

Interstices of Law and Literature: Narratives of the 2008 Batla House Encounter at New Delhi

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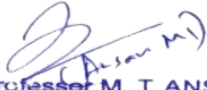
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CERTIFICATE

This is to certify that dissertation entitled “**Interstices of Law and Literature: Narratives of the 2008 Batla House Encounter at New Delhi**” submitted by **Afnan Hussain K T** bearing Reg. No. **20HCHL01** in partial fulfilment of the requirements for the award of Master of Philosophy in Comparative Literature is a bonafide work carried out by him under my supervision and guidance.

The thesis has not been submitted previously in part or in full to this or any other University or institution to award any degree or diploma.


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DECLARATION

I, **Afnan Hussain K T**, hereby declare that this Dissertation entitled, “**Interstices of Law and Literature: Narratives of the 2008 Batla House Encounter at New Delhi**”, submitted by me under the guidance and supervision of **Dr. M.T Ansari** is a bonafide research work. I also declare that it has not been submitted previously in part or in full to this University or any other University or institution to award any degree or diploma.

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Introduction

In contemporary times, documents of various kinds permeate the socio-political life of individuals and communities. The state often plays an important role in the production and authentication of documents of this kind, and these procedures are part of what Michel Foucault has identified as “governmentality”- a major dimension of modern arrangements of power (Burchell, Gordon and Miller 1991). The documents pertaining to various aspects of our lives are so large that a comprehensive study is impossible. Even within the restricted area of a person’s education, we find many documents starting from school leaving certificates, transfer certificates, progress reports, mark sheets, and degree certificates. Each of these documents has a specific use in determining the requirements for entry into or exit from institutions and educational programmes. At the same time, they also document the person’s educational history. The continuity of this history is established through the production and verification of these documents.

An important domain of a person’s life where the ubiquity of documentation is clearly visible is in the documents related to community affiliation. Determining the community to which one belongs plays a crucial role in various aspects of a person’s life in countries such as India, where communities have played a vital role in governance since the colonial period (P. Chatterjee 1993, Dirks 2001). Certificates attesting to one’s religious or caste identity, and documents that determine the community categories such as ST, SC, and OBC¹ to which these groupings belong play a vital role in one’s education and employment. There are economic groupings too, such as “below the poverty line” attested to by BPL cards issued by the state, which entitles certain families to access welfare schemes.

Although a variety of documents – such as electoral identity cards, driving licenses, cards issued by one’s employer, income tax account documents, etc. – have been and are still

¹ Scheduled Tribes, Scheduled Castes and Other Backward Classes

being used in India for attesting to one's personal identity, unique identification numbers or Aadhaar numbers are becoming increasingly mandatory as the document of identification. In this case, a number – rather than a card – is the device for identification. The number refers to several different kinds of data – including biometric data – compiled and stored in a database. This enables verification through the use of fingerprints rather than paper documentation.

There have been apprehensions that the emergence of Aadhaar and biometric identification pose threats to the privacy of individuals. While in earlier times, a ration card without even a photograph of the individual was seen as sufficient, in recent times, identification mechanisms seem to penetrate further into personal details. Although these new mechanisms' ostensible purpose is to make identity verification processes more efficient and quick, Giorgio Agamben's view that modern biopolitical mechanisms have the effect of placing all citizens under surveillance is relevant.

Most documents are also highly dependent upon the institutions to which they belong and with which they interact. Taking them out of their context or grounding would result in inaccuracies in analysis. The birth certificate, for example, is related to the population register, and thus is associated with the general census and statistics maintained by the state. Dipesh Chakrabarti has shown, in an essay related to the governmental roots of modern ethnicity, that the word statistics has etymological connections to the gathering of information for the state (Chakrabarty 2002). If we extend the question of the population to that of communities, one can see how community certificates too are part of this mechanism. It is interesting to note that while various identification documents or certificates are issued to the public by authorized state agencies (e.g., the Regional Passport Office for driving licenses, Passport office for the Passport, Election Commission for electoral identity cards), the primary demand for these documents also comes from other departments and agencies of the state. In other words, state agencies demand that the citizens produce documents from

other agencies of the state. One might even say that in the circulation of documents among state departments, citizens often play the role of a medium. In order to understand this process, it may be helpful to closely analyse how documents work in a specific domain. Here we encounter the institutions, procedures and protocols that regulate the production and circulation of documents, and the effects they produce.

Perhaps the most important feature shared in common by modern documents of the kind discussed above is that they all belong to one or another state institution. Not only are they connected to specific institutions, but they are also closely linked with other institutions, thus forming a network of circulation. A study of the nature of documents cannot avoid considering these interconnections, as the very interconnections make the functioning of documents possible. Interestingly, it is a feature external to documents, i.e., their institutional linkages, which appears as a common feature of documents.

Documents in a legal investigation

An important question that confronts a researcher about the nature of documents would concern which sort of document could be a paradigmatic example for the study. Indeed, individual documents like birth certificates, community certificates, and income certificates might reveal many important aspects of modern documents when compared to complex referential documents like census reports or voter's lists. However, documents with strong institutional character and clearly laid down procedures for their use might offer a more secure starting point for analysis.

In comparison to other spheres of life, the realm of legal interaction appears to insist on more rigorous procedures and practices. Since the very function of law is to institute order, legal mechanisms may be seen as particularly appropriate for offering insight into the nature of modern institutions. For instance, a criminal investigation begins only when a

complaint is filed at any institution designated for the purpose. The act of complaint presumes an institution, such as the police station, to receive the complaint. The first document filed in the case of a crime at a police station would be a First Information Report (FIR). A first information statement would be given by the complainant, and it would be recorded by the station officer. This document, apart from detailing the abstract of the complaint, would also carry the details of the complainant, the accused and the deceased if a death is involved.

Do all modern documents have a connection with legal mechanisms? By reversing this question, we may also ask: can we ever think of any area of life which is beyond the reach of law? Both these questions can be answered only by enquiring into the nature of law. In mathematical terms, a law can be almost equated to a formula, to which various variables' values may be applied to see if they satisfy the requirements of the equation.

If those variables do not work within the constraints of the formula, it is out of the formula, and in legal terms, it may be termed illegal. The only way to make it legal would be to change the variables according to the law. In that sense, the law or formula would decide if a variable is a fit or a misfit. Since all structures would have their own formula, and every institution would institute its own structure, all institutions have mechanisms of inclusion and exclusion. Coming back to the analogy of mathematical formula, a law can be seen as a decisive realm which decides on the fundamental question of what to include in the system and what not to include.

In short, the meaning of the word 'law' may be extended to other related words such as formula, structure, institution, and system. Rather than deciding on the fitness question, the law would also attempt to comment on what is right and wrong. Since questions related to right or wrong can also be extended to the areas of morality and ethics as well, Agamben argues that "almost all the categories that we use in moral and religious judgments are in

some way contaminated by law: guilt, responsibility, innocence, judgment, pardon” (Agamben, *The Witness* 1999, 18). He further adds that this confusion makes it impossible to invoke them without particular caution, though it asserts the all-pervasive nature of law.

In his critique of violence, though Walter Benjamin analyses the relationship between violence, law, and justice with regard to the question of violent means to be applied for even just ends, since our concern is not related to the moral issues related to violence, it is more important here to see how law works in its institutional form. A close analysis of the working of law in its very institutional form would also help in understanding other areas which are contaminated by law, such as the moral and religious realms. This study, however, is limited to analysing the institutional aspects of law to understand the nature of documents and stories it generates.

Coming back to the realm of social and community life, one can clearly see how modern institutions regulate them. A question persists: is there any legal foundation for the working of these modern institutions? As we have already noted, all structures maintain a sense of legality within it; without this, the structure would collapse. Every institutional mechanism, therefore, assumes a legal foundation. One may also wonder if the law has its existence only in relation to its other, which is the violation of law, since it keeps pointing to punishments for such violation.

Context of the Study

Five bombs went off in New Delhi in the span of 30 minutes on September 13th, 2008, and a few more were found unexploded. One of the most immediate occurrences that followed this incident was an encounter on September 19, 2008, in Batla House, a Muslim-majority neighbourhood in the East Delhi district. The Special Cell of the Delhi Police conducted an armed operation, and two suspected terrorists, Atif Amin and Sajid, were shot and killed

during a raid inside Flat 108 in Building L-18. An inspector with the Delhi Police's Special Cell named Mohan Chand Sharma was attacked and eventually died from his wounds at the Holy Family Hospital. The Delhi Police claimed the teenagers who were killed and arrested were the principal conspirators and perpetrators of the bombings in Delhi, leading to further arrests in the days that followed. The news of the Batla House encounter got more following in the subsequent days as many activists, journalists, and members of human rights organizations raised several questions regarding the official statement made by the Delhi Police. Many were doubtful about the whole operation and argued that it was a fake encounter or extra-judicial killing. The subsequent reports only raised more questions about the veracity of the entire incident. This study will take three texts under its purview; the official trial court judgement, a fact-finding report titled '*Encounter at Batla House: Unanswered Questions*' by Jamia Teachers Solidarity Group, and a Bollywood movie titled *Batla House*, directed by Nikkhil Advani.

This study examines various narratives produced and circulated at the intersection of legal documents such as judgement copies, case files, journalistic reportage, and literary adaptation. In the popular narrative, legal theory has always been received as a stable category that has implicit claims to objectivity. The discourse of law locates itself above the individual and the social, and contends that it has a 'legal' authority which is superior and objectively identifiable. Legal documents, such as case files, FIRs, judgments, etc., make authentic claims about their truth and objectivity. However, interdisciplinary attempts like 'law as literature,' 'law and literature,' etc., incorporating both legal studies and literary studies, have been concerned with uncovering the hidden structures of power in law, and treat law not as unified and monolithic but as constructed, fictional and narrated.

Although scholars have made various attempts to study communal riots and fake encounters, most of them were done in the disciplines of sociology and anthropology. A

distinct area of study, law as literature, hasn't found much reception in India, especially in disciplines like Comparative Literature and English. The proposed study will interrogate these disciplinary limitations and attempt to stretch the boundaries of comparative literature in order to incorporate legal studies, literary theory, and ethnographical inquiry under one project. My attempt is also to look at the ways in which rhetorical, discursive, and idiomatic strategies at play within legal documents tend to produce a certain regime of truth which has implications for lives outside the peripheries of the 'text.'

The legal system is often understood as an abstract idea devoid of cultural, political, and social preoccupations. But many scholars have questioned this notion and have argued that law is rhetoric and can be seen as a social, political, and narratological enterprise. Jacques Derrida, in his book titled 'Force of Law: The Mystical Foundation of Authority,' shows an inherent problem in legal authority, that is the completely arbitrary relation between law, justice and power or force. He asks; If justice does not reside in the law, where does it reside, and how can it serve as a foundation for the law's authority? In what way can the law realise a balance between justice and force? In order to characterise the 'mystical foundation' of the law's authority more clearly, Derrida refers to Montaigne's statement that the source of legal authority resides in the fictions of the law: "even our law, it is said, has legitimate fictions on which it founds the truth of its justice" (Derrida 1992).

In his book *The Differend: Phrases in Dispute*, Jean Francois Lyotard analyses how injustices take place in the context of language. He talks about the concept of *differend*, where "a case of differend between two parties takes place when the "regulation" of the conflict that opposes them is done in the idiom of one of the parties while the wrong suffered by the other is not signified in that idiom" (Lyotard 1988). A differend is an alternative to litigation, in which the parties to the dispute come to an agreement on how to resolve it. The plaintiff's wrong can be argued in the court in a litigation. However, in a differend, the

victim's wrong cannot be defended. For Lyotard, a victim is not merely someone who has been harmed; it is also someone who has lost the ability to articulate this injustice. This disempowerment can take the form of a literal silencing or be accomplished via the use of various techniques, such as threatening the victim into submission. Another possibility is that the victims are able to express themselves, but their words are inadequate to convey the wrong committed within the language of the rule of judgement. It's possible that the victim won't be believed, understood or labelled crazy. It's possible that the victim's wrong doesn't fit into the language of the rule of judgement; that the wrong isn't even readily apparent as such.. This idea will enable me to look at how partisan narratives of Delhi Police were constructed in an authoritative language, leaving the other party no language for expression. Here, human rights organisations point how the case filed by the Delhi police, registered partisan narratives and constructed idioms that suited some vested interests. In the study, I intend to look at the production of counter narratives like *Encounter at Batla House: Unanswered Questions* that challenges the rhetorical status of these idioms and calls us into rethinking the 'language' of these official documents.

Chapterisation

In the first chapter, the thesis offers an introductory discussion to the field of 'Law and Literature'. Within the field itself, there are multiple approaches like Law in Literature, Literature in Law and Law as Literature etc.,. The first one tries to explore the settings, characters and narratives that have a legal background, in various literary genres. On the other hand, the second approach looks at literature as a source of moral lessons, that can inspire and navigate legal arguments or humanize the practitioners in the legal world. However, the third attempt, Law as Literature provides a theoretical foundation to question the rhetorical character of legal narratives and evidences. The school attempts to theorise Law

not just as a set of rules, but also as having different stories produced and circulated with many other influences at play. Critical Legal Studies, which emerged in American law schools during 1970s, questioned various foundational principles of legal institutions and opened new doors to question the relationship between legal institution, culture and politics. Scholars associated with CLS are considered to be the pioneers of Law as literature as a systematic approach, and they were influenced by post- structuralist theory and deconstructive reading.

The chapter then moves towards the specific context of Indian politics and discusses how documentation and legal proceedings work in cases involving Muslim community member(s). It provides a brief outline of how the term ‘communal’ came to define the discussions about Indian politics. By discussing existing literature on documentation of riots done by scholars like Gyanendra Pandey, Paul Brass, Pratiksha Baxi, Pratap Mehta and Salah Punathil, the chapter sets the theoretical background for engaging with the narratives of Batla House Encounter.

The chapter also looks at how the police attempts to weave stories and use coercion to make a trustable narrator of their stories. Shahid Amin’s important work on ‘Approver’s Testimony’ is discussed to show how the police imagine the beginning, middle and end of an event, and how they use the testimonial of the made up approver to turn their fictitious narratives into a ‘real’ event. By discussing Shylashri Shankar’s work on Supreme court, Social and Civil Rights, the chapter shows how the Judges, who are supposedly not affected by any external influence, act as embedded negotiators and how they reproduce statist rhetoric in matters related to national security, terror related cases etc.,.

The second chapter begins by discussing the formation of modern nation state and how it created binaries to imagine the figure of Muslim as a ‘savage other.’ A detailed discussion of state violence and modern biopolitics is undertaken to see the patterns of power

relation between Muslim subject and the sovereign state. It then deals with how Muslim community in India was constructed as an essential minority and a foreign other in the political discourse since the colonial times, and how it was transpired into the post-colonial national politic as well. The spectre of partition never ceases to haunt Indian Muslims and any discussion about loyalty of an Indian Muslim to the nation resurfaces around open or closeted support to Pakistan. In cricket, politics, media, Bollywood and to countless other sphere, an Indian Muslim is considered a threat to national security.

By taking the paradigmatic case of Gujarat politics and Hindutva experiments there, the ethical foundation of Hindu Nationalism is explored in the chapter. As Bordia writes, Hindu Nationalism urges the individuals who are part of the system to not only condone, but also to actively initiate violence against Muslims. By discussing Moyukh Chatterjee's ethnographic work on state sponsored pogrom in Gujarat and its aftermath, the chapter delves into how Muslims are imagined as permanent minorities in Indian courtrooms. The 'impunity effect' of police officers and other perpetrators in state sponsored pogrom enable them to condone mob violence on one hand, and to unleash lethal violence against Muslim minorities on the other hand. In the legal proceedings that occur in the aftermath of riots/ pogroms, these impunity effect also makes it easier for the police and other legal institutions to imagine a different narrative, which is far from the actual events that happened, and to criminalise and penalise Muslim victims. The responsibility of violence is taken away from the perpetrators and through a set of well-crafted chain of stories, it is imposed on the shoulders of complainants/ victims.

Against these theoretical backdrops, the third chapter deals with various narratives of the encounter at Batla House, which happened on 18th September, 2009. In the beginning, the chapter briefly engages with the politics of encounters in India. Encounter killings, also known as extra- judicial killings, are often seen as the abuse of police power over the rule of

law. An event of police encounter is followed by the construction of a narrative, often fabricated, as police wants to absolve themselves from the crime of murder. First Information Reports and other case files are usually rendered as having no authorship, and the chapter problematises this ‘invisible author’ through the discussion of author function by Michel Foucault and Roland Barthes.

The disparities found in the police story is juxtaposed with the counter narrative published by Jamia Teachers Solidarity Network under the title Encounter at Batla House: Unanswered Questions. The report asks crucial questions about the lack of incriminating evidence and the nature in which the entire operation was carried out. The counter-narrative deconstructs the authenticity claimed by the police report. The police stories are also reproduced in the trial court judgement of the case Shahzad Ahmed vs. State, where Batla House is imagined as a hub of terror activities. The chapter offers a theoretical setting into anti- Batla narratives through the discussion of Ghazala Jamil’s work on Muslim colonies in Delhi. Journalistic reportage of the event of Batla House Encounter is also analysed to show how media reproduces statist narratives to construct a favourable public perception about the entire episode. The discussion also throws light into how various newspapers immediately turned a blind eye even when the police narratives were questioned by students and activists. Towards the end, a movie titled Batla House, directed by Nikkhil Advani, is analysed to show how legal truth is further enforced into the public perception, by releasing a movie ten years after the encounter. In this section, the chapter also deals with existing literature on the representation of Muslim community in Bollywood.

In conclusion, this thesis is an introductory attempt to look at legal documents through the lens of literary analysis. Law definitely has its own set of stories, which the system, and its practitioners, use and reproduce according to the political context. As Adichie maintains, a single story is indeed dangerous, especially when it is produced and circulated by the people

in power or the system. An interdisciplinary approach, incorporating anthropology, sociology and literary theory, into the analysis of legal narratives and its context, will be able to provide an important enterprise; a space for the subaltern voices of dissent.

Chapter One

Law as Literature: Reading Legal Documents as Constructed Narratives

In the popular narrative, legal theory has always been received as a stable category that has implicit claims to objectivity. The discourse of law locates itself above the individual and the social, and contends that it has a 'legal' authority which is superior and objectively identifiable. Legal documents, such as case files, FIRs, judgments, etc., make authentic claims about their truth and objectivity. However, multiple interdisciplinary attempts like Critical Legal Studies and Law and Literature movements, which originated from both Law schools and literature departments, attempted to question the hidden structures of power in the legal field. Critical Legal Studies was founded in the 1970s by a group of law students who had graduated from American law schools during the 1960s and 70s. The majority of them participated in the civil rights movements, anti-Vietnam war demonstrations, and other political and cultural uprisings against authority that marked that era. For them, American Law was not just a mere product of linear history, rather; the law was also a field where the contest of power takes place and ultimately favours the wealthy and ruling class. Inspired by the desire to bring social change, they questioned the fundamental separation of law and politics.

CLS² was arguably the first theoretical attempt at breaking down the networks of power in the field of the legal system. The founders of CLS were convinced about the inseparability of law and politics, and they questioned the partiality of legal procedures towards the wealthy class. It was usually believed that law was either the result of impartial judicial reasoning, based on objective principles, or possessed a democratic spirit, but CLS scholars pointed out the indeterminacy and the ways in which legal reasoning and judgements

² Critical Legal Studies

are affected by the social, cultural, economic and political presuppositions. For them, law accelerated illegitimate social hierarchies, which aided the domination of various social groups in terms of race, ethnicity, gender, and so on. The highly regarded neutrality of legal institutions and their language did not produce an equal society, but rather masked the relationships of power and control in the society. In the critique of individual rights discourse, they talk about how conventional rights discourse creates an isolated individualism and hinders the development of social solidarity between the members of communities, especially in the American legal system.

CLS scholars explore the indeterminacy of legal doctrine with the help of various interdisciplinary methods, such as structuralism in linguistics or deconstruction in literary theory. They try to unearth a deep structure of categories and tensions at work beneath the surface layer of legal talk, historically and contextually. It helps uncover various power relations and attempts to question the normalcy of legal reasoning that has been in practice. Despite the indeterminacy, critics can trace a pattern of predictable results in the courtrooms, concomitant with the power relations and privilege. Hence, for scholars like Duncan Kennedy and others who insist upon the nature of legal education, the pedagogy of legal classrooms should be radically revised, in such a way that they should be critical space for political analysis and struggle, instead of catering to the existing social hierarchies and power relations. By problematizing the legitimacy of legal reasoning and institutions, they should be able to expose the indeterminacy of legal doctrine. Instead of training law students to assimilate predictable patterns of legal decision-making that favour those with privilege and power critical theorists want to teach law students to modularize and redefine legal arguments in favour of those with less power.

Despite their joint critique of these dimensions of law, scholars in the field of critical legal studies fight against attempts to standardize their research. They press upon episodic

interventions and differ in their methods of analysing the law. Some of them look to Marxist ideas to delve into the economic power relationships and undercurrents, while others examine the Frankfurt School of Critical Theory's approaches in the production of cultural and psycho-social meanings to reveal how law employs the mechanism of denial and legitimization. The concept of the self as a consistent entity, one that can reason in accordance with universal principles and is guided by natural laws, has been forcefully challenged by intellectual currents in postmodernism, deconstructive theory, and cultural studies. Many critical thinkers contend that each person is the product of a web of interconnected and mutually constitutive factors, including ideology, social practice, and power dynamics.

Critical Legal Studies marked a rupture in the conventional understanding of the law, and it was no longer considered a phenomenon consisting of various rules devoid of any dependence. As Janet Halley maintains, the law is a “dazzlingly complex array of social, cultural, linguistic, and normative practices” (Halley), and over the years, various “law and” have developed, like law and humanities, law and history, law and economics, etc. Although one can see stark differences between these schools, Marc Galanter & Mark Alan Edwards say that “all of them concur that the legal world is not to be understood on its own terms, but requires the application of some method or substance provided by other disciplines” (Galanter and Edwards 1997, 376). These interdisciplinary scholarships have consistently encouraged scholars to look into the dependency of law, its fissures, silences, and gaps in its engagement with society.

Although it may not be the fundamental or most influential one, Law and Literature school carved out a new method through which literary scholars and law school graduates tried to understand the legal field. Scholars have put great effort into understanding the relationship between these two disciplines, which otherwise was not explored in detail. A primary attempt to link the two fields would be to see it from a humanist perspective, i.e.,

understanding the disciplines, both Law and Literature, as dealing with morality, human nature, and their interaction in society. One can also find interesting similarities in the methods they use, in expression, description, and rhetoric. As the title of J. N. Turner's & P. Williams' edited volume suggests, Law and Literature are the "happy couple" (Turner and Williams 1994), as both disciplines have much to give and take from each other. However, as a field that has consistently raised intriguing and de-settling questions against authority and power, the potential of Literature, literary theory in particular, in understanding law and its attendant registers would be much more sophisticated.

The recent history of law and literature school can be traced back to the writings of James Boyd White, an American Law professor, literary critic, and philosopher. He holds a Master's degree in English Literature and went on to study law professionally, and urged his students to think about the language of law and the role they have to play as lawyers in society. His seminal work titled *The Legal Imagination: Studies in the Nature of Legal Thought and Expression*, published in 1973, is considered one of the pioneering works that led to the field of law and Literature.

One of the intriguing questions to address in the thesis would be to look at what law exactly is and how the documents in legal institutions get produced. For example, what are the intricacies involved in the making of a legal document? How can one say that the production and circulation of judicial documents are completely autonomous and not biased? While these questions are primarily addressed through other strands of 'Law ands', like the sociology of law and anthropology of law, what can literary scholars, or literary critics offer as a critique of the law? While these questions remain pertinent, most of the proponents of law and literature school have attempted to tackle something that is slightly unrelated, a conventional approach to understanding what both fields can offer each other. In his interesting critique on the school of Law and Literature, Jane Baron problematizes the extent

to which these scholars have used the concept of interdisciplinarity. For him, they have not used interdisciplinarity in its truest sense- to question how the category of legal knowledge is produced and why- because “Law-and-literature scholarship has not questioned what the category “law” consists of and has thus tended inadvertently to reinforce the notion of law as autonomous” (Baron 1999, 1061). In order to advance his critique of the school, he roughly divides the movement into three strands, arbitrarily, as follows: Humanist, hermeneutic, and narrative (Baron 1999, 1062). He says that the concerns of these separate strands, if at all it is a single movement, are radically different from each other. However, for me, that critique does not stand a merit, as the diversified strands increase the potential of movements, especially those aimed at bringing about social justice, theoretically and practically. Let us look at how James Baron’s demarcation of three strands would be helpful for us in understanding law as Literature.

The first group of law and literature scholars, whom he calls “humanist” law- and- lits, are concerned with imparting moral values through Literature. For them, lawyers should read Literature, as it will help them understand human nature and emotions better. Martha Nussbaum says:

Literary works typically invite their readers to put themselves in the place of people of many different kinds and to take on their experiences. [T]hey promote identification and sympathy. One may be told many things about people in one's own society and yet keep that knowledge at a distance. Literary works that promote identification and emotional reaction cut through those self-protective stratagems, requiring too many things that may be difficult to confront (in Martha Nussbaum’s *Poetic Justice: Literary Imagination and Public Life* as cited in (Baron 1999, 1063)).

This particular emphasis on the instructive and guiding nature of Literature has been argued umpteen times whenever a question like what is Literature is posed. Humanist law- and- lits argue that Literature humanizes lawyers, as it is a source to learn about people different from them. Literature also helps deal with the ghost of abstract reason, which most

lawyers follow, towards an empathetic understanding of emotional and concrete reason (Baron and Epstein 1997, 145). Finally, moral education required to make a moral judgement is also supplied by Literature. Humanist law-and-lits do not offer anything new, rather; they are re-presenting the same old argument about the purpose of Literature as a guiding force to the purview of the legal field (Baron 1999, 1064-65).

The second group of scholars, whom he calls “hermeneutic” law-and-lits, argue that lawyers should be accustomed with literary theory. It is an attempt to supplement the law with the interpretive methodologies from Literature. As Mark Kingwell maintains, law and Literature have a lot in common, as both deal with written texts and their interpretation. Texts such as cases, orders, statutes, legal narratives, etc. embody texts that must be interpreted. Kingwell extents that “law and literature are two instances of the same human activity, deriving meaning from written artefacts” (Kingwell 1994, 351). They do not ask lawyers to read Literature, as interpretive techniques do not demand one to actually read a novel or a play; rather, a theory that is developed in a literary scholarship can be applied to many other texts. Interpretation in law can also find parallel to the troubles literary scholars face in deciphering a text. Kenneth Abraham writes,

The issues that trouble literary theory ... are strikingly similar to those that have troubled thinking about statutory interpretation. Practitioners of both disciplines have debated at length about the nature of the texts with which they are concerned, the relation of the author's intention to the meaning of a text, and the character of the reader's knowledge of a text's meaning. (in Kenneth Abraham's "Statutory Interpretation and Literary Theory: Some Common Concerns of an Unlikely Pair," as cited in (Baron 1999, 1065)).

The third group of scholars, whom he calls narrative law-and-lits, are occupied with the stories of law. They attend to the “stories told by the clients, judges, lawyers, and the legal doctrine itself. They don't look into these stories for moral lessons, but to discern its persuasive impact, evidentiary value and epistemological implication”(Gewirtz, 1994). They call us to question the narrative and rhetoric in the law, which is a fundamental critique of the

foundation of law itself. In his article titled *Narrative and Rhetoric in the Law*, Paul Gewirtz says,

Storytelling in law is narrative within a culture of argument. Virtually everyone in the legal culture ... is explicitly or implicitly making an argument and trying to persuade. Storytelling is, or is made to function as, an argument. (In Paul Gewirtz's "Narrative and Rhetoric in the Law" as cited in (Baron 1999, 1066)).

While we see no apparent connection between the three strands of law-and-lits that Jane Baron has classified, the third school of law-and-lits stands out for its remarkable contributions to problematizing the legal doctrine itself. There are quite a lot of disparities within each of the strands described. Narrative law-and-lit scholarship has three different strands, one focuses on the use of storytelling as a persuasive technique, the second focuses on the evidentiary use of storytelling to supply information about how the law actually functions in real-world settings, and the third focuses on how multiple inconsistent stories might accurately be told of the same event and raising questions about the sustainability of the legal vision of truth as univocal (Baron 1999, 1071).

Much has been discussed and written about the 'narrative' character of law. Jane Baron and Julia Epstein use the term 'narrative' in a broader sense that "encompasses the recounting (production) and receiving (reception) of stories" (Baron and Epstein 1997, 151). In an edited volume titled '*Law's Stories*,' Peter Brooks writes that narrative is "one of our large, all-pervasive ways of organizing and speaking the world- the way we make sense of meanings that unfold in and through time" (Brooks 1996, 14). Law involves stories and as many scholars have argued, the law should do more to address the stories of outsiders, refugees, minorities etc.

I take the premises of narrative law-and-lits, that is, the importance of analysing 'law's stories', as a point of departure, to see how prejudices and biases against minority communities are at work in the legal procedures, documentation, and circulation of legal

texts. To understand the modalities of documentation, it is imperative to look at how the documents related to communal ‘riots’ or cases related to violence by/ against minorities are crafted and produced within the bureaucratic procedures. The judicial documents, written after the communal riots, attempt to craft a rational conclusion of the event, and serve the purpose of protecting the image of the state, and do not offer justice to the victims, as Hansen argues (Hansen 2001). They establish a linear sequence of the events as it has happened, and most of them do not appeal to the complexities of the problem. There is a pattern of studying communal violence in colonial India, predominantly the colonial pattern. Rather than attempting newer methodologies, which would deliver justice to the affected parties, judicial reports tend to reproduce the oriental gaze in which colonial records looked at communal riots.

How did the word ‘communal’ come to define any discussion that we have today? Scholars like Gyanendra Pandey and Paul Brass have extensively looked at the many incidents of communal riots that happened in both colonial and post-colonial India. It is a fact that the contours of branding someone as communal has taken a shift in post-colonial India; nevertheless, as scholars argue, ‘communal’ was invented in the colonial records about Hindu and Muslim communities in India. Through analyzing documents on violence in colonial India, Pandey shows us how Orientalist stereotypes portrayed Indian society in terms of the recurring hatred between Muslims and Hindus, and how the word ‘communal’ was permanently inscribed in the state reports. For them, Indian society was characterized by a group of people who are mobilized by their religious imaginations to kill each other, and the colonial state would not be able to interfere with them through rational discussion (Pandey 2006, D. Mehta 2007, P. Baxi, Communal Violence, Crowds and Public Tranquility in India 2007). Later in the post-colonial reports, Pratiksha Baxi argues, there is an attempt to regulate and sanction illegal state violence. She has done extensive studies on the judicial reports

pertaining to 1984 anti-Sikh violence³, the 1992–93 violence following the Babari Masjid demolition⁴, and the Gujarat anti-Muslim pogrom of 2002⁵. The role of the state is masked, and a passionate crowd is deployed in order to absolve the state from the responsibility of communal violence (P. Baxi 2007). Mehta, in his study on the Srikrishna Commission report on the 1992–93 Bombay riots, argues that riot is seen as an incurable epidemic that spreads from one place to another, which also establishes violence as anonymous, random, and irrational, and in turn erases the individual subjectivities (D. Mehta 2007).

In his ethnographic study on the judicial proceedings of the Beemapalli police firing in South Kerala⁶, Salah Punathil talks about the ‘party formations’ through the classificatory practice in the government reports. He analyses a series of judicial reports on violence between Muslim and Christian communities in the coastal belt of Thiruvananthapuram and concludes how this classification of parties further increases the hostile atmosphere between the communities. He observes that the “party representing the police and the officials can manipulate one community and isolate the other to protect their interests, especially when there is an incident of the police firing against one community” (Punathil 2019, 39)

To understand the role of fictional narratives in police documents, it will be interesting to look at the work of Shahid Amin, a historian who has extensively studied the curious case of the making of an Approver in judicial procedure. In his essay “*Approver’s Testimony, Judicial Discourse: The Case of Chauri Chaura*,” which was published in

³ Anti-Sikh violence erupted after the assassination of then Prime Minister Indira Gandhi on 31st October 1984, by two of her Sikh bodyguards. It is estimated that 8000-17000 Sikhs were killed across the cities and their properties were damaged.

⁴ Babari Masjid in Ayodhya, Uttar Pradesh, a 16th century mosque built by Mughal emperor Babar, was demolished by right wing groups led by Vishwa Hindu Parishad on 6th December 1992, after long political campaigns and rallies. Violence erupted in multiple cities after the demolition and it resulted in 2000 deaths, mostly Muslims.

⁵ Gujarat is a western Indian state which is considered as the hotbed of Hindu Nationalism. The state sponsored violence of 2002 erupted after the Godhra train incident and resulted in killing of more than 2000 Muslims and 300 Hindus. Many Muslim localities were burned and properties were damaged.

⁶ Beemapalli is a coastal area located in southern Kerala and the police shooting which happened in the Muslim locality on 17th May 2009 resulted in killing six people and left 42 people injured.

Subaltern Studies Volume 5, he talks about the story of Mir Shikhari, who was the prime witness for the prosecution in the aftermath of Chauri Chaura incident. Mir Shikari was a twenty-seven-year-old cultivator and hideseller from Chotki Dumri, and he saved himself from jail by turning into an approver by sacrificing his colleagues in the event. The importance of storytelling in the legal procedure is clearly evident in the case of ‘Approvers,’ because they play with the words, but often these stories are fed to them by the prosecution or the police officers themselves. Amin says that “Created in the 1830s by Henry Sleeman, the legendary Thugcatcher of the British Raj, “approvers were to be employed by the Thagi and Dakaiti (dacoity) Department in the 1890s at four rupees a month. Allowed to live in official family quarters, they could be deputed to whichever police station their stories might take them-`liable to be transferred at Government expense ... where their services may be required either temporarily or permanently” (Amin 1987). The Approver is different from an eye-witness, as the approver offers more to the police narrative, where he testifies that he, along with others, was part of the event or crime. The idea of an Approver was new to Indian courts, and colonial historians even ridiculed the Mughal judiciary for not recognizing the approvers (Amin 1987). The procedures that lead to finding and making the approver- or the potential approver – demand that they be separated from others. It reflects in the case of Mir Shikari, Ramrup, and Bhagwan Ahir, the other two potential approvers. Out of the three, Shikhari was chosen as the prime approver, and the other two were sent to the gallows. Realising the imminent danger, Ramrup described the horrors of police torture he had gone through while they tried to make him the approver, but went in vain as the judge was unmoved by the plight of “an actor who had been told, mid-play, that he had better act out another part” (Amin 1987). As Amin notes, Shikari was taught by the police how to perform by weaving the stories in the court. In order to prove the cases registered against 225 accused, the prosecution created a “connected narrative-a chain of events-leading up to and ending

with the occurrence itself' through Shikari's tongue. Through various 'actions' and 'identification' of those, Shikari played the narrative function in a very much legal way, since his life depended upon the success of his story's acceptance (Amin 1987).

It will also be interesting to look at the case of Judges in this episode. What is the reasoning of a judge while writing his opinion? Edward Levi provides us with a simple but clear explanation of the steps in legal reasoning. "First, similarity is seen between cases; then the rule of law inherent in the first case is announced; then the rule of law is made applicable to the second case" (Levi 1949). Judges are always thought to be, especially in common parlances, the perception of the laypeople tainted with a bit of hope, as impartial arbitrators between them and the state, as "rational negotiators" untainted with social prejudices by a "veil of ignorance" espousing, if not upholding the "original position", that is "justice as fairness" (Rawls 2020). Posited against this Rawlsian proposition, is the 'embedded negotiator' framework where analysis is made focusing on the empirical reality of judges who make decisions within constraints (Shankar 2009). As Shankar elaborates, this approach "has four elements: the presence and content of laws, institutional experience/ norms/rules, political configuration, and public concerns. The limits and opportunities for judicial decisions are triggered by the relative power of these four factors" (ibid). The basic assumption of this framework is that judges *want* their judgements to be perceived as legitimate; legitimacy has to be negotiated, it is not inherent in the institution. Most judgments "are a delicate and political balancing of competing values and political aspirations; they seek to provide a workable modus vivendi rather than articulate high values." (P. B. Mehta 2002). Laws (as interpretation based on subjectivities), institutional norms and/or institutional memories (judges, as members of a state institution prefer to be non-confrontational in their dealings with the executive and legislature (especially powerful ones) and hence prefer a collaborative stance), political configuration of power (since the

fragmentation of the political environment during coalition governments produces more leeway for judges, while single party majorities are more likely to limit the scope of judicial choices), and public opinion (since lacking both, the ‘force of arms’ and the ‘power of the purse’, public confidence in the judiciary is important for its effectiveness) influence the adjudicative process of judiciary, perhaps as all together or in tandem, each factor influencing asymmetrically the result, for the judges do not cease to be citizens (Shankar 2009). As stated earlier in the case of minorities or anything that is communal in hue, the judiciary and the laws espoused or adjudicated *as*, do not derive far from the statist (executive/legislative) notions and stands. Although, constitutional interventions in the purview of civil rights, puts the judiciary in favourable light, the matters of adjudication on matters of preventive detention or the elephant in the room, “national security”, judiciary *de facto* reproduces statist rhetoric. Upendra Baxi writes that Chandrachud, who served as Chief Justice of India from 1978 to 1985,

[held the] belief that in matters of national integrity and security, and in the rarest situations when enforcement of rights threatens the survival of the Supreme Court as an institution, the Supreme Court should not intervene against the Supreme executive even if fundamental rights are thereby jeopardized (U. Baxi 1985)

To conclude this chapter, I shall draw the connection between how the above-mentioned theoretical approaches and schools help in understanding the case of minorities, Muslim minorities, specifically in this case. The essentialization of minorities and the construction of narratives around them, in all the fields, from economic, political, and cultural to legal, take place parallelly. The modern state, India in this case, actively constructs the minority and, in turn, the enemy. That figure, an apparition that speaks in “archaic otherness,” is needed for the national imagination, if not “integrity,” the public as well as the institutions, including the “rational negotiators” of the judiciary, take part in this vile ritualistic (re)enactments of modernity’s lethargic binaries. Take, for example, the case of the

2001 Parliament attack, the culprit(s) were caught and hastily condemned guilty— Afzal Guru, the “principal terrorist,” was caught from Kashmir, the land of militants, and in a haste of judicial incapacitation, if not complicity to the national imagination condemning minorities to the margins, was sentenced to death by hanging. The case was pretty much open and shut, but answers were demanded. What happened on that day? “Does the answer lie somewhere deep in the secret heart of this country that we all live in and love and hate in our own beautiful, intricate, various, and thorny ways?” (Roy 2006). However, these questions and answers linger in the “what”s and “why”s of modernity’s rhetoric. In the question as well as in the answer, the spectre of the condemned- the minority, the Muslim, lay admonished of salvation. We shall look at how the question of community and minority was formulated, through a series of exclusion and narrativization, and how they almost became permanent in jurisprudential practices, in the next chapter.

Chapter Two

Indian Muslims as Essential Minorities in Legal Discourses

Westphalia; an event, a 'larger than life' phenomenon, nowadays in political science parlances an extratemporal entity that is often invoked while tracing the genealogy of the Nation-state; as the origin point; as an intervention- divine almost- by the liberals of Europe to usher in an age of tolerance, if not of peace for a war-ravaged world (here, the 'world' is Europe). The nation-state was thus an embodiment of universally preferred abstractions: (secular) peace, tolerance, and coexistence. However, this self-indulgent genealogy is faulty; the origin point was off by a margin of around 150 years. The actual origin of the modern nation-state occurred in 1492 CE when the Castilians conquered Iberia, which was under Moorish Rule. The conquistadors, so as to construct a homogenized subject population, forcefully converted the moors and Jews to Christianity, and those who were unwilling were murdered or exiled— the Alhambra Decree of 1492 was solely for the expulsion of Jews; a genocide-epistemicide (Grosfoguel 2013) was conducted as a nation-building process, and it was constitutive of colonialism. In 1493, just a year after the decree, in the context of Columbus "discovering" the Americas, the Pope asserted that the explorers (a European euphemism) could claim the discovered land in the name of Christian monarchs, in legitimation since the inhabitants of the "discovered lands" were "savages" mainly because they lack Christianity and it was the duty of the "civilized" to civilize the "uncivilized." Within the logic of the new ethical-political distinctions juridically crafted by the Requisition drafted in 1512-13 by the Spanish bureaucrats to give legal grounds for the Spanish State's expropriation of the indigenous land—, any group of the indigenous peoples who refused to accept Christian conversion and resisted Spain's sovereignty could be at once classified as *inimicos Christi* (enemies of Christ). Hence, they could be incarcerated, enslaved, or even killed, which could be an "act of god." Nonetheless,

there were resistance movements all across the colonies; “The Cenu Indian’s reply to the Spaniard "local culture" conception of the legitimacy of the Papal Bull of 1492 as one which "gave" the New World to Spain” (Greenblatt 2015).

Thus, modern colonialism and the modern State were born together with the creation of the nation-state, and the political modernity espoused in Westphalia was less of an engine of tolerance than conquest (Mamdani 2020). The treaty of Westphalia was a way to ensure tolerance towards national minorities. In a reciprocal capacity, the State's sovereignty was respected by other states, even in the context of 'protective' invasions. The fundamental problem one encounters in engaging with or reconstructing the genealogy of the modern State is that we often speak/think through the language that is bequeathed to us by modernity, thus inhibiting any sustained critique. Prevailing narratives of the legitimacy of modernity and its offspring, the nation-state claims that its act of totalization and fetishization is nothing but an instance of self-assertion and the sovereignty of Reason in an ostensibly post-metaphysical world. However, these claims are nothing but a fabrication, for the sovereign was conceived in the “white” and later legitimated. Modernity claims to embody the victory of Reason over the irrational, of man over God, the transition from the theocentric to the Anthropocene, yet in vain. Modernity did not do away with transcendence but rather, it transposed it onto the world.

Binaries of Modernity and the (re)construction of 'Minority' in the context of Communal Strife

The pioneers of postmodern engagements tried to articulate the lack of any ontological foundations for human nature, for example, how concepts like 'good' and 'evil' have changed over time (Nietzsche 1998). Attempting to garner and explain the ontological foundations of phenomena, like Deleuze (1993), one will realize that in actuality, ontological matters are historical matters parading in ontological garb (May 2005). Understanding phenomena or even

categories by contextualizing, if not historicizing them, will yield a better understanding of the matter in hand. Take, for example, the interrogators of communalism in India, often perplexed by the spectre of partition, as a trope of horror, faced with violence, "reach some kind of limit concerning the capacity to represent" (Das, *Boundaries, Violence, and the Work of Time* 2007). Bewildered or even horrified by the atrocities committed by humans upon humans, an analyst(s) who has a given picture of how human subject *is*, through their descriptions, reaffirm the boundaries between civilized and savage (Das, *Boundaries, Violence, and the Work of Time* 2007). Communalism is seen as the sworn enemy of secularism, the disowned doubles of each other (Nandy 1997), and the aforementioned concept of human in the modern parlances, political as well as personal, even though such a binary does not exist as some feminist scholars have claimed (Hanisch 2000), is imbibed within the category of the secular under practice. Secularism works or is the most effective in societies that are predominantly non-secular. When people find out, in utter consternation, that they are living in an increasingly desacralized world, they will start searching for faiths to impart meaning to their life. If they cannot find faith, they will settle with ideologies linked with faith and cling to them defensively (Nandy 1997). Hence, it is imperative to understand the causative link between religious revivalism, if not communalism, and the secular-modern and to note that secularism is premised on "a propensity to violence that is seldom questioned" (Mahmood 2006). Communalism, as a category in its embryonic form, denotes antipathetic relations between communities and, as an event, occurs predominantly in societies that are pluralistic. Surveying the development of India as a postcolonial body-politic, its political decolonization, largescale expatriation, and its phenomenology, one encounters that the political, as well as conceptual terrain, is replete with communal strife, and it is not an accident that there is a plethora of works on the topic. The engagements with communalism, more often than not, attempt to view it in the constructed binary of the modern-traditional and extrapolation secular-religious and

reproduce the notion of enlightenment rationality, that is, with the spreading and deepening of modernity, we will all become 'rational'. As a result, the religion that is relegated to the private sphere will lose its hold over people before getting completely erased. Hence, as a result, communalism is seen as the paroxysms of the undead 'traditional,' lingering within the modern, and as symptomatic of the unfinished project of modernity, for “there is no place for monsters in civilized society. If such creatures roam the earth, they do so out on its uttermost rim, consigned to peripheries by conventions of disbelief... but once in a blue moon, something goes wrong. A beast is born, a 'wrong miracle', within the citadel of propriety and decorum” (Rushdie 1983). communalism, the "monster", comes to pass “not in any wilderness of basilisks and fiends, but in the heart of the respectable world” (Rushdie 1983). Here is where the lethargic binaries, constitutive of the logic of modernity, come into play; modern and traditional, superior and inferior, self and other, majority and minority. These binaries are deployed across the body politic and are contingent on the national imagination, and hence it can be argued that the minority is a national, that is modernity's construction. As in the case of India, Muslims become the internal and the external other, whereas Pakistan embodies the external other, the populace living inside national boundaries become the internal other, and only through vilifying the other, everything that is Islamic can only self-assertion of the nation, as a secular-modern imagination take place. “The narrator in *Shame* speaks about Pakistan as a failure of the dreaming mind, as 'just insufficiently imagined' (Rushdie, 1995, 87). Is it possible then to think that probably India was just excessively imagined?” (Ansari, 2016, 43), and every communal strife within the nation is seen as the impediment for India's apotheosis into a proper secular-modern institution. However, in all the accounts of communalism, the complicity of the secular-modern imaginaries in inciting violence is overlooked. The slow gestation of mediatic urban Hindu normative, and the Hindutva, which culminated in the ascension of the Bhartiya Janata Party (BJP) into power in 2014, is constitutive of, if not

contingent upon, this excessive imagination of India. There is a tacit monotheistic imperative in European religious and ethnocentric nationhood (Schmitt 1986). Looking from this vantage point, for there is to be a (Hindu) Nation and (Hindu) State, there is a necessity for (Hindu) monotheism. There had to be an axiomatic Church and a sense of (Hindu) laity that could then be parlayed into the political construction of a national *fraternité* (Basu 2020). As Basu argues “The tendency to impart an Abrahamic cast to a vast, eclectic field of polytheistic, pantheistic, henotheistic, or atheistic forms of Indic piety can be traced as a consistent feature in the modern invention of the Hindu as a religious and eventually jealous political identity” (Basu 2020, 4). In the nationalist imagination of India, this meant finding, if not constructing, a pan-Indian congregational orientation to subsume the regional eccentricities, caste divisions, and practices like untouchability, gender segregation, and linguistic differences. In terms of political theology, this meant absorbing errant, syncretic pieties and picturing a singular Hindu telos (Basu 2020). These phenomena are not 'traditional', but rather an orientalist in orientation, because the construction of 'Hindu' which is a Brahmin minority's masquerade as a majority was constitutive of collusive colonial practices between British colonizers and the caste dominant Brahmins. The Indian State later consolidated these categories of Hindu as the majority and Muslim as the minority, taking patronage from the European ethnographers who were endorsed through nationalist historiography, showcasing the perfect practice of enumerative power relation (Asad 1994), and got stuck in the psyche of the inhabitants of the nation-state in a "terrific suggestiveness of words heard in dreams, of phrases spoken in nightmares" (Conrad 2010). It is in this context, the conceptual vicissitudes of aporetic imaginaries, where discourses on minorities must take place, yielding analyses bereft of secular anxieties and lethargic binaries of modernity. No two events of communal hue are the same. However, a thorough analysis will prove (which is taken on the later section) that there are historically formed threads, and commonalities that run along. In India, this is Muslim as other,

the fanatic, person excessively, abnormally, religious, s/he who needs to be controlled, who looks backward to the "heathen," or the "pagan," one who believes in a different and "primitive" religion; s/he was to have been educated, who also looks forward to the "fundamentalist" or the "terrorist", s/he who can only be confined or killed (Ansari, 2016). The “fanatic,” the “fundamentalist,” and the “terrorist” constantly appear in contemporary secular-modern discourses representing attitudes that have to be condemned outright, and as Ansari argues, “the slow dissolve of the “heathen” and the “pagan” brings into relief the image of a refurbished “terrorist,” pointing to a metonymic displacement within the metaphoric” (Ansari, 2016). A particular caveat of the aforementioned common thread is that in the contemporary global and national discourses, metaphors for the non-modern “other” have undergone a substitution whereby it has acquired an exclusive “Islamic” tenor. These discourses in political as well as in academic parlances reconstitute the re(li)gion, which is "Islamic", as the other, which is the transmutation of the Ethnographic Other into the Savage Other. In the proceeding orientalist vigor to civilize the "savage", liberal democracy declares a 'War on Terror' in the West Asia which is "Islamic"; the re(li)gion. The globe is divided into two warring camps, a binary, the modern and the traditional, civilized and the barbaric. In this global context, where the Godhra incident is situated, Muslims, the perpetrators of "inhuman" violence, are proper "barbarians". The following Gujarat Riots was "just" a reaction, perceived as a civilizing mission bordering on extermination; the 'non-violent' Hindu, coextensive with the secular-modern Indian nation-state, had to awake into a 'violent' self, to protect their, and the nation's, in extrapolation, modernity's way(s) of life, that which is 'non-violent' ("civility"). In Marad, again, Muslims were the "perpetrators"; even the "Left" came forward condemning the "inhumanity" of a community, reasserting the 'secular-modern'. Going back to my previous point, no two communal incidents are the same, but the position of Muslims (conceptual, political) remains

the same; in the margins, in "the wilderness of basilisks and fiends", where they had been relegated a "home".

‘Nationalist Muslim’ and the Test of Loyalty of Muslims

In his fascinating essay titled ‘Can a Muslim Be an Indian?’, Gyanendra Pandey observes that nations are established by constructing a core or mainstream, and minorities are constituted along with the birth of it. The mainstream, he argues that, is always considered as the essential, real, natural and as the soul of the nation. Nationalism(s) then have always been about identifying and sustaining a demarcation; between the real mainstream and the notion of minorities and marginalized communities. Through the essay, Pandey tries to analyze “the construction of the unhyphenated national, the real, obvious, axiomatically natural citizen-Indian, Nigerian, Australian, American, British, whatever-and the simultaneous construction of the hyphenated one- Indian Muslims, Indian Christians, Indian Jews, or African-American” (Pandey 1999). The essay brings light into the ways in which the Muslims – which account for around 200 million as of today in India- were relegated as an essential and dangerous minority who pose a threat to the majority community or the nation/ Hindu itself.

The category of Nationalist Muslim is a trope that is recurrent in India's political and cultural landscape. Pandey notes that an equivalent category is missing for all the other religious communities in the country. More often than not, they- a nationalist Christian, nationalist Hindu etc.- are considered as a misnomer. In the case of Hinduism, they are categorically divided into two, especially after the assassination of Mahatma Gandhi, as Hindu nationalists and secular/Indian nationalists. Despite their participation in India's freedom struggle, Muslims are always haunted by a peculiar ghost; the spectre of loyalty to the nation. Gyanendra Pandey leaves behind all the political turmoil before 1947 and takes the independence moment, and of partition therein, to trace how the binary of loyal/ disloyal

and dangerous minority was constructed, one that is made even stronger in the time of an ethno-fascist Hindu nationalism in India.

Majority and minority are not merely two terms that are used in the context of electoral politics, rather are closely connected with the cultural terrain where the politics is played out. The discourse around cultural, religious, and ethnic minorities then is what Talal Asad terms as 'ideological hybrids'. Pandey quotes Asad, "It is to make the implicit claim that members of some cultures truly belong to a particular politically defined place, but those of others (minority cultures) do not- either because of recency (immigrants) or of archaicism (aborigines)" (Asad 1993, 257). As an immediate consequence of independence and partition, Muslims were portrayed as the minority, ones who had to pass the test of loyalty to the Indian/ Hindu State, and they were identified as a minority "even in districts, cities, or towns where they were a numerical majority" (Pandey 1999).

The unity of the newly born Indian nation was imagined through the construction of the 'other', the pro-Pakistan Muslim figure. Those who stayed back in India during the partition had to face the brunt mostly because the onus of the partition and its subsequent bloodshed was imposed on their head. The Hindus were thought of as the majority, even when a large portion of the supposedly Hindu category was denied their political, cultural, and religious rights within the 'sacred' ambit. Sikhs, Jains, and Parsis were also assimilated quickly into the political category of the majority 'Hindu', a unity that comes out if the 'other' is a Muslim figure. Just like a homogenous Hindu political category was formed, Muslims – who were earlier defined by their regional, caste, and occupational markers- were referred to as Muslims (also as open or closeted Pakistan supporters) in the official conversations, media, and public sphere. The colonial categorization of the Hindu and Muslim binary made to make their imperial rule justified and administration easier, was carried over to the debates and power play in postcolonial India. The majority had much to gain in this affair, while the

minority, the ones that needed to prove their loyalty constantly, suffered. The blanketed category of Muslims was blamed for the contamination of Hindu/ Indian culture and the partition. From nationalist leaders to journalists and other commentators addressed Muslims as an undifferentiated and homogenous category, with a pinch of suspicion as to why they had stayed back in India and did not go to Pakistan. Pandey quotes from Congress leader Babu Sampurnand's article about partition, "India was losing something, but we are going to recover that [precious] thing that we lost a thousand years ago. With the defeat of Prithviraj [at the hands of Mohammed Ghori] at the battle of Thanesar, Bharat [India] lost its swa [one's own, or self]" (Pandey 1999). The term *swaraj* was always propounded as one of the prime slogans of the Indian Independence struggle by the nationalist leaders, but it acquires a different meaning in Sampurnanand's article; *swaraj* is imagined as the return to the idea of Bharat and to the Hindu past, which had been ruined by the Muslim invaders of West Asia. Partition then becomes a moment of significance despite its horrors, a return to India's natural and real soul, by eliminating pollutants to the State of Pakistan.

The loyalty of Muslims toward the Indian nation continued to be questioned. Apart from the apparent political campaign of Hindu nationalists, the so-called secular nationalist leaders also hinted at the possibility of Muslims' sympathy veering towards Pakistan. The identification of the Muslim League as a political party and not as a single cultural unit where all the Muslims rallied was blurred. The claims of Pakistan- and of partition- became the responsibility of all Muslims, despite their varied heterogeneous nature. They were asked to surrender arms and weapons openly in the speeches made by leaders; despite the fact, there was little or no evidence of them carrying any. War against Pakistan- which was soon declared as a foreign country and a potential danger at the borders- lingered over their heads. On this occasion, they would be needed to cement their loyalty by taking an extraordinary interest. Even those who were fleeing India, fearing the possibility of repercussions as a minority in a

Hindu majoritarian state, were branded as disloyal, i.e., the act of fleeing because of the fear of violence and expulsion from the homeland became a signifier of disloyalty and extra-terrestrial attachment.

One can see there are other numerous minority communities in India, then; how Muslims were constructed as the essential minorities, in its cultural and political sense, despite their numerical supremacy over many other communities?. Alternatively, one can ask; how only Muslims were kept far away from the 'we' of Indian nationalism?. Gyanendra Pandey answers this question by bringing in an editorial published on 12th October 1947 in a Hindi daily, namely *Vartman*. To the question ' Whose country is this', the daily answer is that it is for all those who can call India *Swadesh*, the native land. The editorial then goes on to extrapolate how Buddhists, Jains, Parsis, Sikhs, Anglo Indians, Christians, etc., have come to understand India as their native land and fully belong here. While the four communities mentioned in the beginning had religious traditions rooted in India, Anglo-Indians and Christians had nowhere to go after the British left, and they posed no threat to the 'mainstream' fabric of India, culturally and politically. However, the case of Muslims was different; though the majority of Muslims were depressed classes converted to escape the discrimination and casteism in Hinduism, they shed their national culture and attached themselves more to the roots of Islamic tradition. Pandey quotes from the editorial, "Flesh and blood of the Hindus though they were, these Hindavi Muslims came to think of themselves as belonging to the Arab and Mughal communities. Rulers like Aurangzeb, and, later on, the British, never tired of preaching that they were the governors of this country and that their direct links were with Arabia, Persia, and Turkey. Their language, appearance, religion, and practices differ from those of Hindus" (Pandey 1999). Hence, while the other minorities can imagine themselves as truly Indians, Muslims were not, as they were also condemned for their separatist demands and different imaginations in the nationalist rhetoric.

It is interesting to note that the daily did not even consider the 'Hindu' community as a separate constituent like the other communities, as they naturally qualify to be the real owners of Indian geography, politics, and culture. They never felt the need to present themselves as Nationalist Hindus or loyal Hindus because they were automatically Indian, “nation's natural condition, its essence and spirit” (Pandey 1999). Sardar Vallabhai Patel's response to a journalist about citizenship provides a better picture of what would happen to Muslims in India. He said, “whatever the definition maybe, you can rest assured that the Hindu and Sikhs of Pakistan cannot be considered as aliens in India [sic]” (Pandey 1999). The same criterion behind the question of citizenship reverberated in the speech made by Amit Shah about the Citizenship Amendment Bill as well, that all the communities, barring Muslims will be given citizenship in India under CAA. The bias and stereotypes against the Muslims as foreigners and invaders did not begin or end after partition, instead continue to shape the majoritarian political and cultural rhetoric that is used to demonize and lynch Muslims in India even now. Pandey concludes the essay with the following remarks, “no nation, no state is natural; no people as chosen or pure as they might pretend” (Pandey 1999).

The Biopolitics and Killable bodies/ Denaturalization

Many scholars have contributed to the studies on forms of violence and control enacted by the State and other actors in the contemporary world. They have pushed the limits of scholarship to question even the most basic assumptions that transform the modern world. While the State often takes cognizance of violence perpetrated by individuals or communities, it never accounts for its own forms of violence, which is often legitimized by means of law. Max Weber perceived State as a modern institution with a monopoly over legitimate violence on people in its territory, as power decides the legitimacy of state violence (Weber 1968). Walter Benjamin's

distinction between legitimate and illegitimate violence also shows how the State tries to monopolize violence (Benjamin 1999).

Slavoj Žižek, in his book *Violence* marks a distinction between what he calls 'objective violence' and 'subjective violence'. When the violence is inflicted by a clearly identifiable agent, it is referred to as subjective violence and is seen as a disturbance of normal, which is immediately condemned by the State and general public. However, objective violence, one that is carried out by the State or the system and a perpetrator is not identifiable, such as poverty or class difference, is often overlooked. Žižek maintains that subjective violence may arise out of objectively violent systemic conditions and, in turn, detracts people from noticing the objective forms of violence (Žižek 2008).

Michael Foucault explores the genealogy of the emergence of the modern regime of social control and how power controls bodies. In his works, he offers a historical reading of the shift in penal technologies from 17th century, from torture to imprisonment, and looks at how State produces docile bodies. In the modern world, State has taken up the task of caring for and regulating the biological human life, which Foucault identifies as 'biopower', a regularising technology of power that “distribut[es] the living in the domain of value and utility” (Foucault 1990, 144). For him, this new technology of power “has to qualify, measure, appraise, and hierarchize, rather than display itself in its murderous splendour” (Foucault 1990, 144). Foucault distinguishes between sovereign power and biopower, and the latter signifies the emergence of a ‘biopolitics’ of the human race’.

Italian theorist Giorgio Agamben extends Foucault's theory; for him, sovereign power is in itself biopolitical, based on the constitution of bare life as the threshold of the political order. Agamben invokes a distinction made by Aristotle between *Zoe*, or simple physical existence, and *bios*, or a way of life, which opens human beings to politics. Agamben sees *Zoe* as bare and unqualified life, and argues that in biopolitical regimes, *Zoe* becomes an

object of political intervention. For Agamben, the emergence of the technology of biopower signifies not a break in the history of Western politics, but the expansion of the existing biopolitical imperative of the State, as bare life moves from the periphery to the centre of the State's concerns entering modernity into the political order as the exception increasingly becomes the rule (Agamben 1998, 9). “Placing biological life at the center of its calculations, the modern State [...] does nothing other than bringing to light the secret tie uniting power and bare life” (Agamben 1998, 6). “Agamben’s theory shows that law produces certain bodies as ‘killable’ because they are positioned by the law itself as prior to the institution of law” (Punathil 2019).

One can see echoes of what Agamben argues in the debates around the National Register of Citizens (NRC) and Citizenship Amendment Act (CAA), especially in the case of Assam State⁷, where it is already implemented. Those who are left out of the NRC list, which accounts for more than 19 lakhs people, will be stripped off their citizenship and political rights and will be put in detention centres. Their biopolitical body becomes the ground of enactment of the law of exception that puts them out of the domain of legality. The exception is first codified in the body of law, before being enforced on actual human beings. There are a number of these exemptions, in the form of unique rules incorporated just for Assam, in the intricate legislative framework of the NRC. There is a cut-off date for citizenship in Assam, March 25, 1971, and it is established in Section 6A of the Citizenship Act, 1955. This distinguishes Assam citizenship significantly from the rest of India.

The question persists; how does the Muslim body become more susceptible to violence, by state mechanisms and in the legal framework? Das and Poole argue that the “state of exception comes into play not always through such spectacular acts of state agencies

⁷ The process of National Register of Citizens began in the State of Assam, alleging the rise of illegal Bengali migrants in the State.

in situations of 'disorder' but through various confrontations between the State and the marginal subjects in their everyday life” (Das and Poole 2004). More importantly, the experience of the state of exception is not devoid of collective identities and specific localities. They argue that “the political community itself becomes split along different axes of membership and exclusion that may run along given fault lines of race, gender, and ethnicity or may produce new categories of people included in the political community but denied membership in political terms” (Das and Poole 2004). It demonstrates that marginal spaces and people with diverse collective identities are more susceptible to such cyclical forms of violence, particularly when they threaten the dominance of the dominant group. Anthropological and sociological inquiries into the State-sponsored pogroms in India against minority communities like Muslims and Sikhs shows us a specific pattern in which this violence goes unpunished and unaccounted. The Indian State absolves itself from the responsibility of brute massacres and lootings, not by erasing violence altogether or denying it, but through the very legal framework which is supposed to act as a protective cover for the victims. Various ethnographic works undertaken in India's lower courts prove this point; various “forms of legality allow postcolonial regimes to inscribe, frame and repackage exceptional violence against minorities to reinforce and deepen a form of state power based on the explicit subordination of minorities” (M. Chatterjee 2017, 118). In his doctoral fieldwork carried out in the lower courts of Ahmedabad after the Gujarat anti-Muslim massacre of 2002, Moyukh Chatterjee argues that “the ‘impunity effect’, which allows public, even spectacular violence to go unpunished, is produced by three interrelated techniques: documentation, temporality, and proceduralism” (M. Chatterjee 2017, 119). He shows us how majoritarian rule is reconciled with everyday legality, forming a distinct state power that explicitly leads to the subordination of minorities.

The delay in trials and other attendant legal procedures is a structural issue that is at the core of the Indian judicial system. However, does that really account for the anti-minority nature of legal procedures? The Gujarat case and other terrorism-related trials show a different picture; it is neither a breakdown or failure of law and order, nor does this biased judicial structure stop at the borders of Gujarat. It is a continuation of politics as usual and the parcel of postcolonial state formation in India. Chatterjee argues that “Gujarat 2002 was not, in fact, a breakdown of law and order but a hybrid initiative led by militant Hindu nationalist organisations, nurtured by state officials, and normalised by the general public” (M. Chatterjee 2017, 120). He further adds, “By focusing on inscription, not erasure; on legality, not corruption; on the quotidian, not the exceptional, we can see clearly that the impunity effect is not the break- down of the law” (M. Chatterjee 2017, 121).

The entanglement between the State and society in Gujarat, known as the 'laboratory of Hindutva' can be seen as extending beyond its borders; the entire country and Indian society has become a hotbed of militant Hindu nationalism since the emergence of Narendra Modi into power in 2014. In such a case, where criminal proceedings follow a British pattern, where all the cases and procedures are initiated by and in the name of the State, how can a Muslim body expect justice? The prosecutors are appointed by the Hindu nationalist government, and more or less, they would be reluctant to prosecute their own comrades or taint their own State. It is evident in most of the judicial proceedings pertaining to mass violence and pogroms, like the anti-Sikh violence of 1984, Gujarat 2002, North East Delhi 2020, etc. Here, the “legal outcome is largely a foregone conclusion because the present criminal justice system is woefully inadequate to deal with state-sponsored genocide. The criminal justice system assumes the existence of an independent investigating and prosecuting agency, insulated from political interference” (Grover 2002), which is not the reality in most cases. Various technologies are enabled to acquit the accused; by dismissing

the credibility of Muslim witnesses, pointing to the temporal disunities in FIRs, and judges advocating for out-of-court settlements, etc. Chatterjee notes the case of Amali Bhai, a Muslim factory worker, who was stabbed from behind by a Hindu mob. During his case, the judge gave a short speech about the importance of compromise, as given below:

It is my duty to conduct the trial and give a judgment. But, then someone will appeal, and it will go to the High Court, and then after another appeal, it will go to the Supreme Court. All this will mean unnecessary running around for *you*, so isn't it better that you simply live together with the accused? (cited in (M. Chatterjee 2017, 122)).

What is contradictory here is that the judge, who is an actor in the legal system, is advocating for the compromise and pointing to the structural delay in the judicial system. In her fascinating study about the rape trials in India, Pratiksha Baxi also observes a “culture of compromise” (P. Baxi 2010) produced by the regimes of legality, including police investigation, legal reasoning, and the examination of testimony. The act of documentation, from registering an FIR and through the subsequent court proceedings, is used to challenge and dismiss the victim's testimonials. Scholars like Akhil Gupta and Mathew Hull have studied how the postcolonial State relies excessively “on documentation to dissolve responsibility, produce indeterminacy and perpetuate structural violence, especially because it is normatively associated with transparency and clarity” (Hull 2012, Gupta 2012). In the case of Gujarat 2002, Chatterjee argues, various “official writing techniques were used, like recording a single omnibus FIR rather than registering separate FIRs, which makes the prosecution a futile exercise, “to transform a one-sided targeted attack on Muslim minorities into yet another “communal riot”—a spontaneous violent encounter between Hindus and Muslims” (M. Chatterjee 2017, 124). For him, the police “do not simply erase or deny the violence but actively inscribe it such that a range of legal actors, like lawyers and judges, interpret, discuss, and dissect the violence in the courtroom in ways that transform targeted

violence into public rioting” (M. Chatterjee 2017, 124). Most FIRs and police reports fail to identify the individual perpetrators or common targets, and the violence is rendered faceless. These documents are crafted in such a way that it can be legally undone in the court. On the other hand, the witness, who is also the victim, is pushed into a realm of marginality. Their testimonials are considered as conspired and lose credibility since the official documents are already 'inscribed' by the police. The documents allow the State to acknowledge the violence but also enable the perpetrators to go scot-free because of the 'concocted contradictions' between oral testimonies and written shreds of evidence. Chatterjee argues that “In Gujarat, a range of temporally and spatially dispersed actors—police officers, lawyers, and judges—harnessed the potential of official documents in India as a regime of misrepresentation to create a gulf between what was on and off the record” (M. Chatterjee, *The impunity effect: Majoritarian rule, everyday legality, and state formation in India* 2017, 126). In the legal framework, the manipulation of proceduralism and ‘impunity effect’ “produced a certain type of minority identity- the Muslim as unreliable and malicious” (M. Chatterjee 2017, 128). Most of the activists and victims saw this as a breakdown of law or legal failure. However, in Aradhana Sharma’s argument, the legal language of evidence and proof forced them to “engage and audit the state in its own idiom” (Sharma 2013, 310). Chatterjee further argues that the “Hindu- nationalist regime galvanized the violence and its aftermath into a larger project of transforming the idiom of statecraft itself, one that openly privileges Hindus over Muslims” (M. Chatterjee 2017, 129).

In conclusion, as we have traced in the chapter, the Muslim community was seen as a threat to the national fabric of Indian State and there were targeted efforts to normalise violence against them. The spectre of partition haunts the Muslim figure and after the emergence of hardcore right wing politics in India, they are relegated into the realm of ‘non-citizens’, literally in some cases, and as an impending one in other. Through surveillance and

regulation of their political, economic, social and cultural participation, their 'lives' are controlled by the state which can be located in the legal sphere as well. Police violence creates a politics of fear among the communities and attempts to seek justice are being impeded by the growing 'otherization' in the court rooms and other legal institutions. In short, these developments point to an unsettling fact that Muslims are turning into permanent minorities in the legal discourses in India.

Batla House Encounter at the Interstices of ‘Legal Facts’ and ‘Fictional Narratives’

Extra Judicial Killings and the Act of writing FIR

In a general understanding, ‘encounter killings,’ ‘retaliatory killings,’ or ‘extra-judicial executions’ are considered human rights violations as the ‘accused’ is considered innocent until proven guilty by the Indian legal system. Police encounters are seen as direct encroachment of the executive over the powers of the judiciary. According to the International Rules and Standards for Policing, if police officers attempt to arrest a person and he resists, they have to review the situation before resorting to force or even firearms. In case they are using arms, it is also essential that the said person be dangerous to the life of others. In India, no particular law directly deals with encounters; rather, it is mostly considered as an issue pertaining to the private defence of police personnel. Mainly there are two reasons for the increase in encounter killings in India recently; firstly, fake encounters are staged in order to absolve political leaders from crimes or to turn the attention of the public from a larger issue at hand, and secondly, the middle-class public perception about police taking law in hands in order to eliminate dreaded criminals, especially in terror and rape cases, has been successfully built.

Encounter killings in independent India became an everyday practice for the first time during the police action against the Telangana peasant movement⁸. In the 1960s and 1970s, Naxalites⁹ were at the receiving end of encounters, and it swept into areas like Kashmir and

⁸ Telangana peasant movement of 1946- 51 began as an armed revolt led by communist parties against the erstwhile Hyderabad state, but later was directed at the Indian State after Hyderabad was annexed. The military mercilessly repressed the struggle, forcing many groups to give up the armed struggle.

⁹ Naxalism or Naxal Movement (a term that came from the place named Naxalbari in West Bengal) refers to the insurgent struggle against Indian government which began in the 1960s. They adhere to the Maoist doctrine of peasant-led revolution and claims to represent the marginalized members in the society.

Northeast under the pretext of getting rid of the terrorists. Rewards, promotion, and media coverage boosted the morale of the police force in executing these encounters, and it was rampant during the 1990s and years following it. Media reportage helped in two ways; initially by drawing the image of a Naxalite or a Muslim as an anti-national who should be killed in the popular imagination and by valorising the police officers who lead the operations as ‘national heroes’ (Pelly 2009, 198-200). The argument mostly follows from the presupposition that the Indian legal system is slow-paced and not adequate; hence extra-legal methods such as encounters should be used in order to provide instant justice. This is particularly true in cases that invite much public outrage, such as rape cases and alleged terrorist attacks. The encounter operations, which had taken many lives of Naxalites in Andhra Pradesh and other parts of the country and gangsters in Mumbai, began to constantly focus on the Muslims in north India after the 1990s, especially in Gujarat. The portrayal of Narendra Modi as a national leader began from the Hindutva hotbed of Gujarat, and the State government used encounters against alleged ‘terrorists’ as a tool to garner popular support. For instance, Modi directly took up the responsibility for the Sohrabuddin Sheikh encounter and asked in a rally, “What should have been done to a man from whom a large number of AK-47 rifles were recovered, who was on the search list of police from four states, who attacked the police, and who had relations with Pakistan and wanted to enter Gujarat?” (Pelly 2009, 206).

Political rhetoric around killing alleged terrorists in the state of Gujarat was repeatedly used, and in the rally mentioned above, the crowd was reportedly said to have cheered for killing Sohrabuddin Sheikh. Between 2003 and 2006, it was reported that more than 21 encounters took place in Gujarat, and most of them were Muslims. The encounters followed a particular sequence; the construction of a police story about the murdered people in the FIR. Officers in Gujarat Police, concomitant with the political leadership, repeatedly

constructed a narrative; that Muslims are anti-nationals, terrorists, and sympathizers of terrorist organizations like Lashkar-e- Taiba and Jaish-e- Mohammed, and the same was reproduced in police documents. In Gujarat, it also took another turn, alleging that all of them had come to kill Narendra Modi. The documents presented Modi as the target of terrorist attack and stated, “the terrorists of banned Lashkar-e-Taiba [L-e-T] were conspiring to assassinate Gujarat Chief Minister Shri Narendra Modi, and obtained arms and explosives to make a suicidal attack on him, to commit terrorist acts in India” (Jagannathan, Rai and Jaffrelot 2020, 468). They also mentioned the incident of Godhra train burning and the communal riots that followed, to draw a pattern of terrorist attacks against India. This trope was used in many cases, including the case of Sadiq Jamal, who was shot on the 13th of January 2003, and the encounter killing of Ishrat Jahan and three others in 2004. However, various fact-finding reports and civil society interventions prove that none of them had any connection with Pakistan or any of the terrorist organisations, and the narratives were born out of politically motivated police imaginaries.

The existing literature on police violence in India indicates that the police engage in excessive unethical modes of violence against Muslims to construct them as fearful subjects and also to advance the politics of fear against them (Jagannathan and Rai 2015, Engineer 2003). Bordia suggests that Hindu nationalism is a framework that actively modifies individuals' political vocabularies and demands that they commit particular acts of violence in the service of the country. Hindu Nationalism does not pay heed to the ethical norms in politics, and for Bordia, their core idea is to protect the pure Hindu identity from the contamination of Muslims (Bordia 2015, 62-64). Scholars like Moyukh Chatterjee, Jagannathan, and Rai have explored the relationship between Hindu Nationalism and police individuals and have shown us how the culture of impunity or the ‘impunity effect’ absolves police personnel’s from their crimes (Jagannathan and Rai 2015, M. Chatterjee, The impunity

effect: Majoritarian rule, everyday legality, and state formation in India 2017). However, this line of argument is not enough, and as Bordia argues, Hindu nationalism encourages violators, police, and other actors to accept precariousness and risk and does not guarantee impunity in advance. Against this theoretical backdrop, we shall look at the judicial documents, media reportage, and a Bollywood film related to the much-debated Batla House Encounter case of 2008.

Five bombs went off in New Delhi in the span of 30 minutes on September 13th, 2008, and a few more were found unexploded. One of the most immediate occurrences that followed this incident was an encounter on September 19, 2008, in Batla House, a Muslim-majority neighbourhood in the East Delhi district. The Special Cell of the Delhi Police conducted an armed operation, and two suspected terrorists, Atif Amin and Sajid, were shot and killed during a raid on Flat 108 in Building L-18. Atif Amin, aged 24, was enrolled in M.A. Human Rights at Jamia Millia Islamia. He hailed from Sarai Meer in Azamgarh and had been living in Delhi since 2006. Md Sajid, aged 17, also a legal minor, was a student in Class XI in Azamgarh and had come to Delhi to seek admission to Jamia School. He could not get into Jamia and attended an English Speaking course in Batla House. An inspector with the Delhi Police's Special Cell named Mohan Chand Sharma was attacked and eventually died from his wounds at the Holy Family Hospital. The Delhi Police claimed the teenagers who were killed and arrested were the principal conspirators and perpetrators of the bombings in Delhi, leading to further arrests in the days that followed. Jamia students, aged between 18 and 24, like Zia-ur Rahman, Mohammed Zeeshan, Mohammed Saquib Nisar, and Mohammed Shakeel, were picked up and tortured in custody without even giving an intimation to their families. The news of the Batla House encounter got more following in the subsequent days as many activists, journalists, and members of human rights organizations raised several questions regarding the official statement made by the Delhi Police. Many

doubted the whole operation and argued that it was a fake encounter or extra-judicial killing. The subsequent reports only raised more questions about the veracity of the entire incident.

FIRs, Police reports, and the Invisible Author

Legal documents are usually rendered as having no authorship or an authorial function. In the study, I intend to interrogate the notions that legal documents are devoid of cultural preoccupations and ‘authorial functions.’ The role of the Author in the process of meaning-making has been a much-contested topic in contemporary literary theory. In the early ages, literary works were widely accepted and circulated without paying much attention to the author, and the spectre of the author never haunted criticism as it does in the modern age. Many works were read and discussed even when it was unclear whether they were written anonymously by a single person or a group of people. With modernity and the proliferation of the capitalist ideology, the ‘individual’ or the ‘thinking human’ dominated the stage, and the figure of the author also gained importance in literature. Criticism looked for the author’s biography, authorial intention, and whatever was available about him/her to initiate the discussion around the work, mostly turning it into a weak analysis. After the emergence of structuralist, postmodernist, and post-structuralist thought, the discourse around meaning-making changed drastically.

Roland Barthes and Michael Foucault displaced the figure of the author from its earlier accepted notations and deconstructed it. Although the ways in which Barthes and Foucault look at the subject of authorship appear to be different, one can see many similarities as well. Barthes explores the question of authorship through a binary of author and reader, while Foucault is more concerned with the concept of author function in the discourse. Barthes does not call for the death of the author as such; rather, it is an attack against the overarching authority of the Author-God and fixed meanings. Death of the

Author, for Barthes, is an “anti-theological activity, an activity that is truly revolutionary since to refuse to fix meaning is, in the end, to refuse God and his hypostases- reason, science, law” (Barthes 1977, 147). In a way, Foucault begins from where Barthes has stopped, to find the function of the author from the empty space and gaps left by the disappearance of the author. For Foucault, Author-function is one possible specification of the subject, and the form, complexity, and even the existence of the author-function are not permanent. He imagines a culture where discourse would circulate without a specific author. He says, “Discourses, whatever their status, form, or value, and regardless of our manner of handling them, would unfold in a pervasive anonymity” (M. Foucault 1969, 314). As Barthes and Foucault were associated with the post-structuralist movement, both initiated a critical discourse aimed at traditional imagination around the role of the author. We see a fundamental tenet of post-structuralism in both essays: the collapse of fixed meaning and an approach towards finding multiplicity of meaning. They consider language as an interplay of signs, “regulated less by the content it signifies than by the very nature of the signifier” (M. Foucault 1969), and it is “neither an instrument nor a vehicle: it is a structure” (Barthes 1977). The author is no more the ‘Author- god’ emanating a ‘theological’ meaning, and a text needs to be understood through larger groups of texts or discourse.

In the episode of Batla House Encounter, the subsequent protests demanding a fair inquiry came out of the disparities found in the police version of the story. The police version, which is revealed through ‘inscription’ in the form of an FIR, supposedly claims authority over any other narratives. In comparison to other spheres of life, the realm of the legal field appears to insist on more rigorous procedures and practices. Since the very function of law is to institute order, legal mechanisms may be seen as particularly appropriate for offering insight into the nature of modern institutions. For instance, a criminal investigation begins only when a complaint is filed at any of the institutions designated for

the purpose. The act of complaint presumes an institution, such as the police station, to receive the complaint. The first document which would be filed in the case of a crime, at a police station, would be the First Information Report (FIR). A first information statement would be given by the complainant, and the station officer would record it. Here, the voice of the complainant is recorded in the document. In cases of encounters or custodial deaths, it is the voice of the police, that is recorded in the FIR. The pertinent question would be this; who is the author of an FIR? Is it the police department, or state, or can we identify a particular individual as the author of the document? Once the police narrative is crafted, it automatically claims authority and truth, through various institutional means and conventions. However, an alternative narrative pops up when a fact-finding team or independent enquiry team visits the place or the event. They formulate a finding report and make it accessible to the public, unlike the bureaucratic obstructions that follow the police reports. While FIRs are available to the public in many cases, the police department and state tend not to release the FIRs or reports related to high-profile cases, custodial deaths, encounters, etc. For example, Afroz Alam Sahil, an RTI activist and a Jamia student during the Batla House Encounter had to run around the court for almost two years to get the FIR of the case. RTI requests filed by him were repeatedly not answered under the claim that the “matter was under investigation” (Afroj Aalam Sahil vs. Delhi Police 2010). The fact-finding reports and other independent enquiries challenge the authority of official reports, and the question of how much ‘fiction’ is employed in producing these FIRs resurfaces. In most of the ‘contested’ cases in India, especially those which are meted against minority communities, Adivasis, Dalits, and tribals, fact-finding teams find out details that are always contradictory to the police version. In the case of Batla House Encounter, the police version of the story was immediately questioned by various human rights activists and a fact-finding team led by the teachers and students of Jamia Millia Islamiyya. They visited the place,

interacted with the locals, checked the post-mortem reports, and published their findings under the title “Encounter at Batla House: Unanswered Questions” in 2009. Even before the report came out, various Urdu dailies were questioning the veracity of the incident, but mainstream English newspapers took it up only after the book was published.

The author figure, that is, the police, state and other institutional bodies, is invisible in the legal field. An author of a fictional piece or prose cannot escape the criticism that follows about their social location, context, or content in its analysis. In the case of legal documents, they are totally absolved from the supposed ‘author figure,’ as the author is faceless and nameless. However, opposing narratives that emerge from the fact-finding team, or other activists, challenge the idea of a ‘faceless author’ and ‘non-intentional’ author, as the official narratives are seen in the larger corpus of the ruling ideology that accompanies the police, state, and other actors in the legal institutions.

Case Study: Disparities in the Police Story and Fact-Finding Report

The fact-finding report titled ‘Encounter at Batla House: Unanswered Questions’ published by the Jamia Teachers Solidarity Group throws light into a saga of contradictions in the police version of the encounter. They say that the events on the 19th of September and subsequent days left them shocked and aggrieved when young students of Jamia were picked up and tortured in suspicious circumstances. They could not afford to sit at the intellectual ivory towers and reached out to the community and conducted a ‘Jan Sunwai’ (public hearing) in Batla House on the 12th of October 2008. ‘Jan Sunwai’ acted as a community space, what Ghazala Jamil terms as “spaces of counter-hegemony,” (Jamil 2017) to collectively question the institutional narratives and raise awareness about the naivety of supposedly ‘authoritative claims.’ By examining post-mortem reports, testimonials from

locals, and the contradicting news that came out through the media, they challenged the inconsistencies of the Delhi Police Special Cell's stories around the encounter.

Atif Amin and Mohammed Sajid were shot point blank, and Zia-ur Rahman, Mohd. Zeeshan, Mohd. Saquib Nisar, Mohd. Shakeel, among others, were arrested and tortured in custody.

Families of those who were killed and picked up were never given any intimation about the incident, even after it had occurred. All of them fall in the age group between 18 to 24, and no credible evidence of their involvement in the Delhi blasts was produced immediately.

Several procedural lapses were committed by the Special Cell, which pointed to the possibility of a cooked-up story about the encounter. The National Human Rights Commission, in its revised guidelines that should be followed in cases of encounter killings issued in December 2003, clearly state that "when information is received that death was caused in an encounter as a result of firing by the police, prima facie the ingredients of culpable homicide under section 299 of the IPC are satisfied. That is sufficient to suspect that an offence of culpable homicide has been committed." (NHRC 2003). NHRC issued a notice to the Delhi Police Commissioner, Y.S. Dadwal, on the 23rd of September, seeking that the Delhi Police prepare a comprehensive report on the 19th of September 'encounter' in accordance with NHRC norms. It sought to know if a magisterial investigation had been approved and, if so, its current state. It demanded that the Commissioner provide information on whether or if a criminal investigation has been initiated and, if so, its current state. The Commission ordered Dadwal to disclose the autopsy results of Mohd. Atif, Mohd. Sajid, and Inspector Mohan Chand Sharma, who succumbed in the 19th of September 'encounter'. The NHRC received notification of the incidence on the 13th of October from the SHO of Jamia Nagar, dated the 21st of September. The Delhi Police did not submit the report within the 15-day limit prescribed by the Commission. In contrast, the Department circulated false rumours that the NHRC had found its report

sufficient. In a report submitted to the Delhi High Court on the 15th of October, the Joint Commissioner of Police (Special Cell) Karnail Singh asserted that “so-called factfinding reports lack veracity and relevance because whenever a death by encounter occurs, the report is sent to the National Human Rights Commission.” In addition, the police said that the NHRC's unwillingness to propose any disciplinary action against police personnel involved in the incident was evidence that the commission was “satisfied.”

(*Hindustan Times*, October 20th). On its website, the NHRC officially disputed this claim. In fact, the Commission reminded the police commissioner to submit a comprehensive report. However, after repeated delays, the Lieutenant Governor of Delhi declined to authorize the magisterial probe. (*Asian Age*, the 6th of February, 2009).

The fact-finding report effectively traces the contradictions in the police version and calls it “the drama of encounter, staged by the Delhi Police” (Encounter at Batla House: Unanswered Questions 2009). The team examined various newspaper reports on the event and found mismatches in the reportage. “*The Indian Express* reported that Sharma went there along with five officers, while *Mail Today* reported a 15-member team” (Encounter at Batla House: Unanswered Questions 2009). In the official briefing given to the media, the police commissioner stated that the team had cordoned off that area in the morning. At 10.30, armed men took positions, and half an hour later, “another team went up to the flat on the 4th floor of L-18” the team was fired upon, following which a crossfire happened. However, the report finds that no one in the Batla House neighbourhood, or the community leaders, was informed about this entire operation, which creates suspicion about the police agenda. A fundamental principle that the police can resort to hard power only as a last resort was violated, and they chose it primarily. Kamala Kanta Dash argues that the Batla House encounter, the way in which it was carried out, “demonstrates a dangerous complicity of the law enforcement agency with an anti-Muslim nationalist discourse” (Dash 2010, 13). He further adds that

incidents like these are indicative of what Irfan Ahmed talks about, the failure of the state to protect the secular character of the nation and how that, in turn, paves the ground for radicalisation (Dash 2010, 12, Ahmad 2009).

The Delhi Police also made several contradictory statements about the occupants of flat No L-18, Batla house. The media reports, mostly quoting police sources, regarding the intelligence reports about the ‘accused’ contradicted each other. The Times of India claimed on September 20 that the Special cell had reliable intelligence regarding the presence of dangerous terrorists engaged in the Jaipur, Ahmedabad, and Delhi bombings in the apartment that was seized. The Special Cell allegedly learned of the existence of a person whose "physical appearance matched" that of a senior agent involved in the serial explosions in Ahmedabad on July 26. ('Shootout at Jamia Nagar,' *The Times of India*, the 20th of September, p 1.) In Indian Express, dated the 9th of October, it was written that the police were not expecting an encounter at the flat on the 19th of September, as they had gone only to do a recce, but the presence of armed terrorists surprised them (*Indian Express* the 9th of October). In an op-ed article defending the Batla House encounter, a senior journalist claimed that “the investigators learned that top commander 'Bashir' and his assault armed squad left Ahmedabad on the 26th of July for a safe house at Jamia Nagar.” Further, he says, “the investigators came to believe that Atif Amin either provided Bashir shelter or the two were one and the same person.” (Alice in Wonderland by Praveen Swami, *The Hindu*, the 10th of October). Indian Express, dated the 16th of October, quoted an affidavit submitted by Delhi Police in the high court stating that the police went there for a raid after receiving a tip-off about Atif’s stay at Batla House. The affidavit further said that “ the team knocked at the main door of the flat and disclosed its identity, but the occupants did not respond... the team members entered the flat through the side door to apprehend the suspects.” The team had only meant to apprehend the occupants of the flat, but the occupants opened fire to evade

arrest. The team members also fired in self-defence...' (*Indian Express*, the 16th of October, 2008). The report makes a pertinent and vital intervention, that "the police pick one of these 'truths.' It cannot claim all to be 'true' simultaneously" (Encounter at Batla House: Unanswered Questions 2009). To substantiate, the report asks three questions:

The police knew that a "top commander" and his "armed assault team" were residing in L-18 (as claimed confidently by Swami). In this case, the Special Cell's almost cavalier approach is inexplicable. Knowing full well that a dreaded terrorist was in residence in L-18, why did the Police make no attempt at forcing a surrender, making public announcements to the effect, vacating the other residents, sealing the building, and so on? This could have helped the police arrest the alleged terrorists, which would have provided crucial leads into the bomb blast cases (Encounter at Batla House: Unanswered Questions 2009).

The Police went to L-18 merely for investigation and was ambushed. In which case, isn't it surprising that it took them only a few hours to crack nearly all cases of bomb blasts that have occurred across the country? It was, of course inconvenient for UP, Gujarat, Rajasthan and Maharashtra state police, who had been claiming their own successes in uncovering their 'masterminds' – an obvious and sheer one-upmanship. (Encounter at Batla House: Unanswered Questions 2009)

The other slain boy, Sajid – a minor of seventeen years – was described as a bomb-maker. Police Commissioner Dadwal declared that "explosives made by him and his team bore their signature – two detonators, wooden frame, ammonium nitrate and analogue quartz clocks," (*Hindustan Times*, the 20th of September 2008). This begs the question: how were the police – which did not even expect an 'encounter' in the morning – were able to say with confidence by the evening that the bombs used in the Delhi blasts bore the 'signature' of the slain Sajid? (Encounter at Batla House: Unanswered Questions 2009)

One can see a pattern of narratives, one that is used in most cases of encounters, repeat itself in this case as well. The police successfully manipulate the media to make an encounter look like the biggest victory in the 'War on Terror' discourse. Questions raised by individuals and activists are immediately termed as supporting terrorism and hence anti-

national. However, the ways in which fact-finding report uncovers the contradictory police narratives invites special attention, as it questions the linearity of police stories. It is not easily escapable, even if it does not bring immediate remedies.

Batla House, Azamgarh and the Spatial Segregation

Batla House is often referred to as a ‘ghetto’ or a colony, predominantly a Muslim neighbourhood located at the heart of Jamia Nagar in South Delhi. Jamia Nagar stands out as one of the few exceptions to the otherwise posh urban settlement where most of the Delhi upper caste and class elites reside. After the 1984 anti-Sikh genocide following the murder of Indira Gandhi, Muslims of various parts of Delhi fled in and around Jamia Nagar to build a buffer zone against possible mob violence targeting minority communities. However, colonies like Batla House and Zakir Nagar never existed on the map of urban elites or the mainstream civil society until the infamous Batla House encounter took place in September 2008. These spaces, with their narrow lanes and crowded shops, are often referred to by ‘mini Pakistan,’ a tag used by the urban elites to signify Muslim neighbourhoods and ghettos since partition, is avoided by even the cab drivers, auto-rickshaw drivers, food delivery outlets, banks, etc.

In her recent book titled *Accumulation by Segregation: Muslim Localities in Delhi*, Ghazala Jamil looks at the exclusionary spatial ordering, structural processes, subjective meanings, and dominant representations that confine Muslims to marginal locations and the everyday life of Muslims in Delhi. She argues that the geographical segregation of Muslims is structurally intertwined with capitalism, by looking at the economy and global network of the city. Secondly, she says that the media representations and modes of discursive governmentality have reduced Muslims into “normative non-citizens,” which has excluded them from adequate claims to space in the political community. These Muslims are

vulnerable to mob violence, and hence, moving away from the term “ghetto,” she extrapolates that the “self-segregation” that many scholars have theorised is not a conscious choice, but rather is one of those preventive measures, or a buffer zone, to protect themselves from violence (Jamil 2017, 86). Unlike other Muslim neighbourhoods in Delhi, Jamia Nagar presents a different picture, with its proximity to Jamia Millia Islamiyya, one of the eminent institutes of higher education in the country. She observes that Jamia Nagar has grown into a bustling hub for employment opportunities since the 1990s. The place attracted educational aspirants, skilled and unskilled workers searching for private jobs, and those escaping communal violence. Further, Jamil looks at the class hierarchies within this Muslim neighbourhood, which promised them upward social mobility, but also enclosed them in terms of their identity. She reads the gated enclaves of Jamia Nagar, Batla House, and Zakir Nagar not as classic examples of voluntary self-segregation, but as a phenomenon that emerged as they are denied accommodation in the Hindu areas despite their class and financial capacity. The segregation arises out of structural discrimination by the state and civil society and out of a desire to be safe against the palpable fear of communal violence. Jamil does not forget to take account of the class differentiation, and she says:

Notwithstanding the homogenising tone and tenor of hegemonic discourses, not all Muslims are discriminated against in the same manner; they are not all segregated in the same way. As a result, everyone aspires more to become the kind of Muslim who would be less discriminated against. Like a chimera, segregation is a strange animal. It buys the complicity of its subjects by discriminating between them. (Jamil 2017, 90)

Jamil moves away from the conventional forms of analysing city plans, architecture, and symbols to study the representation and production of space. Instead, the construction of Muslim identity and these spaces is explored through the discussion of Bollywood and print media. As we traced in the second chapter, the question of citizenship and the alienation of Muslims was developed historically before and during the nation's founding moment, where it reflected the communal lines which portrayed Muslims as disloyal citizens who are

sympathisers of Pakistan. Jamil also reviews the same, and she identifies a “citizenship deficit” that Muslims confront in the city (Jamil 2017, 97). She observes a lacuna of Muslim participation in struggles for claiming equal citizenship, as they are not welcomed in many mainstream civil society activisms. Drawing on Michel Foucault’s notion of biopolitics and Giorgio Agamben’s conception of bare life, she concludes that Muslims are “treated as normatively non-citizens at the minimum, and as *homines sacri* in the extreme” (Jamil 2017, 125).

The spatial turn in the 1970s opened up a plethora of scholarship, arguably by Henri Lefebvre’s *The Production of Space*, among many others, and marked the importance of spatiality in sociocultural studies. In literature, geocriticism “explores, seeks, surveys, digs into, reads, and writes a place; it looks at, listens to, touches, smells, and tastes spaces” (Tally Jr. 2011, 3). Many scholars have engaged with how various fictional cities and towns were constructed, and vice versa, where literary works create alternative histories and geographies about existing places. As Ghazala Jamil explores, scholars should also pay attention to how sensibilities and stereotypes are built into the public imagination about particular spaces through movies, literature, and print media. The journalistic reportage following the Ahmedabad blasts and Delhi blasts, concomitant with an already existing Islamophobic gaze, constructed the image of Muslim colonies like Batla House and Jama Masjid as hotbeds of Islamic terrorism, armed training, and so on. The anti-Muslim sentiments perpetrated by the global ‘war on terror’ discourse were effectively taken up by the media and Bollywood to demonise the daily lives and political articulations of Muslims living in these areas. Even Azamgarh, located in the eastern part of Uttar Pradesh, had no choice of escaping the terror tag. The slain students, Atif Amin and Mohammed Sajid, and many among the accused, in the Batla House Encounter also hailed from Azamgarh. The fact-finding report argues that Azamgarh is touted as “hub of terror” and many youths from there have been arbitrarily

picked up and tortured, resulting in a constant climate of fear to prevail. It refers to an incident, among many, to show the extent of repercussion they are subjected to because of the media trial:

The incident happened on the 9th of November 2008, when under the coach Abu Lais, three district-level players from Azamgarh, namely, Shivanand Maurya, Shamiullah, and Pawan Gaud, were headed to Etawah to participate in the state level, under-16 hockey tournament. At the Kanpur railway station, they were waiting for a train bound for Etawah. Around 2.30 pm, when they were boarding the train, one of them suddenly remembered that they had left their jerseys behind. The boys rushed back to retrieve their jerseys. As they were running, they were stopped by some GRP personnel and questioned: 'Kahan sey aa rahe ho?'; 'Kahan jaa rahe ho?' ('where are you guys coming from?'; 'where are you all heading to?'). The boys replied that they were from Azamgarh and going to Etawah to participate in a state-level hockey tournament. No sooner did the GRP men hear the name of Azamgarh that they were called as 'aatanki' (terrorists) and were subjected to severe physical search, during which Rs 200 was snatched from one boy and Rs 700 from another boy. Monetarily ransacked and emotionally scarred, the boys nonetheless left for their tournament and returned to Azamgarh on the 13th of November. Subsequently, the District Hockey Association submitted a memorandum to the District Magistrate demanding action against GRP personnel involved (Encounter at Batla House: Unanswered Questions 2009).

Media Reportage, Bollywood and the Production of Legal Truth

It goes without saying that an accused has to face two trials- one in the courtroom and the other one outside court, or what is known as a 'Media Trial.' In the Indian public sphere, most undertrial prisoners, especially those arrested in terror cases, go through a harsh media trial daily. The age-old basic principle of innocent until proven guilty has lost its importance, and the undertrials in terror cases, their families, communities, and geo-locations are scrutinised by the print and other media. The state effectively uses these media to purport their narratives in order to form a public opinion about the incident or to cover up the violence at their end. The days following the Batla House Encounter saw a rally of cooked-up stories around the

murdered students and other accused, placing Batla House and Azamgarh as the hub of anti-national Islamic terror activities. They covered everything, from the courses they attended, hometown, and even the minute details like in which condition they lived (Hindustan Times, 21 and 22 September 2008). *The Times of India* and *Hindustan Times*, on its 22nd of September 2008 edition, reproduced photographs of the arrested students with their faces covered in red ‘*kafiyeh*.’ *Kafiyeh* is a headdress worn by Arab men, and owing to its distorted representation in anti-terror movies and media reportage, it has become almost synonymous with the typical terrorist outfit. Indian media ‘inscribed’ the same outfit immediately after the encounter with the arrested suspects. Ghazala Jamil identifies that the media also tried to draw out an elaborate terrorist network between various Muslim neighbourhoods such as Jamia Nagar and Sangam Vihar in Delhi to Mumbai and Cheetah Camp in Mumbai, and Sanjarpur village in Azamgarh. Jamia Millia Islamiyya was portrayed as the base camp to which all these operations are linked, and it was claimed that they were responsible for blasts in Mumbai, Hyderabad, Bangalore, Varanasi, Delhi, etc (Jamil 2017, 161). In all of these reports, the religiosity of the accused is invoked repeatedly, to show how violent and primitive Islam and Muslims are. Jamil further talks about how the backwardness and discrimination faced by Muslims in India is used by the media to portray that the entirety of the Muslim community is turning towards radicalisation. For Jamil, it is problematic because the primary intention of many articles arguing along these lines is not to showcase the discrimination; rather, it is an attempt to burden the community for individual actions. She says:

The reproduction of the image of the Muslim community as an entirety, complicit in the terrorizing designs of the extremist outfits, is also a reproduction of an orientalist image of Muslims across the world. Like all other hegemonizing orientalist images, it is nothing but a part of the simulacrum in which the images are reproduced mechanically and repeatedly, while no original of the image exists. It is in Baudrillard’s sense that the media(especially the news media) has itself become a simulacrum, in which situations devoid of meaning are

continually simulated and nothing is sacred- least of all the life of a member of an ‘undesirable group.’ But that makes a Muslim life profane and a Muslim body *homo sacer* in a process that voids and profanes other realities too. In such a commodified media, all reality is reified and no one can be sure what a thing means (Jamil 2017, 165).

After almost ten years of the encounter, a movie titled ‘*Batla House*,’ directed by Nikhil Advani, was released in 2019. The movie starring John Abraham and Mrinal Thakur in lead roles, tells the story of the Batla House Encounter from the vantage point of Special Cell DCP Sanjay Kumar Yadav. Although the director claims that the movie does not take any sides, the choice of portraying the story through a policeman’s account makes it a classic case of propaganda film. One can see that literary adaptations like ‘*Batla House*,’ which claim as actors committed to fictional productions, base their performance on an already established ‘truth’ mediated between the legal system, media, and public perception. The analysis of the movie will enable us to see how the ‘truth propositions’ enounced by legal narratives get reproduced transmedially, thus furthering the originary ‘force’ of legal idioms. Scholarly works on Hindi films, or Bollywood, are mostly characterised by genre criticism, and as Ashish Rajadhyaksha argues, nationalist film as a genre occupied a significant presence in the industry. For him, not only the content but also the practice of filmmaking was seen as a nationalist enterprise in postcolonial India (Rajadhyaksha 2016). Bollywood films released after the 2000s, taking their cue from the post-Babari volatile situation that had emerged, portray a revised form of ultra-nationalism, one that openly celebrates the production of *Hindurashtra* and villainization of Muslims in India. They celebrated a monolithic image of the nation, and this majoritarian construction needed a Muslim ‘other’, who is either a terrorist or a loyal patriot. Filmmakers played a double role, one that caters to the public demand and, on the other, as active creators of alternate history. Muslims in India were portrayed as the successors of medieval Muslim rulers, who had come from Afghanistan and other places to loot India and subjugate the Indian/ Hindu populace. Films like

Roja (1992), *Sarfarosh* (1999), *Mission Kashmir* (2000), and *Sikandar* (2009) open up a one-sided debate about Muslim identity and their allegiance to the Indian nation. Kashmir was also a focal point for Bollywood filmmakers, and they perceived the geographical territory of Kashmir as an excellent vacation spot and the Kashmiri as a violent militant who needed to be regulated.

The binary of good Muslim versus bad Muslim is a repetitive trope used in films and other platforms in order to intensify the discourse of Islamophobia further. As Mahmood Mamdani argues in his work *Good Muslim, Bad Muslim: America, the Cold War, and the Roots of Terror*, violence is one of the foundations of political modernity, and the state finds its own ways to cover it up. He discusses the same in light of the politics after the 9/11 attacks in America. Violence against Muslims increased enormously in post-9/11 America, putting the community and other ethnic minorities in great danger. Muslims were identified as two; one who showed complete allegiance to the state and worked with them, mostly those who had no visible symbols, and those who were politically assertive and had visible Muslimness (Mamdani, *Good Muslim Bad Muslim : America the Cold War and the Roots of Terror* 2005). Along similar lines, Indian Muslims were also rendered into this binary in the aftermath of the Babari Masjid demolition of 1992. In films like *Fiza* (2000), *Fanaa* (2006), *Mumbai Meri Jaan* (2008), and *Raazi* (2018), one can see how the global ‘war on terror’ and good/bad Muslim discourse is effectively reproduced in the Bollywood.

The movie *Batla House* puts forward a distorted version of ‘victimhood,’ where the police department, which has had an easy walk in the encounter case is portrayed as the victim in search of public empathy. Even though many activists and groups questioned the veracity of the entire episode of the encounter, the media, and even the National Human Rights Commission gave a clean chit to the police department. However, in the movie, we see two strands; the track of a special cell officer who has Post-Traumatic Stress Disorder and

his disillusioned marriage on the brink of collapse, parallel to the episode. The trope of mental health is effectively used to arouse sympathy among the spectators, and the general public.

At the beginning of the movie itself, Batla House is presented as a volatile neighbourhood, where a voiceover of a speech from the Masjid is shown immediately after the encounter. The speaker says, “Delhi Police has been violently torturing the locals for a long time, and everyone should assemble at the earliest to protest against it. They have been arresting Muslim youth under false cases. They are conspiring, and that should not be allowed. They have killed our innocent kids, and blood has been spilled” (Advani 2009). The figure of Batla House locals, skull-capped men, as a furious, irrational mob who would do anything for their community brethren is portrayed. In a particular scene, inspector Sanjeev imagines that a skull-capped violent mob is suffocating him as a group. Sanjeev mentions it was Ramzan time, and bulletproof jackets could have made a violent response from the community, further stereotyping them as terrorist sympathisers.

The movie explicitly uses persistent and overused tropes in anti-terror films and has nothing substantially new to offer. One can see that Tufail’s testimonial is a fictional account of how the so-called ‘terrorist’ would speak. Tufail is the boy who was picked up alive from the L-18 during the encounter and who turns hostile. He explains how Quran asks them to raise their voice against injustice and mentions Ayodhya, Gujarat, and other riots and how the bomb blasts are their revenge. The trope of discrimination radicalising Indian Muslim youth is used in a generalised term. In another instance, the movie claims that Dilshad (Shahzad Ahmed) had the full support of the community in Nizampur (Azamgarh) to the extent that they turned violent and used Muslim women as shields at the police while they were trying to arrest him, but it acts contrary to the facts as the ruling party of Azamgarh, or the community there, had not issued any statement supporting Shahzad/ Dilshad. It is also shown that

Sanjeev is getting beaten up by the Muslim mob at Nizampur, which is far from the truth. Later, Dilshad's escape plan is operated from Pakistan through Dubai, a typical terror link in Bollywood. The movie constantly refers to the Muslim community as they/ them and shows them celebrating the failures and pressure Delhi Police had after the encounter. The fact that the film crew tried to show the film to Mohan Chand Sharma's widow prior to the release and did not feel the need to take Batla locals' opinion on the film or shoot in the neighbourhood testifies the intentions behind the film.

The movie 'Batla House' has also to be seen in a context where Bollywood filmmakers are obsessed with re-telling stories that are particularly connected with the Muslim history and culture. For example, period drama as a genre have been exploited by them to reconstruct historical narratives, wherein, Muslim rulers and characters are presented in a stereotypical oriental gaze. Movies such as '*Padmavat*', which had initiated much protests for all the wrong reasons, present the Mughal rulers through a lens that would benefit the proliferation of Hindu nationalist narratives. Recent projects like *Kashmir Files* (2022) directed by Vivek Agnihotri goes a little further, in which he fictitiously retells the exodus of Kashmiri Pandits in 1990, with a nationalist fervour. The movie presents a one-sided story, by erasing many other versions and totally condoning the struggles of Kashmiri Muslims under the regime. The figure of Kashmiri Muslim as a terrorist or a militant sympathizer is reproduced, with intermittent portrayal of beards, skullcaps and guns in the frames. International Film Festival of India Jury chairman Nadav Lapid also criticised the movie by calling it a vulgar, manipulative and violent propaganda film. Movies like Batla House and Kashmir Files perfectly fits into this genre of 'propoganda films', and further reproduce stereotypes and biases against marginalised communities.

In this chapter, we discussed how various institutions work together to construct a master narrative in the case of encounters, one that furthers particular agendas. Legal truths,

despite the lack of incriminating evidences, are mediated between police, media and other institutions. Cultural stereotypes about communities, be it about Muslims or about other marginalised communities, play an important role in the ways in which documents such as FIRs, media reports or even judgement reports are produced and circulated. For example, in the trial court judgement *State vs. Shahzad Ahmad @ Pappu*, rather than referring to the accused individuals as ‘accused’, the judgement report constantly call them as terrorists and militants. Literary productions or cultural representations either construct fresh narratives or reiterate existing narratives to force them into public imagery, thus furthering the originary force of political and legal idioms. However, the ways in which fact-finding reports like one I discussed in the chapter attempt to uncover these dominant narratives, thus providing a space for alternate voices to be raised.

Conclusion

Primary thoughts about this project came to my mind in the immediate aftermath of state sponsored pogrom which happened in North-East Delhi in February 2020. During the nationwide protests against Citizenship Amendment Bill and National Register of Citizens, violence broke out in North East Delhi for almost four days. Although massive violence was unleashed against the local community in the Muslim dominated areas of Jaffrabad and Shiv Vihar, the legal procedure after the pogrom took a different turn; the perpetrators were presented as the victims and a lot of Muslim men were jailed immediately. What caught my immediate attention was how Delhi Police instantly produced a conspiracy theory; they linked the student led protests in Jamia Millia Islamiyya and Jawaharlal Nehru University to a master plot of anti-national riot narrative, and various student leaders like Umar Khalid, Sharjeel Imam, Shifa-U-Rahman among others were presented as the key conspirators. In the controversial FIR No 59, the police filed a charge sheet of seventeen thousand pages filled with narratives. This incident sow the seeds of this question; how can a charge sheet, which is very detailed and long, be produced immediately after the incident? Wouldn't the police have used fictitious narratives influenced by the current political discourse to criminalize the student leaders? These questions led me to think about the much-debated case of Batla House Encounter, and in this thesis, I tried to locate the event of encounter and various narratives associated with it – legal, media and counter narratives- in a comparative framework to see how the discourse of law is also constructed and narrated in one way or the other.

The project leads us to a compelling question; what can comparative literature as a discipline offer to the study of non- literary documents? As a discipline that was initially emerged in the backdrop of a crisis, comparative literature has been evolving through various disciplinary crises, owing to the significant socio-cultural and political shifts happening in human history and thought. If we conflate the debates within the discipline, we see that

there are many originary moments within most of the scholars, informed by the context that they belong to. From the period of Goethe where it was not established as a proper discipline, through the fragmented and standardized age of Rene Wellek to us, comparative literature has travelled through multifarious disciplinary crises and debates, contributing to the understanding of history, literature, culture and the human thought.

Anthropology and sociology have been engaged with the field of legal studies for quite long time. They attend the court hearings, interviews the accused and tries to understand how the accused, especially the vulnerable ones use the legal language and make it their own or also the ways in which gestures and forced arguments imposes the concept of different in courtrooms. However, literature, as a field that has been concerned with questioning rhetorical status of narratives, also has a lot to offer in this enterprise. Literature engages with the 'other', 'outsider,' 'periphery' etc., and it tries to give voice to them. Scholars who have worked in the area of law as literature show that legal arguments has to be understood as narratives.

The intention of this project was also to open up the methodological limitations in the field of comparative literature. This project is far from being perfect, and there is a huge lacuna that has to be explored by literary scholars in dealing with the human subject. In the first chapter, this thesis tried to introduce the school of law and literature, with specific attention to how reading 'law as literature' helps in understanding legal arguments and evidences as constructed and narrated. This narrative enterprise is dependent upon multiple external factors, where the cultural, political, social and the economic context actively shaping the arguments.

In the second chapter, the thesis discussed the ways in which Muslims in India have become an essential minority in India, in political and legal discourses. It discussed the existing scholarly works on the effect of partition and how the onus of it was imposed on

Indian Muslims to make a connection to the way Muslims are treated in the narratives of Hindu nationalists. The chapter also explored the ways in which documentation of communal violence works as an active catalyst in furthering these narratives. It further looked at the court cases in Gujarat anti- Muslim pogrom to understand how police officers are absolved of crimes and how Muslims become voiceless in Indian courtrooms, where the judicial system either tries to initiate out of court settlements or blatantly question the credibility of Muslim witnesses and complainants.

The third chapter began with a brief introduction to the history of encounter killings to understand how Muslims became the prime target of extra- judicial killings after 1990s, before which the State was actively involved with Naxalites and gangsters. The procedures of writing an FIR after an extra- judicial killing involves a lot of complexities, where the police undertake an authorial function of constructing a believable narrative. The chapter then looked at the specific case of Batla House Encounter and juxtaposed the arguments of police and trial court judgement with the counter-questions posed by the fact-finding report of Jamia Teachers Solidarity Network. The chapter looked at how the stereotypes about localities and the imposed spatial segregation make their ways into institutional documents and how it affects lives that reside outside the peripheries of the text. The chapter also enabled us to look at how films like Batla House repeats and configure itself into a pattern of propaganda films, which also further the public perception about a legal truth, or stories around the encounter in this case, by employing various theatrical methods.

The research on legal documents and counter narratives was not an easy one, and it faced many challenges like the lack of a proper methodology. There is a huge lacuna in the field of law and literature in India and this thesis had a lot of limitations, with regard to accessing relevant FIRs, and I hope further research will enrich the field in the future. An inquiry into documents is necessary and relevant as it has the potential to offer insights into

modern day subjectivities. They are to be studied not as dead documents, but as active ones in circulation between various institutions, which has implications in the lives of people outside the text.

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