-koregaon-case-arrested-activists-allege-nia-pressure-to-apologise/article32554255.ece>.

925 Sagar Taytyaram Gorkhe and Ramesh Murlidhar Gaichor were arrested on 7 September 2020, with Jyoti Raghoba Jagtap being arrested on 8 September 2020; PTI, "NIA arrests 3 from Pune in Bhima Koregaon case", *The Times of India*, 8 September 2020: <https://timesofindia.indiatimes.com/city/pune/nia-arrests-3-from-pune-in-bhima-koregaon-case/articleshow/77999530.cms>.

926 *Kartar Singh v. State of Punjab*, (1994) 3 SCC 569, para 352.



Given this inclination of investigating agencies, *Watali's* effective negation of the court's discretion to grant bail has made courts silent spectators in instances of abuse of the UAPA.

### **Redaction and Truncation of Witness Statements**

Another key feature of chargesheets filed under the UAPA which severely prejudices the accused, especially at the stage of bail, is the redaction of witness statements. While Section 44, UAPA, allows the court to take measures to keep the identity and address of a witness secret, this provision ought to be used judiciously only to the extent required to protect the identity of a particular witness whose life is threatened. The prosecution in its first chargesheet in FIR 59 has included the statements of 42 Protected Witnesses. The extent of redaction is so severe that the content of some key statements is incomprehensible. Further, it is not just the identity of the witness, but identities of other persons, information about locations, and even events, that have been redacted. An illustration of this may be seen in the statements of PW JULIET,<sup>927</sup> SATURN,<sup>928</sup> DAVIS,<sup>929</sup> and HELIUM.<sup>930</sup>

The severe extent of redaction make statements unintelligible and consequently obstruct the accused from knowing the case against them and putting up an effective defence. This is contrary to the principle of a fair trial. Moreover, it also prejudices the accused's ability to avail undertrial bail. With key information including the time and location of events being withheld, it is difficult for the accused to contradict these statements or present evidence of the falsity. The UAPA severely curtails the scope of what an accused may argue at the stage of bail. The unbridled and unprincipled redaction of witness statements further cripples the accused's ability to defend himself, reducing the bail hearing to a charade.

### **Media Leaks: Establishing Guilt in the Public Mind**

Selective media leaks by the investigating agency have been a consistent feature of investigations under the UAPA. Despite censure by courts, investigating agencies continue to perpetuate this dubious practice towards creating a fear psychosis and prejudicing public opinion.

Selective media leaks during investigation were condemned by Justice Chandrachud in his dissenting opinion in *Romila Thapar v. Union of India*<sup>931</sup> in 2018, when the initial round of arrests was made in the Bhima Koregaon case. In that instance, the Maharashtra Police held press conferences where the allegedly incriminating documents were shown for public consumption. Republic TV followed suit and broadcasted copies of undated, unsigned and unverified letters allegedly written by the accused.<sup>932</sup> Despite earlier condemnation by the Supreme Court, the Delhi Police used the same modus operandi while investigating the Delhi violence. An alleged confession made by an accused (Asif Iqbal Tanha) regarding inciting riots was leaked.<sup>933</sup> While hearing the accused's petition against the leaked confession, the Delhi Police submitted that despite having conducted an enquiry, they were unable to state who was responsible for the leak. On receiving the inquiry report, it was reported that the single-judge bench of Justice Mukta Gupta reprimanded the police

927 See pg. 1581 of the first chargesheet (FIR 59) for redactions in JULIET's statement under Section 161 and pg. 1596 of the first chargesheet (FIR 59) for redactions in JULIET's statement under Section 164 with respect to the part discussing preparations for violence.

928 See pg. 1746-1747 of the first chargesheet (FIR 59) for redactions in SATURN's statement under Section 164 with respect to Tahir Hussain's accountant Roshan Pathak bringing something (presumably money) to Tahir Hussain's office.

929 See pg. 1769-1770 of the first chargesheet (FIR 59) for redactions in DAVIS' statement under Section 161.

930 See pg. 1966-1967 of the first chargesheet (FIR 59) for redactions in HELIUM's statement recorded under Section 161.

931 *Romila Thapar v. Union of India*, (2018) 10 SCC 753, para 74.

932 Manu Sebastian, "Human Rights Lawyer Sudha Bharadwaj Issues Public Statement Against Republic TV Allegations of Maoist Link", *LiveLaw*, 5 July 2018: <https://www.livelaw.in/human-rights-lawyer-sudha-bharadwaj-issues-public-statement-against-republic-tv-allegations-of-maoist-link>; Scroll Staff, "Full text: Arrested lawyer Sudha Bharadwaj says letter read out to media by police is 'concocted'", *Scroll.in*, 1 September 2018: <https://scroll.in/latest/892757/full-text-arrested-lawyer-sudha-bharadwaj-says-police-letter-leaked-to-media-is-totally-concocted>.

933 Staff Reporter, "Disclosure statement in riots case not leaked by us", *The Hindu*, 16 October 2020: <https://www.thehindu.com/news/cities/Delhi/disclosure-statement-in-riots-case-not-leaked-by-us/article32866334.ece>.

for not doing a thorough inquiry on the subject.<sup>934</sup> The supplementary chargesheet in FIR 59 was also leaked to the media before the Court took cognizance,<sup>935</sup> prompting a response from the Delhi High Court.<sup>936</sup>

Leaking of investigative material seems to be a consistent trend in sensational matters involving offences against the state, under the UAPA or the IPC. Several private messages and other material collected during investigation into alleged acts of sedition by Disha Ravi were leaked to media houses, prompting her to file a petition in the Delhi High Court which remains pending till date.<sup>937</sup> Leaking investigative material such as a confessional statement to the media tends to mould public opinion and prompt a media trial even before the accused has an opportunity to present his defense in court. In his dissenting opinion in *Romila Thapar v. Union of India*<sup>938</sup> Justice Chandrachud observes:

74. ...The use of the electronic media by the investigating arm of the State to influence public opinion during pendency of an investigation subverts the fairness of the investigation. The police are not adjudicators nor do they pronounce upon guilt.

Persons facing trial for a terrorist offence under the UAPA are in any case severely handicapped and denied due process rights guaranteed under the ordinary criminal code. To stand trial both inside and outside the court severely prejudices the accused and compromises his right to be presumed innocent.

### Targeting of Advocates

In certain recent UAPA investigations, there have been instances of arraigning advocates defending persons accused for committing UAPA offences. A much-publicized instance of this has been the investigation against Advocate Mehmood Pracha, who is appearing for several accused in the Delhi violence cases. It is no one's claim that advocates are incapable of committing crimes. Nor can one have any grouse against a *bona fide* investigation irrespective of who forms the principal suspect. However, it is difficult to ignore a history of demonization and intimidation of advocates defending persons accused of terror crimes.<sup>939</sup> As an illustration, in 2020, a Mysuru based lawyers' association passed a resolution barring its members from representing a woman charged with sedition for protesting against the CAA.<sup>940</sup> Similarly in 2008, the Bombay Metropolitan Magistrate Court's Bar Association passed a resolution that forbade members from representing Ajmal Kasab.<sup>941</sup> Intimidation of lawyers not only disrupts an accused's legal representation

934 Staff Reporter, "HC flays police report on Tanha 'confession' leak to media", *The Hindu*, 2 March 2021: <https://www.thehindu.com/news/cities/Delhi/hc-flays-police-report-on-tanha-confession-leak-to-media/article33966748.ece>.

935 PTI, "Can't find how leak in riots case happened", *The Hindu*, 6 August 2021: <https://www.thehindu.com/news/cities/Delhi/cant-find-how-leak-in-riots-case-happened/article35756063.ece>.

936 Staff Reporter, "HC upset with police over leak of chargesheet in Delhi riots case", *The Hindu*, 6 March 2021: <https://www.thehindu.com/news/cities/Delhi/hc-upset-with-police-over-leak-of-chargesheet-in-delhi-riots-case/article34001473.ece>; *Asif Iqbal Tanha v. State of NCT of Delhi*, 2021 SCC OnLine Del 1107.

937 Order dated 19.2.2021, *Disha A Ravi v. State (NCT of Delhi)*, W.P. (C) 2297/2021, Delhi High Court; Soibam Rocky Singh, "Disha Ravi case: Ensure probe documents are not leaked to media, Delhi HC tells police", *The Hindu*, 19 February 2021: <https://www.thehindu.com/news/cities/Delhi/toolkit-case-some-media-coverage-on-disha-ravi-sensational-prejudicial-says-hc/article33878062.ece>.

938 Note 931.

939 Poulomi Banerjee, "Defending the doomed: Lawyers who stand up for terror accused, Maoists, Hindustan Times", *Hindustan Times*, 13 March 2016, <https://www.hindustantimes.com/india/defending-the-doomed-lawyers-who-stand-up-for-terror-accused-maoists/story-3roGxXmIQeBlIwFOVmuFO.html>; Dipanjan Sinha, "Threats, slurs, insults, it's a hard life for Lawyers Defending Terror Suspects", *Hindustan Times*, 19 March 2017: <https://www.hindustantimes.com/weekend/threats-slurs-insults-it-s-a-hard-life-for-lawyers-defending-terror-suspects/story-z4futnhK9opw7dlgv5aZaK.html>; FP Staff, "Why it hasn't been easy being a defence lawyer for Kasab", *Firstpost*, 29 August 2012: <https://www.firstpost.com/india/why-it-hasnt-been-easy-being-a-defence-lawyer-for-kasab-434541.html>.

940 Rintu Mariam Biju, "If Bar Associations pass Illegal Resolutions we cannot be mute Spectators: Karnataka High Court", *Bar and Bench*, 15 February 2021: <https://www.barandbench.com/news/litigation/if-bar-associations-pass-illegal-resolutions-we-cannot-be-mute-spectators-karnataka-high-court>. The Mysuru City Advocates Multipurpose Cooperative Society had passed a resolution barring advocates from representing a young woman who was allegedly photographed holding a "Free Kashmir" placard during the anti-CAA protests at Mysuru University resulting in filing of a sedition case against her, and came under criticism for the same from the Karnataka High Court in a Public Interest Litigation Petition filed before it seeking the quashing of this resolution.

941 Rina Chandran, "Mumbai lawyers won't represent Suspect", *Reuters*, 12 December 2008: <https://www.reuters.com/article/uk-india-mumbai-lawyer-sb-idUKTRE4BB2DP20081212>.

in court but also silences the defense's public voice, enabling the prosecution narrative to seep into public conscience. In a democracy the dangers of this cannot be overstated. It is in this light that the intimidation and prosecution of lawyers defending persons arrested for UAPA offences requires deeper scrutiny.

### **Mehmood Pracha**

FIR No. 120/2020 was registered on March 4, 2020 by Irshad Ali, who claimed that his shop had been looted and set on fire on February 24, 2020. Several persons were arrested in this case.<sup>942</sup> Thereafter, statements of public witnesses identifying the accused were recorded.<sup>943</sup>

On August 10, 2020 during a bail hearing on behalf of two accused persons,<sup>944</sup> Advocate Javed Ali produced a subsequent complaint by Irshad Ali claiming that the arrested accused had not looted his shop and the police had falsely implicated them. On receiving this, the Sessions Court adjourned the hearing and directed the police to file a report on the same. On August 22, 2020, the Delhi Police submitted a report that Irshad Ali had now named three other residents as the assailants.<sup>945</sup> In its report, the Delhi Police claimed that the first false complainant by Irshad Ali was on account of tutoring and fabrication by Advocate Mehmood Pracha. The Delhi Police further claimed that Advocate Pracha had also tutored the eyewitness Sahrif Malik. Pursuant to the filing of this report and on the directions of the Sessions Court, FIR No. 212/2020 was filed at the Special Cell Police Station against Advocate Mehmood Pracha on August 22, 2020 under Sections 120B (criminal conspiracy), 193 (false evidence), 420 (cheating), and 468 (forgery), IPC.

Despite making such grave allegations, no action was taken by Delhi Police for the next four months. Advocate Pracha was neither called for interrogation nor was he asked to produce any documents. On November 24, 2020, the Delhi Police did not oppose the anticipatory bail application filed by the said eyewitness Sahrif Malik (allegedly tutored by Advocate Pracha) in three separate cases under Section 307, IPC (attempt to murder) registered in Dayalpur Police Station. Thereafter on December 22, 2020, four months after the Delhi Police registered a FIR against Advocate Pracha for tutoring Sharif Malik and one month after they did not oppose Malik's bail application, the Delhi Police procured a search warrant to search Advocate Pracha's office. On December 24, 2020 the police issued a notice to Pracha stating that his office would be searched for the fabricated complaint drafted under his instructions on the computer in his office.<sup>946</sup> Mehmood Pracha's office was then searched on December 24, 2020 and subsequently on March 9, 2021 for over 15 hours.

The circumstances giving rise to this search are suspicious. A four-month delay in taking any action after the registration of a FIR casts serious doubt on the integrity of the search conducted by the Special Cell. Further, the raid and search of an advocate's office raises serious questions regarding the exposure of material protected by attorney-client privilege. This instance itself has evoked strong condemnation from both the Supreme Court Bar Association and the Delhi Bar Council.<sup>947</sup>

### **Investigating Advocates and Endangering Privilege**

Article 20(3) of the Constitution of India guarantees protection against self-incrimination. Further, Section 126 of the Indian Evidence Act states:

942 Gulfam; Mohd Abid; Arshad Qayyum; Shahdab; Shah Alam; Riyasat Ali and Rashid Saifi.

943 Surender Singh, Rajbir Singh Yadav, Pradeep Kumar and Manoj Kumar.

944 Abid and Qayoom.

945 Deepak, Navneet alias Nanu, and Mintu.

946 Kaunain Sheriff M., Sofi Ahsan, "Behind police raid on Mehmood Pracha, trail of a riot victim and a riot accused", *The Indian Express*, 30 December 2020: <https://indianexpress.com/article/india/mehmood-pracha-delhi-police-raid-7125555>.

947 Poonam Sharma, "Delhi Bar Council writes to MHA seeking immediate action against police raid at lawyer Mehmood Pracha's office", *India Today*, 27 December 2020: <https://www.indiatoday.in/india/story/delhi-bar-council-letter-home-ministry-advocate-mehmood-pracha-raid-office-delhi-police-1753611-2020-12-27>; Express News Service, "Shocked, dismayed by police search at lawyer's office: SC Bar Association", *The Indian Express*, 29 December 2020: <https://indianexpress.com/article/cities/delhi/shocked-dismayed-by-police-search-at-lawyers-office-sc-bar-association-7123909>; Scroll Staff, "Raid on Delhi riots lawyer a 'brazen exercise of brute power', says SC Bar Association", *Scroll.in*, 28 December 2020: <https://scroll.in/latest/982546/raid-on-delhi-riots-lawyer-a-brazen-exercise-of-brute-power-says-sc-bar-association>.

Professional communications.—No barrister, attorney, pleader or vakil shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such barrister, pleader, attorney or vakil, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment: Provided that nothing in this section shall protect from disclosure

Section 129 of the Indian Evidence Act states:

Confidential communications with legal advisers.—No one shall be compelled to disclose to the Court any confidential communication which has taken place between him and his legal professional adviser, unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the Court necessary to be known in order to explain any evidence which he has given, but no others.

The Bar Council of India Rules also reiterate the spirit of the above sections and state:

An advocate shall not, directly or indirectly, commit a breach of the obligations imposed by Section 126 of the Indian Evidence Act.<sup>948</sup>

None of the above statutory provisions protect a lawyer who may have participated in any illegality. However, the search of an advocate's office renders material provided to an advocate within the confines of attorney-client privilege vulnerable to exposure. Clients entrust advocates with sensitive and confidential material that is protected by privilege as well as the fundamental right against self-incrimination. This protection lies at the heart of a fair trial. The search and perusal of such material by police authorities who are also separately prosecuting the lawyer's clients severely prejudices the client and his defense.

In the United Kingdom, documents subject to legal professional privilege cannot be made subject to search and seizure by the investigating authorities.<sup>949</sup> Documents subject to legal professional privilege include any communication made, or item disclosed between an attorney and his client, or any other person representing his client in connection with giving legal advice or any legal proceedings.<sup>950</sup> Such documents can only be seized in circumstances where it is not reasonably practical to separate legal privilege material from other material.<sup>951</sup> Such difficulty may arise due to the storage or the volume of the material. Further, any digital material which is reasonably believed to be subject to legal privilege cannot be seized.<sup>952</sup>

Similarly, in Canada, search and seizure of documents protected by solicitor-client privilege, including electronic material, is not permitted by law.<sup>953</sup> Both these jurisdictions contain detailed rules for the identification of privileged material in case of electronically stored data.<sup>954</sup> The United States, in the same vein, prohibits search and seizure of lawyer's premises except where the lawyer is suspected of criminal activities.<sup>955</sup> Such searches are subject to claim of legal privilege by the lawyer.<sup>956</sup>

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948 Part VI, Chapter II, Section II, Rule 17, Bar Council of India Rules.

949 Section 19(6), Police and Criminal Evidence Act, 1984 (PACE).

950 Section 10, PACE.

951 Sections 50 and 51, Criminal Justice and Police Act, 2001.

952 Annex A, Attorney General's Guidelines on Disclosure for investigators, prosecutors and defence practitioners, 2020.

953 *Lavallee, Rackel and Heintz v. Canada (Attorney General)*, 2002 SCC 61, Supreme Court of Canada.

954 Attorney General's Guidelines on Disclosure for investigators, prosecutors and defence practitioners, 2020.

955 9-13.420, Title 9, Justice Manual.

956 Note 955.

In Australia, the general rule that documents covered under legal professional privilege cannot be made subject to a search warrant has been upheld.<sup>957</sup> In the absence of detailed rules, the execution of search warrants on a lawyer's premises is governed by general guidelines between the Australian Federal Police and the Law Council of Australia. Legal professional privilege has also been recognized in New Zealand.<sup>958</sup> Search and seizure of protected material is prohibited.<sup>959</sup> A lawyer's premises may be searched only in the presence of the lawyer or their representative and when they have been given the opportunity to claim privilege.<sup>960</sup> Lawyer-client privilege has also been recognized by the European Court of Human Rights as being part of Article 8 of the Convention.<sup>961</sup> Certain restrictions on this right are accepted only when they are in accordance with the domestic law<sup>962</sup> and meet the test of proportionality.<sup>963</sup> In *Andre v. France*, the court observed that search and seizure at a lawyer's office interferes with lawyer-client privilege and the right against self-incrimination of the client.<sup>964</sup> Such search and seizure can be permitted only if special safeguards are ensured by the law.<sup>965</sup>

In the present case, the warrant under Section 93, CrPC allowed for the search of not only incriminating documents, but also the meta data of Advocate Pracha's official email id.<sup>966</sup> As per Advocate Pracha, the police officials also seized the hard-disk of the office computer and did not provide him with a hash value for the same. Electronic devices are in any case imminently vulnerable to tampering. The failure to create a hash value leaves a device completely open to manipulation and tampering, with little or no means of tracing such tampering. Unlike the above quoted jurisdictions, India lacks any guidelines regulating the search and seizure of privileged material. It is essential that comprehensive guidelines are enacted at the earliest.

## UAPA: A Need for a Relook

The numerous ways that provisions of the UAPA erode constitutional guarantees of fair trial have been discussed threadbare. The stringent standard of bail requiring a court to assume the prosecution case to be true and material admissible at this early stage almost extinguishes the presumption of innocence, and with it, the bedrock of fair trial. The high threshold for bail combined with extended custody of the accused and the phenomenon of staggered arrests, ensure that the UAPA accused are subjected to indefinite incarceration without trial. According to some estimates UAPA trials are characterized by delay with the rate of pendency at approximately 95.5 percent.<sup>967</sup> In all, persons accused under UAPA languish in custody for extraordinarily long periods irrespective of the strength of evidence against them.

### Abuse of Law

A study of recent prosecutions under the UAPA reveals that this law is often used to secure undertrial custody despite insufficient evidence in a calculated manner. Even if the UAPA accused are inevitably acquitted, the

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957 General Guidelines between the Australian Federal Police and the Law Council of Australia as to the execution of search warrants on lawyers' premises, law societies and like institutions in circumstances where a claim of legal professional privilege is made, available at <https://www.lawsociety.com.au/sites/default/files/2018-03/Search%20Warrants%20Law%20Council.pdf>.

958 *Rosenberg v. Jaine*, [1983] NZLR 1, para 8; Section 136, Search and Surveillance Act, 2012.

959 Sections 102 and 142, Search and Surveillance Act, 2012.

960 Section 143, Search and Surveillance Act, 2012.

961 Article 8, European Convention on Human Rights, 1953; Paras 118-119, Judgment dated 6.3.2013, *Michaud v. France*, Application No. 12323/11, European Court of Human Rights; Paras 49-51, Judgment dated 9.4.2019, *Altay v. Turkey (No. 2)*, 11236/09, European Court of Human Rights.

962 Para 109, Judgment dated 16.11.2021, *Särgava v. Estonia*, 698/19, European Court of Human Rights.

963 Para 52 *Altay*, Note 961.

964 Para 41, Judgment dated 24.10.2008, *Case of Andre v. France*, Application No. 18603/03, European Court of Human Rights.

965 Para 42, *Andre*, Note 964.

966 Search Warrant dated 22.12.2020 under Section 93, CrPC.

967 Radhika Chitkara and Vikas Kumar, "Why recent judgements in UAPA cases represent limited victory", *The Indian Express*, 22 June 2021: <https://indianexpress.com/article/opinion/columns/why-recent-judgments-in-uapa-cases-represent-limited-victory-7369546>. The rate of pendency of police investigations is reported to be around 83 percent.

long process of incarceration serves as *punishment*. Judgments of acquittal under UAPA are replete with instances of sloppy investigations, fabricated recoveries, false confessions, and lazy prosecutions attempting to procure convictions on the basis of seized literature, or remote and tenuous associations.<sup>968</sup>

On March 6, 2021, 122 persons accused under the UAPA of being members of a banned outfit, the Students' Islamic Movement of India, were acquitted by the Trial Court after having spent about 20 years under trial.<sup>969</sup> It is not unusual to find severe criticism of the investigation in judgments of acquittal in the UAPA cases. In the case of Imran Kirmani, an aeronautical engineer from Jammu and Kashmir, who was acquitted after 4.5 years in custody, the Sessions Court castigated the Special Cell of the Delhi Police for fudging dates and documents in the chargesheet only to implicate the accused.<sup>970</sup>

In *Thadiyantevida Nazeer v. State of Kerala*<sup>971</sup> where the case was anchored on the approver's evidence and the confessions of the accused persons, the court remarked that the police "did not make any concerted effort to 'go out in the sun' to collect independent evidence of whatever version the accused told them; though we do not venture to speculate whether they employed 'red pepper' to elicit the disclosures." It further noted that "in their anxiety to wrap up the case...they (the Officers of the NIA) even recorded the confessions of the accused, clearly inadmissible under Section 25 & 26 of the Evidence Act." The accused were acquitted of all charges.

In *State v. Paramjeet Singh Behora*,<sup>972</sup> the Delhi District court acquitted the accused alleged to be the commander of Babbar Khalsa International, a banned organization. The Court severely criticized the shoddy investigation conducted by the police and the serious inconsistencies in the prosecution's case. His co-accused, Bhupinder Singh and Jasbir Singh, were similarly acquitted.<sup>973</sup>

Courts have reprimanded the investigating agencies for arresting suspects solely on the basis of books and printed material found in their custody. In the case of *Thwaha Fasal* and *Allan Shuhaib*<sup>974</sup>, the Supreme Court criticized the detention of the accused for over a year on the mere basis of possessing Maoist literature. The Supreme Court was hearing an appeal from an Order of the Kerala High Court wherein the High Court had reversed the Special Court's Order granting bail. Granting bail to both the accused, the Court held that no *prima facie* case has been made out against them.<sup>975</sup> In another case, a Trial Court in Karnataka acquitted two accused, a student of journalism and his father, charged under Sections 19 and 20 of the UAPA.<sup>976</sup> The Court observed that possessing Bhagat Singh's book or certain newspaper cuttings does not amount to any offence.

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968 For a more elaborate discussion of this topic, see Jamia Teachers' Solidarity Association, 2012, *The case that never was: The 'SIMI' trial of Jaipur*; Jamia Teachers' Solidarity Association, 2013, *Guilt by Association: UAPA Cases from Madhya Pradesh*; Sethi M., 2017, "Tenuous Legality: Tensions within Anti-Terrorism Law in India", 13, *Socio Legal Review*, 139.

969 PTI, "Surat court acquits 122 persons accused of being SIMI members" *The Hindu*, 6 March 2021: <https://www.thehindu.com/news/national/other-states/surat-court-acquits-122-persons-accused-of-being-simi-members/article34005151.ece>. It is pertinent to note that while 127 people were charged with the offence of being members of SIMI, 5 passed away during the trial. (The Trial Court judgment is in Gujarati.)

970 Para 72, Judgment dated 12.5.2011, *State v. Imran Ahmed*, Final Sessions Case No. 32/2007, Court of Additional Sessions Judge, Tis Hazari Court, Delhi, available at <https://indiankanoon.org/doc/30634272>.

971 *Thadiyantevida Nazeer v. State of Kerala*, 2022 SCC OnLine Ker 357.

972 Judgment dated 11.12.2015, *State v. Paramjeet Singh Behora*, Sessions Case No. 153/13, Court of Additional Sessions Judge, Patiala House Court, Delhi, available at <https://indiankanoon.org/doc/20980343>.

973 Para 36, Note 972.

974 *Thwaha Fasal*, Note 913.

975 *Thwaha Fasal*, Note 913.

976 Judgment dated 21.10.2021, *State of Karnataka v. Vittala Malekudiya*, Sessions Case No. 125/2017, Court of Additional Sessions Judge, Dakshina Kannada, Mangaluru, Karnataka, available at [https://www.livewlaw.in/pdf\\_upload/state-of-karnataka-v-vittala-malekudiya-402764.pdf](https://www.livewlaw.in/pdf_upload/state-of-karnataka-v-vittala-malekudiya-402764.pdf).

There are also various instances of the police invoking the UAPA in cases of ordinary penal offences. In *Abdul Azeez P.V. v. State of Kerala*,<sup>977</sup> 21 persons were convicted for being members of an unlawful assembly and imparting training on making of country bombs and use of swords in order to further terrorist activities. They were, however, acquitted of the UAPA charges by the High Court as there was no evidence to indicate the use of arms with the intent to “strike terror based on any communal rivalry or violence”. Their convictions under the IPC for being members of an unlawful assembly as part of a conspiracy were sustained. In the case of *CBI v. Hopeson Ningshen*,<sup>978</sup> the accused were charged for the kidnapping and murder of a Sub-Divisional Officer along with his staff members. The Special Court convicted them for the charges under the IPC, while acquitting them under the UAPA. It held that Section 15 and 16 of the UAPA were not attracted as the accused were not members of a banned organization, did not use bombs or any such lethal weapons, and had only caused a law and order problem. The Order of the Special Court has since been upheld by the Delhi High Court.<sup>979</sup>

Likewise, in *Muhammed Shafi v. National Investigation Agency*,<sup>980</sup> the Kerala High Court took a view that smuggling of gold would not constitute an offence under the UAPA unless committed with the intent to further terrorist activities. The Supreme Court refused to interfere with the High Court’s Order granting bail, but it has kept the question of law open.<sup>981</sup>

In cases such as these, the legal onslaught of designating ordinary violence as terrorism is accompanied by the ability to apply stringent provisions of the UAPA on these accused, making prolonged incarceration possible without trial. The misuse of the law by the police is also evident from the increasing instances of courts granting bail to those accused of offences under the UAPA on the ground that the UAPA is not attracted to the facts of the case.<sup>982</sup> In another gross instance of misapplication, while granting bail to the accused, the Gauhati High Court observed that it is doubtful if posting on Facebook that Taliban are not terrorists constitutes a cognizable offence, let alone a UAPA offence.<sup>983</sup> Similarly, the Delhi High Court in the case of FIR 59 granted bail to three accused persons on the ground that the prosecution case even if true was a case of public disorder and rioting under the IPC, and not a terrorist offence under UAPA.<sup>984</sup> In *Iqbal Ahmed v. State of Maharashtra*,<sup>985</sup> the Bombay High Court held that mere discussion, deliberation and advocacy of a cause would not constitute an offence under the UAPA.

The increasing instances of targeted abuse of the UAPA forces the question of reparations, including compensation to the victims of such abuse. Indian law has precedent on the issue of monetary compensation for the violation of fundamental rights by state agencies, especially in cases of custodial violence.<sup>986</sup> However, there is a lack of coherent jurisprudence on compensation for a dishonest or malicious prosecution. Recently, in the case of *Ankush Maruti Shinde v. State of Maharashtra*,<sup>987</sup> the Supreme Court reversed its own judgment of conviction and sentence of death in review and acquitted six men for the offences of dacoity,

977 *Abdul Azeez PV v. State of Kerala*, 2016 SCC OnLine Ker 40231.

978 Judgment dated 31.5.2014, *CBI v. Hopeson Ningshen*, CC No. 36/10, Court of Special Judge (PC Act), Patiala House Court, Delhi, available at <https://indiankanoon.org/doc/183467616>.

979 *Hopeson Ningshen v. CBI*, 2019 SCC OnLine Del 11236.

980 *Muhammed Shafi P v. National Investigation Agency*, 2021 SCC OnLine Ker 902, para 42.

981 Order dated 13.7.2021, *Union of India v. Said Alavi*, SLP (Crl.) No. 3837-3848/2021, Supreme Court.

982 *Wuthikorn Naruenartwanch v. National Investigation Agency*, 2017 SCC OnLine Del 10056; *Faizan Khan v. State (NCT of Delhi)*, 2020 SCC OnLine Del 1365; Order dated 13.7.2021, *Gurpal Singh v. State of Punjab*, CRM-M-6168-2021(O&M), High Court of Punjab and Haryana, available at <https://indiankanoon.org/doc/90229968>; Order dated 9.4.2021, *State v. Akhil Gogoi*, Crl. A. 192/2020, Gauhati High Court, available at <https://indiankanoon.org/doc/155704009>.

983 *Maulana Fazlul Karim Qasimi v. State of Assam*, Bail Application No. 2322/2021, Gauhati High Court available at <https://indiankanoon.org/doc/27112171>.

984 *Asif, Bail Order in FIR 59*, Note 823; *Natasha, Bail Order in FIR 59*, Note 825; *Devangana, Bail Order in FIR 59*, Note 866. SLP against these judgments is presently pending before the Supreme Court.

985 Order dated 13.8.2021, *Iqbal Ahmed v. State of Maharashtra*, Criminal Appeal No. 355/2021, Bombay High Court.

986 See *Nilabati Behra v. State of Orissa*, (1993) 2 SCC 746; *Rudul Sah v. State of Bihar*, (1983) 4 SCC 141.

987 *Ankush Maruti Shinde v. State of Maharashtra*, (2019) 15 SCC 470.

rape and murder. Acknowledging that the men had spent 16 years on death row on account of a dishonest investigation, the Court granted each of the accused Rs. 5 lakhs as compensation. Such instances remain rare and outside a principled framework. For example, in 2014, the Supreme Court refused compensation to six persons acquitted in the Akshardham terror case for their false implication. The Supreme Court in *State of Gujarat v. Kishanbai*<sup>988</sup> had directed all states to constitute a board to review orders of acquittal in order to identify cases of false implication or blameworthy negligence by investigating agencies and frame guidelines for necessary action against such erring officers. However, we have not seen this Order being implemented so far.

This Committee does not suggest that every acquittal must give rise to a claim for compensation. However, neither the state nor the judiciary can turn a blind eye to the suffering inflicted on an innocent person and his family by a dishonest investigation and prosecution. Prosecutions under anti-terror laws such as the UAPA are even more onerous on the accused, for the reasons we have discussed in this chapter. Imprisonment is not the mere loss of liberty, it is the loss of all the possibilities that life affords. It is subjecting a human being to an abject mechanical existence and the daily hardship, humiliation and indignity of prison life. As a custodian of rights, the state has a responsibility to conduct itself in a fair and just manner. False implications and malicious prosecutions therefore threaten the very foundation of rule of law. This Committee urges the state to frame a law towards instituting accountability, including the payment of compensation to persons exonerated and for punitive action against officials responsible for conducting malicious prosecutions.

### **Urgent Need for Review**

In the recent past, courts have adopted an overly deferential outlook in UAPA cases. Precedents like *Watali* have the effect of immunizing the UAPA prosecutions from effective judicial scrutiny, thereby enabling the unchecked abuse of this harsh law by the state. In light of the stark evidence of the abuse of UAPA and the severe erosion of guarantees of fair trial and liberty implicit in this law, it is crucial that the legislature prioritizes a comprehensive review of the UAPA. The larger implications of the problematic features of the UAPA go to the heart of constitutionalism and the preservation of the rule of law. The consistent history of abuse of special laws holds valuable lessons. Disproportionate arrests and minuscule convictions under the UAPA also suggest that the law is not fit for the purpose of effectively recognizing and prosecuting terrorist activity. A comprehensive review of the law may pivot itself on the advice that perhaps the answer lies not in enacting laws with corrosive provisions combined with extraordinary penal consequences, but investing in better policing, evidence-based investigations, and committed compliance with fair trial guarantees. As a democratic society, we cannot tolerate injustice in the name of exceptionalism and perceived threats to national security.

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988 *State of Gujarat v. Kishanbai*, (2014) 5 SCC 108. See also Law Commission of India, 2018, *Report No. 277: Wrongful Prosecution (Miscarriage of Justice): Legal Remedies*: <https://lawcommissionofindia.nic.in/reports/Report277.pdf>.



# 10. Conclusions

Our examination of the developments that preceded and accompanied the breakout of violence in North East Delhi reveals that it was the outcome of several interlocking factors. We recognize that the violence should not be seen only within the limited prism of that fateful week in February 2020, but acknowledged as the tragic culmination of a deliberate build-up of polarized hate between communities. Significant after effects endure to the present. In probing the various factors that gave rise to the violence, this Committee has discerned broader implications, summarized below along with the main conclusions.

## Pathways to Violence: Spreading Hate and Anti-Muslim Sentiment

### Political Hate Campaign

As evident in the report, a campaign of hate against anti-CAA protesters, and more broadly against Muslims, had been a steady feature in political speeches and election campaigning in the months immediately preceding the violence. Speeches, statements and slogans by BJP functionaries, prominently Kapil Mishra and Anurag Thakur, characterized the protesters as traitors, enemies, and violent troublemakers, within a divisive Hindu-Muslim binary. Calls for violence against those labelled traitors, through the “*goli maaro*” slogan, were repeated by political leaders in election rallies, public demonstrations and mass gatherings, with no censure. The Delhi High Court described specific prominent speeches and utterances by political leaders as within the ambit of the crime of hate speech.<sup>989</sup>

### News Media and Hindu Nationalist Leaders Amplifying the Hate Narrative

Chapter 5 reveals how sections of the television media, namely six highly watched news channels in the period under study, mirrored the politicians’ hate narrative directed at anti-CAA protesters and Muslims, beginning from December 2019 and continuing into 2020. Hindu nationalist figures such as Yati Narsinghanand and Ragini Tiwari, as well as local BJP party workers, further spread the hate messaging through social media platforms. Facebook, WhatsApp and YouTube were widely used, as described in Chapter 6, to propagate divisive Hindu-Muslim narratives and calls for violence. It is a matter of concern that the examples presented in this report are only a small sample of the hateful content that was widely disseminated.

### Embedding an Environment Conducive for Violence

Based on the material examined, this Committee concludes that the prevalence of hate significantly contributed to creating a climate in which a significant section of society became receptive to incitement and calls for violence against the Muslim community. The inadequate response to hate speech of the Election Commission, media regulatory bodies, and the Delhi Police only exacerbated such a climate. There were significant warning signs of impending violence – the shooting attempts on anti-CAA protesters – that went unheeded.

## Features of the Violence

We identify characteristics of the violence to present a broad view of its core nature as well as illustrate contributing factors at its root.

### Entwined Roots of the Violence

When violence first broke out on February 23, it appeared to be between pro and anti-CAA camps across the Maujpur-Jaffrabad fault line. However, by this time, the steady vilification of the anti-CAA protests had conflated *protesters* and *Muslim* so closely that the stance against the anti-CAA protests on one hand,

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989 Para 9, *Harsh Mander v. GNCT of Delhi*, Note 359.

and anti-Muslim hate on the other, had fused. The opposition to the protests had coalesced with viewing the socio-political assertion of Muslims against the CAA as a threat to Hindu identity. This was ramped up on February 23, with wide calls for mobilization by figures in the public eye like Kapil Mishra and Ragini Tiwari. The divisive dynamics began to be utilized locally to mobilize crowds and build pressure down to neighborhood streets, with leaders exhorting their supporters for show of force and direct action. By February 23, the situation on the ground was ripe for a communal breakout.

The anti-Muslim hate at the root of the pre-violence build-up carried over into the actual violence. Muslim identity, ranging from individuals, homes, businesses, and places of worship, was targeted. In the complex dynamics of communal violence, this remained a running thread even as the violence grew, and mobs from both sides clashed. This mix of targeted as well as generalized violence resulted in deaths among both communities, with 40 Muslims and 13 Hindus being killed. This violence was also aided by instances of apparent police complicity, of which specific allegations are listed in Chapter 3.

It is important to recognize the targeting of anti-CAA protests as a significant element of the violence. From February 23 to 26, the sites of the anti-CAA sit-in protests dotted across North East Delhi, including Chand Bagh, Kardampuri, Jaffrabad, Mustafabad and Khajuri Khas, were attacked and steadily cleared.

### **Ramifications**

It is our view that engineered hate, enabled by the complicity of state actors, culminated in violence towards cementing a firm sectarian divide. In this attempt to alter social relations, Muslim identity and agency stand noticeably diminished. This is an inevitable outcome of a politics of hate becoming embedded in the social fabric.

## **Seeking Accountability for State Failures**

Considering the institutions present in Delhi, both state and central, and the ease of movement for security forces, it is a legitimate expectation that a situation of communal violence in Delhi should be averted and promptly contained. The very fact that mass violence took place over four days in a district of the nation's capital city – the seat of both the Government of India and the Government of Delhi – indicates glaring failures of constitutional duties.

### **Delhi Police**

As the principal law enforcement body of the city, it was the Delhi Police's role to respond to visible signs of brewing violence and avert the outbreak, and later to contain it from becoming a mass violence situation. The material analyzed in the report demonstrates that the Delhi Police failed to prevent the violence even though there were enough warning signs since January 2020 indicating a tense build up. There were also instances of police complicity of varying degrees.

### **Failure of Police to Prevent Violence**

The Delhi Police Act, 1978 endows the Commissioner of Police in Delhi with a range of prohibitory powers to prevent riots or breaches of public order. These include orders prohibiting the carrying of weapons and arms, and the assembly of persons as “necessary for the preservation of public order”.<sup>990</sup> Section 33 of the Act gives the Commissioner of Police specific powers to issue orders towards preventing a riot or “grave disturbance of peace”. Likewise, the Code of Criminal Procedure prescribes a host of preventive powers in Chapter 10, which by virtue of Section 70 of the Delhi Police Act, 1978 accrues to the Delhi Police.<sup>991</sup>

Yet, the police failed to take any preventive or punitive measures to tackle the polarized atmosphere building up in the run-up to February 23. It is documented that the police were in receipt of intelligence alerts from internal sources, of impending trouble in North East Delhi on February 23 itself.

<sup>990</sup> Sections 30, 31, the Delhi Police Act, 1978.

<sup>991</sup> Through a Notification dt. 31.10.2008 passed under Section 70(1)(b) of the Delhi Police Act, 1978, the Central Government has empowered Deputy Commissioners of Police to perform the powers and duties of an Executive Magistrate under Section 144, CrPC. The Notification is available at [https://www.mha.gov.in/sites/default/files/SNO185\\_18012018.PDF](https://www.mha.gov.in/sites/default/files/SNO185_18012018.PDF).

In his speech at Maujpur on February 23, Kapil Mishra went so far as to warn the police to clear the crowd in a couple of days, failing which direct action would be taken. With hindsight, it is clear this ultimatum came to be an immediate trigger for violence. Kapil Mishra delivered this speech in the presence of the DCP, North East District. However, the police took no action.

Similarly, the police pronounced curfew orders a day too late when the violence had already engulfed the district. This proved to be ineffective, as attacks and acts of violence continued in spite of the imposition of curfew.

### Police Complicity in Violence

Chapter 3 of this report records instances showing involvement of police personnel in acts of violence. These descriptions are backed by eyewitness, media, and affected persons' accounts of violence. On February 24, multiple instances of apparent police complicity were reported: police were seen with mobs attacking the anti-CAA protest site in Chand Bagh; firing tear gas at the tent housing the anti-CAA protesters in Kardampuri; encouraging mobs pelting stones and vandalizing a store with a Muslim name in Yamuna Vihar. The police allegedly assaulted Faizan (leading to his death) and four other Muslim men in full public view on 24 February – a prime example of abuse of police power driven by prejudice. There is documented testimony and video footage of police appearing to beat worshipers and the *muazzin* of Farooqia Masjid in Brijpuri on February 25. Police personnel reportedly roughed up anti-CAA protesters while clearing the Khureji Khas protest site on February 26 and prevented those detained from meeting their lawyers. This limited, but credible, mass of information of police involvement is what has reached the public domain so far, while much more may still have to be unearthed.

The Committee holds the view that the Delhi Police failed to prevent the violence, and expresses serious concern at the instances of police complicity of varying degrees in the violence. The role of the police must be more critically examined to determine the full extent and nature of complicity, including whether the lack of effective preventive action constitute complicity as an act of omission. Towards that end, it is imperative that the investigation is entrusted to a body other than the Delhi Police, and which is not under the direct control of the Ministry of Home Affairs. In the Committee's view, police complicity can be properly investigated only through a Court-Monitored Investigation.

### Ministry of Home Affairs, Government of India

As per the constitutional scheme awarding special status to the National Capital Territory of Delhi, the MHA, has the effective control of Delhi Police.<sup>992</sup> Moreover, the MHA also oversees central paramilitary forces. With these crucial roles, the Central Government holds the primary responsibility to protect the lives and property of the people of Delhi. In spite of all the resources at its command, the MHA's interventions failed to contain the violence in North East Delhi. Repeated assurances by police top brass and government officials that the situation was under control did not match the pace and visibility of violence on the ground.

### Scarce Deployment of Police and Security Forces

As the parent Ministry, the MHA plays a key role in ensuring adequate police deployment in Delhi. Even though it can order central paramilitary forces whenever necessary, it seems the MHA failed to ensure increased police deployment in North East Delhi during the initial phase of the violence. This was a prime factor in the galloping spread of the violence.

While announcements by police and political leaders of greater police deployment were made on February 24 and 25, official data suggests that increased deployment only took place on 26 February. In the chargesheet filed in FIR 59/2020, a chart depicts the details of deployment of Delhi Police and Central Armed Police Forces (CAPF) to North East, East, and Shahadra police districts over the days of violence. This tallies to show that the numbers of police personnel deployed were not suitably increased on February 24 and 25, which is when the maximum number of distress calls were received by Police Stations.<sup>993</sup> In fact, on February 24, the

992 Under Article 239 read with Article 239AA of the Constitution of India, the Lieutenant Governor appointed by the President, serves as the administrator of the National Capital Territory of Delhi.

993 Pg. 1768 in first chargesheet in FIR 59.

numbers of both civil police and paramilitary personnel were less than on February 23. It is only on February 26 when there was a perceptible rise in deployment – the day that the National Security Advisor declared the situation “under control”.

Date	Deployment of Delhi Police + CAPF staff	Distress calls made to police as per NDTV Report
22.2.2020	405	NA
23.2.2020	1393	700
24.2.2020	1361	3500
25.2.2020	1399	7500
26.2.2020	4291	1500
27.2.2020	4635	NA
28.2.2020	4756	NA
29.2.2020	4248	NA

Source: First chargesheet in FIR 59

### Ignored Alerts

The gap is amplified in light of the police internal alerts advising increased deployment from February 23. The Special Branch and intelligence wing of the Delhi Police itself had sent “at least six” alerts on Sunday, February 23, through wireless radio messages to North East District and the police leadership.<sup>994</sup> The first alert advised increasing deployment and police presence in the area after Kapil Mishra tweeted his call to supporters to assemble at Maujpur Chowk at 3 p.m. Alerts were later sent after stone pelting began in Maujpur and mobs were seen mobilizing.

### Ramifications

People who sought police help got little or no response. A journalistic investigation revealed that Delhi Police received about 13,200 distress calls during the four days of violence, with the number of calls rising each day. It recorded that the number of calls to the police control room rose each day, rising from 700 on February 23, to 3,500 calls on February 24, rising further to 7,500 the next day, before reducing to 1,500 calls on February 26.<sup>995</sup> However, police station registers on action taken on these were found to be blank.<sup>996</sup> Chapter 3 records numerous instances of the police not responding to calls from neighborhood, schools, and places of worship, on each day of the violence.

With the information on hand at the outset, it is a grave failure on the part of the Delhi Police leadership and the MHA that police and security force deployment was not immediately stepped up. More recent events in Delhi testify to how rapidly security force deployment can take place in the city. There was speedy and continued deployment of hundreds of police and additional companies of paramilitary forces following an incident of communal violence in Jahangirpuri (North West Delhi) in April 2022.<sup>997</sup> In preparation for a demolition drive in the area, the police mobilized 1500 police personnel virtually overnight (against a request for 400); in addition, a few companies of the Central Reserve Police Force and Indo-Tibetan Border Force

994 TNN, 27 February 2020, Note 171.

995 Mariyam Alavi, Saurabh Shukla, Sreenivasan Jain, “No Action”, “Case Pending”: Delhi Police Call Logs Offer Clue To Why Violence Raged for 4 Days”, *NDTV*, 29 February 2020: <https://www.ndtv.com/india-news/no-action-case-pending-delhi-police-call-logs-offer-clue-why-violence-raged-for-4-days-2187419>.

996 Alavi, Shukla and Jain, 29 February 2020, Note 995.

997 PTI, “Heavy police deployment to continue in Delhi’s Jahangirpuri: Officials”, *Deccan Chronicle*, 19 April 2022: <https://www.deccanchronicle.com/nation/crime/190422/heavy-police-deployment-to-continue-in-delhis-jahangirpuri-officials.html>.

were provided.<sup>998</sup> When such preparation is possible, it is inexplicable as to why the needed deployment was not ensured in North East Delhi on February 23, 2020 itself.

This situation begs a serious reckoning of the Central Government's failure to respond to the violence commensurate with its resources and capacity. The Committee concludes that a comprehensive, independent review of the known intelligence, alerts, total police and other security force strength, and sequence of deployment across affected areas, from the breakout and over the days of violence, is urgently required.

### **Government of Delhi**

The Committee finds that the Government of Delhi did precious little during this entire time to mediate between the communities, even with the warning signs. While the Delhi Government's ability to control violence is limited as the administrative control over the Delhi Police remains with the Central Government; it failed to exert the role of civic mediation, and statesmanship, to calm the situation. The government, and its popular Chief Minister, voted in through a landslide victory only a few days before, displayed an entirely ineffectual, seemingly helpless stance rather than doing all it could on the back of its emphatic mandate.

Additionally, the Delhi Government, which is directly responsible for ensuring relief and compensation, failed to discharge this role in a meaningful way. Government agencies failed to extend effective relief during the days of violence. The lack of adequate relief camps and the sudden closure of the Eidgah camp would have left many vulnerable people with no access to shelter. It was for the Delhi Government to ensure expeditious payment of compensation for harm and losses suffered by the victims of the violence. However, the approval and delivery of compensation has been riddled with difficulties and delay. Where decisions have been made, there are concerning patterns of compensation amounts not matching the harm suffered, or compensation being rejected without adequate basis.

### **Need for a Commission of Inquiry**

A confluence of factors and state failures led to a situation in which the violence that overtook North East Delhi was neither prevented, and once commenced, not stemmed from spreading. Hateful content against Muslims and utterances inciting violence emanated from numerous actors. They were given a free hand over a few months. There are also documented instances of police complicity in violence. The Central and State Governments have failed to fulfil their solemn obligation to safeguard lives, property and the rule of law. More than two years since the violence, glaring issues of accountability remain unaddressed.

This Committee finds that a Commission of Inquiry ought to be set up for an impartial inquiry to establish the factors that led to the violence and issues of accountability and reparations in its aftermath. We would hope such a Commission through its functioning would take steps towards restoring faith in the rule of law by getting to the truth. It is crucial that the terms of reference and the choice of the Chairperson for the proposed Commission of Inquiry assure the affected communities of its independent and effective functioning.

## **Delhi Police's Investigation into the Violence**

As of January 2022, a total of 758 FIRs have been registered alleging a range of offences under the IPC and other laws.<sup>999</sup> In March 2020, the Delhi Police Special Cell registered FIR 59 claiming that there was a pre-planned overarching conspiracy to instigate the violence. In a few days, the Special Cell stated it had discovered evidence that the conspiracy involved terrorist acts, and invoked the UAPA. On a review of primary material including judicial orders, chargesheets (including only the first chargesheet in FIR 59) and FIRs, as available till December 10, 2021, the Committee discerns some very troubling facets.

<sup>998</sup> Akhil Kumar, ed., "14 Teams, 9 Bulldozers, 1,500 Cops: How Delhi Demolition Was Carried Out", *NDTV*, 20 April 2022: <https://www.ndtv.com/india-news/jahangirpuri-demolition-14-teams-9-bulldozers-1-500-police-and-security-forces-used-2903941>.

<sup>999</sup> Affidavit of Delhi Police in *Ajay Gautam v. GNCT of Delhi*, pg. 2, para 4, dated 25.1.2022, Note 1.

### **Unjustified Use of UAPA: Case of FIR 59/2020**

The gravest aspect of the Delhi Police investigation into the February violence is invoking UAPA in FIR 59 against 18 accused persons. The UAPA, being a special law to counter terrorism, unleashes an extraordinary set of harsh conditions on the accused persons. This regimen enables extended pre-trial detention, severely restricts bail, and leads to demonization of the accused. It must be cautiously invoked only in cases where acts alleged clearly meet the definition of terrorist acts backed by sufficient proof. This Committee has considered the question of applying UAPA in FIR 59 very carefully.

The prosecution's case is that the accused persons in FIR 59 conspired to execute riots as a means of forcing the government to repeal the CAA. This Committee has found no material produced through the current investigation that supports the allegation that the said alleged criminal acts constitute a terrorist act. Even if one was to assume that the alleged conspiracy led to the present violence, it disrupted public order. There is copious jurisprudence, some of it excerpted in Chapter 9, illustrating the difference between actions breaching public order and those affecting the *security of India*, the latter being a foundational condition for invoking the UAPA.<sup>1000</sup> It would be a stretch to argue that the present violence, which was restricted to certain localities in North East Delhi was *likely to affect the unity, integrity, security or sovereignty of India*. Further, the material in the chargesheet does not reflect any assault on any symbolic target such as a government institution or on a person or landmark of any significant public importance.

Moreover, the material in the chargesheet also does not credibly canvass the proposition that persons advocating the repeal of the CAA, a law that purportedly discriminates against Muslims, intended to strike terror in the Hindu community. On the contrary, as demonstrated through the official data in earlier chapters, an overwhelming number of victims who were killed, physically assaulted, and suffered loss and damage of property were Muslims. Further, a large number of mosques were damaged and there was a disproportionate impact on the minority community. The incongruity of "Muslim persons" organizing riots in Muslim dominated areas, killing Muslim victims mainly and burning mosques in order to protest against a law that is allegedly discriminatory towards Muslims has been noted by the courts.<sup>1001</sup> This ill-conceived and unsubstantiated application of UAPA to the present case is not merely stretching the law, but a perversion of the law and appears targeted.

### **Strength of Charge of Conspiracy in FIR 59**

This Committee's analysis of the first chargesheet filed in FIR 59 reveals that the prosecution's allegation of an overarching premeditated conspiracy aimed at engineering communal riots, relies on material that is intrinsically unreliable in law.

From the material analyzed by the Committee, the *only* evidence of a conspiracy comes through witness statements of persons who either attended meetings or overheard discussions. While the veracity of the witness statements recorded by the Special Cell will be tested at trial, it is noteworthy that every public witness who claims to have heard explicit details of the preparations for the riots has voluntarily reported this information to the police more than two months after the violence, and much after the initial arrests in FIR 59. The witnesses have given no explanation for the delay in reporting. Every step of the investigation, particularly the arrests of the accused persons in FIR 59, was widely publicized and extensively covered by the national and regional press. These witnesses had ample notice to come forward promptly. The unexplained delay indicates possible tutoring of these witnesses.

A comparison of the investigation in the IPC FIRs (such as FIR 48, 49 and 50) with the investigation into the same allegations in FIR 59 also reveal irreconcilable differences about critical features of the same incident. Such incongruities cast a cloud of suspicion on the claims made in the chargesheet of FIR 59 and further corroborates the possibility that the witness statements gathered have been fabricated.

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<sup>1000</sup> Para 55, *Ram Manohar Lohia*, Note 867.

<sup>1001</sup> Note 827.

### **Misdirected Investigation**

The Committee finds that police actions and omissions, including the hoisting of a remarkably infirm UAPA case, further weaken the overall investigation into the February 2020 violence.

While granting bail in certain IPC cases, the courts have pointed to repeated reliance on belated statements of both police and public witnesses which provide no explanation for this delay. Delayed statements by police witnesses are particularly suspicious as police personnel are well versed with the process of investigation, and do not have the inhibitions or limitations that a civilian witness may have. In some IPC cases, courts have commented that police witnesses have been deliberately planted to implicate the accused. The possibility of fabrication is further strengthened by the consistent absence of relevant station diary entries pertaining to the registration of FIRs, examination of witnesses, etc. across Police Stations for these offences. Trial courts while granting bail in some of the IPC cases have also commented on the absurdity of the prosecution narrative in cases where Muslims have been accused of joining members of the Hindu community in beating Muslims. A closer examination reveals a consistent pattern of such defects in the investigation of IPC offences.

Furthermore, we find that the Delhi Police has desisted from investigating tell-tale events that appear to have a clear link with the February 2020 violence. The police's refusal to investigate speeches (imbued with sentiments of hate, exhortation and incitement) made in close proximity to the onset of violence, and the ramifications flowing from these utterances, seriously discredits the integrity of the investigation. The overall direction of the investigation appears skewed. On one hand, the police have omitted to investigate the connection of the breakout of violence with the offending utterances mentioned above, while on the other, subjected certain anti-CAA protesters to a UAPA prosecution for allegedly committing violence targeted at Muslims. This Committee concludes that only an impartial and rigorous investigation can shed light on the truth, ensure accountability and do justice to the victims of the violence.

## **Broader Implications**

### **Communalizing the Public Discourse**

The microcosm of an engineered anti-Muslim narrative, culminating in violence in North East Delhi, signals the growing fusion of hate messaging in public discourse, with the actual incidence of violence. Public expression of anti-minority hate, at times inciting violence, has become a recurring feature in electoral campaigning. There are also troubling signs of normalization and approval of hate narratives by segments of society. This constant undercurrent of hate directed at religious minorities frays inter-community relations and manifests into various forms of violence.

The brief study contained in this report signals the expansive role of sections of the media in propagating hateful narratives within the public discourse. Television and social media provide platforms for dissemination directly into households and smart phones, essentially right into the minds of a public constantly consuming the narratives they receive. The content analysis of television shows featured in this report indicate how remarkably similar their vitriolic rhetoric and messaging was, geared to promote paranoia and suspicion over the intentions of anti-CAA protesters and Muslims in the same breath. Their collective consistency was in perfect step with the hate speech being spread by certain politicians. These are powerful foundations of an architecture of hate.

India has the world's largest number of users of Facebook and WhatsApp. Independent research and brave leaks from inside these social media giants warn that the algorithms driving these platforms perpetuate the consumption of fake news, hate speech and violent content. While there are dangers for social media users worldwide, the dangers for India are acute. The need for informed debate and deliberation on preventing hate and incitement, through social media platforms, is one of the most urgent challenges of our times.

The total lack of a robust institutional will to act against hate speech, particularly that which is willfully employed by political leaders during elections, is very concerning. The Election Commission of India in particular has a crucial role to play to prevent elections from becoming easy platforms for the spread and

normalization of hateful content. The courts and police too have the critical role of wielding the law against hateful speech and be on vigilant guard to prevent violence from breaking out when sure signs become visible, and take the needed measures to hold genuine perpetrators accountable. The Committee calls on these institutions to condemn, and act against hateful discourse that incites violence, in accordance with their constitutional obligations.

### **Curbing of Peaceful Protest**

The targeted clearing of the anti-CAA sit-in protests in North East Delhi cannot be overlooked as an isolated instance without broader implications. The use of violence casts a chilling effect on the act of protesting itself. Peaceful assembly is enshrined as a fundamental right under Article 19 of the Constitution of India insulated from unjustified state interference or curtailment. In the dialogue between state and citizens that is intrinsic to a democracy, the act of protest is a potent way for citizens to engage with the state. A large part of India's democratic ethos, from independence to the present, is shaped by the exercise of protest by individuals and groups from all walks of life and for diverse causes.

It is important to note that the resort to protest is often the product of a lack of democratic engagement by the state with citizens. The protests against the CAA are a case in point. The Central Government made no attempt to use democratic processes to engage or respond to the serious fears expressed by sections of society, particularly Muslims, who perceived they may well be disenfranchised by the CAA-NRC. In the absence of dialogue and engagement, protest was the only democratic route left for communities to advocate. The Committee calls on state institutions to unequivocally defend the right to peaceful assembly and protest, and take necessary action against violent reprisals that trample the right to protest.

### **Abuse of UAPA**

In addition, this report illustrates the implications of the unprincipled application of UAPA on due process and an accused's right to fair trial. The stringent standard of bail requiring a court to assume the prosecution case and material to be true, significantly dilutes the presumption of innocence, and with it, the bedrock of fair trial. In light of the threshold for bail as laid down in *Watali*, bail on merits has been granted only in cases where courts have held that UAPA is inapplicable to the facts alleged. This high threshold for bail combined with extended custody of the accused, and the phenomenon of staggered arrests ensures that UAPA accused are subjected to indefinite incarceration without trial. Crucially, UAPA trials are characterized by delay with a high rate of pendency. Patterns of use reveal that UAPA is deliberately relied on to secure prolonged custody of individuals, ensuring "punishment" in the face of insufficient evidence. Recent UAPA prosecutions have also been coupled with the phenomenon of prosecution documents being leaked to the media creating a fear psychosis and prompting prejudicial media trials, and the intimidation of advocates appearing in these cases.

A study of judgments of acquittal under UAPA are abound with instances of sloppy investigations, fabricated recoveries, and prosecutions attempting to obtain convictions on the basis of seized literature or tenuous associations. Disproportionate arrests and minuscule convictions under the UAPA suggest that the law is not fit for purpose as one that can effectively recognize and prosecute terrorist activity. This seems to be consistent with the experience of misuse of earlier anti-terror laws such as TADA and POTA. This Committee reiterates the urgent need for a comprehensive review of the UAPA.

Given the rise in false implications and malicious prosecutions, we reiterate an urgent need for accountability processes to immediately flow. This Committee urges the state to frame a law towards establishing accountability for miscarriages of justice arising through the unjustified application of criminal offences (not just through the UAPA) to persecute individuals. Such a law ought to provide for payment of compensation to persons exonerated and punitive action against responsible officials.

## **The Moment of Reckoning**

It is our view that this communal episode has set back the internal processes through which a multi-cultural society like India can engender order and harmony forging its plurality into a strength. Capacity for empathy and sagacity in thought and action, the practice of harmony and most importantly, the imagination to



resolve conflict are essential attributes for such a society to last in the long run. Instead, an architecture of hate and pathways to violence have been strengthened. Communities stand depleted in their ability to heal and restore. We fear that these effects may not be easily undone. Acts of deliberative reconciliation and reparation will have to be fashioned in the civil society and the state ought to play a role in it.

Speaking out, peaceful ways of protest, organized forms of contestation, are essential means to finding a path in a plural polity. In their own way, these are symbols of belonging – when one contests as a matter of right, the notion of belongingness is affirmed. This instance of communal violence at its fundamental level is a debased advertisement of gains to be had from plotting of hate-fueled bloodshed. The only way forward is for the instrumentalities of state to act towards justice harbored in the conjoined practice of fraternity, equality and freedom.

## Annexure:

### Dissent Note and Response

A Member of the Committee, Dr. Meeran Chadha Borwankar, IPS (Retd.), submitted a “Dissent Note” on May 4, 2022. The “Dissent Note” reads:

I. Having gone through all the material with the committee and information from different reliable sources, I believe that a part of the anti CAA protests could have been orchestrated by anti-national and hostile foreign forces though major segment of the agitation consisted of spontaneous response of a community that felt alienated and discriminated against. Deeper enquiry into it is called for.

II. I do not agree to the very generalised inference that ‘police complicity with Hindu mobs, were contributing features of the violence’. However, I do not rule out some cases where police complicity with Hindu mobs did contribute to violence. To paint all police officers of Delhi police to be ‘complicit with’ Hindu mobs would be extremely unfair and unjust.

III. Having worked in police for around thirty-six years and having faced many riots in the state of Maharashtra including a judicial enquiry following a particularly violent riot in Mumbai and a magisterial enquiry in a riot where my car was charred, I can say with considerable authority that many witnesses report very late for recording of their statements by Investigating Officers. One cannot blame police for it.

IV. Since quality of investigation of Delhi riot cases shall be commented upon by judicial officers hearing them, I do not wish to comment upon its ‘integrity’, on ‘misapplication of offences’, or ‘tardiness in filing the chargesheets’ etc. as mentioned in the report.

**Dr. Meeran Chadha Borwankar**, IPS (Retd.)  
Director General Bureau of Police Research & Development”

### Response of the Committee

We begin by commending Dr. Borwankar’s extensive engagement during Committee meetings. The Report has benefitted from her counsel.

A brief response to each of the points raised above is in order.

I. As regards the possibility that a part of the anti-CAA protests “could have been orchestrated by anti-national and hostile foreign forces,” we have not come across anything to suggest, let alone support, such a hypothesis in all the material considered by us. Our examination of the first chargesheet in FIR 59, which deals with the subject of the larger conspiracy behind the violence, does not support a finding to this effect. In any event, investigation in FIR 59 is still ongoing, and covers the field in this matter.

In the absence of any confirmed investigative or other finding which we could ourselves rigorously examine regarding involvement of “hostile foreign forces”, we find it inappropriate to speculate based on hearsay and undisclosed private communications. Further, putting forward such a speculative suggestion could be construed and improperly utilised in the public domain, for purposes other than that intended by Dr. Borwankar, i.e. for the purpose of a “deeper probe”.

II. We share the view that the serious issue of police complicity in the violence should not be presented through a generalised inference. The Report compiles specific instances of police complicity from the reported material on the subject. We believe this is sufficient to warrant an independent inquiry, which would need to be extensive. It is a matter of regret that there has not yet been a comprehensive examination of the extent of varying degrees of police’s involvement in the North East Delhi violence.

In seeking accountability, we recognise the risks and harm endured by Delhi Police personnel in containing the violence. Key unanswered questions on deployment, and the resulting impact on police in the field, are also necessary to be addressed within the framework of accountability. The Committee's overall conclusion on this issue in the last Chapter reflects our careful consideration.

III. The Report's chapters on investigation are based on a careful study of a host of judicial orders which, when analysed collectively, reveal the recurring feature of belated statements of both police and public witnesses, without any explanation. We reiterate the settled law that belated statements without cogent explanations give rise to the possibility of fabrication, which in turn casts doubt on the prosecution's case. In our analysis, we also refer to Orders where courts have accepted reasons explaining the delay in recording of witness statements.

IV. One of the Terms of Reference (ToR No. 2) of the Committee is to "analyse and assess the response of the police in investigating the riots". This mandate derives from the belief that in a democracy, the functioning of all cogs of the criminal justice system – from the police to the courts – are to be rigorously debated and commented on in the public sphere. This heightens following an incident of mass violence such as what took place in North East Delhi and the urgent questions on accountability that arise. In this light, we offer an assessment of the quality of investigation and material collected so far, on the basis of established principles of criminal law.