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**THE SPECTACULAR ACCUMULATION OF COLLECTIVE MEMORY:
CINEMATIC JUSTICE AND THE JURIDICAL ORDERING OF EXCESS IN 'NEW' INDIA**

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I. Introduction

This paper emerges out of my doctoral research project titled *Ways of Remembering: The Juridical Ordering of Collective Memory in 'New' India*. The project studies one of the most litigated, mediatised and politically polarising events of state supported mass religious atrocity in contemporary India – the 2002 anti-Muslim pogrom in the western Indian state of Gujarat. It is interested in finding out how law and aesthetics work together to generate collective memories of the Gujarat pogrom. Given that both law and aesthetics have been in a mode of overproduction with regard to the events of 2002, the project argues that what should concern the critical jurist is not a contest between memory and forgetting, as most on the secular left have continued to claim and fear, but rather the *ways* of remembering that such spectacular accumulation of collective memories engender.

To carry out this line of enquiry, the thesis reads the contestations and collaborations between the public archives of the legal and the aesthetic – which include, criminal trials, feature and documentary films, literary and artistic works, and investigative journalism – to argue that aesthetic forms of memorialization invest in an imagination of law that is informed by a juridical discourse that orders the *ways* in which the pogrom is remembered. These *ways* of remembering recognize and mourn the trauma of the atrocity, but simultaneously contribute to the strengthening of the idea of the 'new' India: a postcolonial nation-state that organizes its governance practices through the triad of developmentalism, secularism and legalism.

This paper is a summary of three chapters from my doctoral thesis and engages some of its major concerns. The thesis devotes more detailed analyses of the filmic archive that I discuss here. The four mainstream Hindi feature films that I read in the thesis are: *Dev*, *Parzania*, *Firaaq* and *Kai Po Che!* All of these films use the Gujarat pogrom as part of their narrative plots. In other chapters of the thesis I look for the legal imaginations of the aesthetic in the two major trials connected to the pogrom. In this thesis chapter I look for the aesthetic imaginations of justice in reading the films. The coming together of words and images of law, as my reading aims to demonstrate, engender particular ways of remembering the pogrom and its relation to law.

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Each of these celluloid re-constructions of the Gujarat 2002 violence not only commemorate the pogrom, but also develop an imagination of cinematic justice. I demonstrate how encounters between the technological imagination of law and the aesthetic imagination of law in these films, lends form, content and meaning to collective memories of the pogrom. I argue that in the memorialization of the Gujarat pogrom, this aesthetic archive of collective memory aligns itself with the state-building practices of 'new' India. However, in my final analyses, I also draw out signs and practices of resistance in the narratives of cinematic justice that can destabilize the "hegemonic consciousness"¹ of the 'new' Indian nation-state that maneuvers and orders collective memories to serve the ends of state-building.

In this version of the paper, I look at what the overproduction of collective memory has done to the ways in which we remember Gujarat 2002. This overproduction works as a spectacle - resulting in excessive accumulation of memorial images. It is this accumulation that law is concerned with. How this excess is juridically managed and ordered to both recognize the horror of the pogrom, and at the same time to valorize the very mechanisms of state-building that were at the foundation of the violence, is revealed in my jurisprudential-aesthetic reading of the films.

I will develop my argument as follows. First, I contextualize the Gujarat pogrom within 'new' India's "mediascapes," and "lawscapes," to demonstrate how the proliferating archives of law and images encounter to produce excessive collective memory, and what role law takes on in its response to the spectacular accumulation of such collective memories. Second, I use a method called the jurisprudential-aesthetic lens to closely read three mainstream Hindi feature films in which Gujarat 2002 is central to their stories - *Dev*, *Parzania*, and *Kai Po Che!*. I show how this filmic archive narrates the compact of legalism, secularism and developmentalism's workings in keeping a fictive idea of the Indian nation-state intact. It is this imagination of the nation-state - in which constitutional secularism, economic progress and rule-of-law prevail, alongside continuing violence against subaltern populations - that is memorialized, and in consequence reified in these films. This imagination is made possible through the ordering of the languages of cinematic justice by the working of what I call 'developmental juridical rationality'. Alongside, I also read a fourth film - *Firaaq* - to draw out some possibilities of reading narratives of collective memory in the films that resist alignment with 'new' India's state-building practices.

¹ Martin Jay uses this expression commenting on Antonio Gramsci's work. See, Martin Jay, *Marxism & Totality: The Adventures of a Concept from Lukacs to Habermas*, Berkeley: University of California Press (1984), at p. 165

II. Modes of Memory Accumulation

a. Media

“The ubiquity of vision,” as Martin Jay has commented on art, is “[...] the master sense of the modern era.”² The Bharatiya Janata Party’s win in the recently concluded general elections reflected such a mastery over the senses of Indian democracy with acute dexterity. The ubiquity of Narendra Modi was a creation of the art of corporate public relations driven election propaganda. Modi has been constantly in the news since 2002. Darshan Desai, who reported on the 2002 violence for *Times of India* has noted: “His [Modi’s] strategy was simple and straightforward: just remain in the news. Hate him, love him, but you just can’t ignore him.”³ Since 2002, Modi has (or has been) turned into a national and international political personality. He has adorned covers of magazines, been turned into cover stories, and has had biographies written on his life.⁴ During the run-up to the elections, a news outlet even carried an insensitive April Fool’s joke that he has apologised for the pogrom.⁵ All this has done well to never let the urban middle classes forget that something happened in 2002. So, it is a little ingenuous to argue or fear (like many of us do on the secular left) that Gujarat 2002 has faded from middle-class memory in India, given how not a single day had passed without a range of news and analyses on Gujarat’s model of economic development, Modi vs. Gandhi, and even Bollywood films, all in the context of the pogrom. But most of what we remember is a blob, wrapped up in the vague temporal expression ‘Gujarat 2002’, sometimes referred to, with greater temporal specificity in the causal, history-vanishing expression, ‘post-Godhra riots’.⁶

During the initial days of the pogrom in 2002, images on satellite television news attained the capacity shock us. Never before in India was sectarian violence turned into a spectacle

2 Martin Jay, *Force Fields: Between Intellectual History and Cultural Critique*, New York 1993, p. 114

3 Darshan Desai, “Massacres and the Media: A Field Reporter Looks Back on Gujarat 2002,” in *Sarai Reader: Crisis/Media*, New Delhi 2004, p. 228

4 Kingshuk Nag, *NaMo: A Political Life* (New Delhi: Roli Books, 2013); Nilanjan Mukhopadhyay, *Narendra Modi: The Man, The Times* (New Delhi: Tranquebar Press, 2013)

5 FB Politics, “Here it comes: An apology from Modi for Gujarat riots,” *FirstPost*, <http://www.firstpost.com/politics/here-it-comes-an-apology-from-modi-for-gujarat-riots-680400.html> (April 1, 2013). For a critique of this joke, see, Zahir Janmohamed, “When an April Fool’s day joke is not funny,” *Kafila*, <http://kafila.org/2013/04/02/when-an-april-fools-day-joke-is-not-funny-zahir-janmohamed/> (April 2, 2013)

6 Oishik Sircar, “How Do We Remember Gujarat 2002?” *InfoChange News & Features*, <http://infochangeindia.org/human-rights/rights-and-resistance/how-do-we-remember-gujarat-2002.html> (March 2013)

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for middle-class drawing room consumption.⁷ Privatised 24/7 news media was enjoying its fledgling liberated status covering the violence without regulation after several years of state control.⁸ The images of brutality were a crude interruption to the desiring modernity of *Saas Bahu* soaps (the trend of large Hindu joint family oriented TV series), gyrating booties on MTV *Grind*, Pepsi's *Yeh Dil Maange More!* (the punchline of the advertisement was 'My Heart Demands More!'), advertisements of slick cars driven by stylish Indians, and neon lights reflecting off rain drenched streets in new-look music videos. Yet, we were pulled in by the live-ness of the actions, the passionate histrionics of the reporters (trying very hard to emulate the embedded tactics of US media post September 11), the images of death and destruction in Gujarat, the interviews with maimed and displaced survivors, and gasped during commercial breaks. The spectacle of 24/ 7 news television, and its live, frenetic broadcast of mass atrocity comfortably numbed us in a way that we were primarily caught up with the aesthetics of the violence, rather than the politics of its transmission. And these were a surfeit of instantaneous images on screen, being repeated over and over again, a form of reporting that Ranjit Hoskote has trenchantly termed "repeatage."⁹ But their impact remained limited to momentary shock. Hoskote compares the consequences of speed in news reporting thus:

The slowness of media technologies meant that there was time to assimilate the shock, to savour the drama in its nuances of fear, trepidation and anxiety, to absorb the textures of the crisis and prepare for its denouement [...] Satellite television, running twenty-four hours all week, has robbed horizons and time differentials of meaning. And yet this ubiquity of sight conceals motive, context, backdrop and detail - the myth of instantaneity and on-site coverage conceals the fact that these self-repeating, self sustaining phenomena do not add up to produce either information or insight.¹⁰

In the run up to the elections through 2012 and 2013 particularly, the pace and expanse of media technologies had increased manifold with blogs and social media networks. The virality of news circulation on Twitter or Facebook added more to the instantaneity of 24/ 7 news media. So while there was information abound on Gujarat 2002 and Modi, insight still remained a casualty. Clearly, what insight India's elite and middle-classes have gained from all the available information is reflected in Modi's invitations to venues like Sri Ram College of Commerce, the India Today Conclave, the Wharton India

7 Anuja Jain, "'Beaming it live': 24-hour television news, the spectator and the spectacle of the 2002 Gujarat carnage," *South Asian Popular Culture* 8: 2, June 2010, pp.163-179

8 Britta Ohm, "Forgetting to Remember: The Privatisation of the Public, The Economiation of Hindutva and the Medialisation of Genocide," in *South Asian Media Cultures: Audiences, Representations, Contexts* Ed. Shakuntala Banaji, London 2011, at p. 123

9 Ranjit Hoskote, "Bearing Inconvenient Witness: Notes in Pro/Confessional Mode," in *Sarai Reader: Crisis/Media*, New Delhi 2004, at p. 2

10 Ibid.

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Economic Forum, the Google Tech Summit and the FICCI Ladies Organisation. This was all before he became prime minister.

The story of Gujarat's economic miracle that Modi and his public relations machinery has used to manipulate our memories of the atrocities he is culpable of has been more than adequately countered by several thorough analyses and studies.¹¹ Despite ample evidence available in the public domain – independent fact-finding reports,¹² survivor testimonies,¹³ damning revelations by public servants,¹⁴ state-instituted inquiry commissions,¹⁵ media investigations,¹⁶ and statements by the Supreme Court¹⁷ – the majority's faith in Modi's violent economic vision built on the blood and bodies of the annihilated remains undeterred. Sadly Rakesh Sharma's disturbingly important 2003 documentary film *Final Solution*, which has the potential to shake this confidence with which the elite and middle-classes support Modi, would never be watched over coffee in

11 See, for example, Neera Chandhoke, "Gujarat and its little illusions," *Economic and Political Weekly* (December 8, 2012); Mihir S. Sharma, "Unpacking the Modi hype," *Business Standard*, http://www.business-standard.com/article/opinion/mihir-s-sharma-unpacking-the-modi-hype-112121400181_1.html (December 14, 2012); Pranjal Sharma, "Not so vibrant," *Business World*, <http://www.businessworld.in/en/storypage/-/bw/not-so-vibrant/766074.37540/page/> (February 7, 2013); BS Reporters, "A vibrant Gujarat, but for whom?" *Business Standard*, http://www.business-standard.com/article/economy-policy/a-vibrant-gujarat-but-for-whom-112121300009_1.html (December 13, 2012)

12 See, for example, Concerned Citizens Tribunal – Gujarat 2002, "Crime Against Humanity, Volumes I – III," <http://www.sabrang.com/tribunal/index.html>; International Initiative for Justice, "Threatened Existence: A Feminist Analysis of the Genocide in Gujarat," <http://www.onlinevolunteers.org/gujarat/reports/iiig/2003/> (December 2003); for a comprehensive list of over fact-finding reports see, Coalition Against Communalism, "Fact-Finding Reports on the Gujarat Massacre," <http://cac.ektaonline.org/resources/reports/>

13 See, for example, Citizen's Initiative, "The Survivors Speak: How has the Gujarat Massacre affected minority women," <http://www.outlookindia.com/article.aspx?215433> (April 16, 2002)

14 Special Correspondent, "I was warned against deposing: Sreekumar," *The Hindu*, <http://www.thehindu.com/news/national/article5896.ece> (August 20, 2009); Times News Network, "Gujarat IPS officer Sanjeev Bhatt who took on Narendra Modi arrested," *The Times of India*, <http://timesofindia.indiatimes.com/india/Gujarat-IPS-officer-Sanjeev-Bhatt-who-took-on-Narendra-Modi-arrested/articleshow/10191519.cms> (October 1, 2012)

15 DNA Correspondent, "Gujarat riots: It took govt 10 yrs and a rap to table NHRC report," *Daily News & Analysis*, <http://www.dnaindia.com/india/1669834/report-gujarat-riots-it-took-govt-10-yrs-and-a-rap-to-table-nhrc-report> (March 31, 2012); "Gujarat govt has failed riot victims: minorities commission," *InfoChange*, <http://infochangeindia.org/human-rights/news/gujarat-govt-has-failed-riot-victims-minorities-commission.html> (2006)

16 Tehelka, "The Truth: Gujarat 2002," http://archive.tehelka.com/story_main35.asp?filename=Ne031107gujrat_sec.asp; Ashish Khetan, "Headlines Today probe reveals Gujarat riots were not spontaneous," *India Today*, <http://indiatoday.intoday.in/story/gujarat-riots-2002-godhra-sudden-spontaneous-backlash-frantic-police-warnings-ignored/1/262413.html> (April 15, 2013)

17 Press Trust of India, "Modi modern-day Nero: SC," *The Times of India*, <http://timesofindia.indiatimes.com/india/Modi-modern-day-Nero-SC/articleshow/612448.cms> (April 12, 2004)

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a comfortable drawing room, or be released in a theatre, or broadcast on television. The film's reach, even after the lifting of the censor ban in 2004, is limited to left circles within universities, niche film festivals, and among progressive NGOs and peace movements.

It's important to ask: why is it that none of this information available in the public domain has even had a semblance of impact on the huge majority of people who unflinchingly support Modi? And I don't mean card-carrying Hindu right-wingers, but regular (even secular) aspirational people, including a large population of the Indian youth and diaspora. Are people so naive that they've been fooled by Modi's whitewashing of the events that unfolded in 2002 with his spiel on economic growth? Have the images of death and gore lost all power to stir our conscience as a people? Or has the proliferation of "photographs of agony"¹⁸ not had an affective resonance with the so-called buoyant consumerist mood of the nation?

Post-liberalisation Hindi films seem to have captured this phenomena better than most sophisticated analyses by experts. Mainstream feature films on the Gujarat pogrom like *Parzania* (2007) or *Kai Po Che* (KPC, 2013) have been richer archives of popular sentiments, than journalistic or documentary accounts, both in terms of their content and the response the films have generated. While photographic or documentary images of 2002 have focussed on phantasmagoric violence, these films have woven aesthetic representations of violence with narratives of the everyday and ordinary that the multiplex audience can connect with at the level of the quotidian and not the exceptional.¹⁹ The use of music and songs add a texture to the filmic narrative that draws the viewer into willingly suspending disbelief. And the fact that these films are works of fiction makes the viewer even more comfortably escape, in the darkness of a theatre (or the privacy of her home), the scepticism about life that she carries around at work, home and in the streets. Fictive representations of un-representable violence feeds a consumptive imaginary of *paisa wasool* (value for money): more truths, more lies, distanced sufferings, simple failures, relaxed redemption and ultimately an indulgent apathy.

New Bollywood cinema strikes a chord also because it achieves a remarkable balance between challenging minor *status quo* ("what's a film if it does not make us think?" the regular refrain goes), but rarely disturbing the neatness of meta structures of socio-political organisation and oppression: most importantly the nation, the market and the family. It is this carefully designed formula that makes new Bollywood cinema so seductive even for the 'intelligent' viewer. And the way in which, for Benedict Anderson, "print-capitalism" facilitated the understanding of the nation as an "imagined

18 John Berger, *About Looking*, New York 1992, at p. 41

19 One would notice this in the case of the Babri Masjid demolition and the Bombay riots of 1992 as well. Middle classes remember the events through Mani Ratnam's feature film *Bombay* (1995) rather than through Anand Patwardhan's documentary films *Ram Ke Naam* (1992), or *Father, Son and Holy War* (1995).

community,” (Anderson 2006) it is new Bollywood cinema that facilitates the understanding of the nation in neoliberal India as a fictive community. This fictive community of the neoliberal Indian nation-state, unlike the critique that had been levelled against Anderson by Partha Chatterjee, is not “derivative” of Western nationalisms (Chatterjee 1993a, 1993b), but one that is home-bred: secular in appearance, neoliberal in conduct, Hindu at the core (Nanda 2011). Every film that keeps this fiction alive, even the ones that talk about fractures and fragments on the fictive canvas, does well at the box office.

b. Law/Image/Imagination

Law and image/ imagination have played a special role in the making of collective memories of Gujarat 2002. This is the case especially for those like me who experienced it from a safe distance, consuming the unfolding of the horror on television screens or in newspapers, and continue to do so, given that the Gujarat violence has come to be one of the most mediatized events of ‘new’ India. The event’s contested narratives are shaped through a set of iconic photographs and landmark legal signposts, that are also represented in cultural products like film, literature, art and a surfeit of media reportage that continue to appear every single day, even now. So, how exactly has law and imagination/ imagery worked in the way collective memories of the Gujarat pogrom are formed and sustained?

Law and image, notes Cornelia Vissman, share “a troubled relationship.” She identifies jurists as those who are most uncomfortable with images: “Jurists fear images foremost and by vocation. After all, they are expected to establish order, a mission they see frequently challenged by the ambiguity of images.” The image – as photograph, art, cinema, and literary imagination – or what can be characterized as the realm of the aesthetic, as has been argued, “is the antithesis of law.”²⁰ As Peter Goodrich observes: “... law... is a text that negates its images and denies the figurations of fluidity in its texts.”²¹ Costas Douzinas and Lynda Nead commenting on the “aesthetic question” in law, write: “Modern law is born in its separation from aesthetic considerations and the aspirations of literature and art, and a wall is built between the two sides... Art is assigned to imagination, creativity and playfulness, law to control discipline and sobriety.”²²

However, despite this historical opposition between law and aesthetics, one is deeply implicated in the other; they share a relationship, I will argue, that is troubled because of their collaborative contestations, and not because of their antithetical orientations. There is an “enriching asymmetry of their encounter,”²³ that connects “justice [or injustice] and

²⁰ Douzinas and Nead, p. 1

²¹ Goodrich, x

²² Douzinas and Nead, p. 3

²³ Oren Ben-Dor, p. 1

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beauty [or the ugly].”²⁴ In the age of “visuality”²⁵ – where “sight is a social fact,”²⁶ and “the ubiquity of vision,” in Martin Jay’s words, is understood as “the master sense of the modern era,”²⁷ – “law, too, operates visually,”²⁸ both as matter and metaphor. Clifford Geertz’s observation that law, “here, there, everywhere, is a distinct manner of imagining the real,”²⁹ is a reminder of “the imaginative life of the law and the way law lives in our imagination.”³⁰ In conceptually understanding law’s imaginative habitations, particularly as they appeal to the visual, Richard Sherwin writes:

If law is to be treated as part of contemporary visual culture, and of that need there be no doubt, it is not enough to consider the way in which law partakes in various aesthetic, cognitive and cultural codes that different visual media deploy. Law also shares in the various normative aspirations and afflictions that are bound up in the culture at large. For this reason, we must also be attentive to cultural conditions.

Collective memory, is one such cultural condition which is paradigmatic of the contested collaborations between law and aesthetics. Collective memory – a term originally coined by sociologist Emile Durkheim, and conceptually developed by his student Maurice Halbwachs³¹ – is a mode of active remembering that is only possible to produce in groups, and not individually. As Halbwachs notes in his classic work *On Collective Memory*: “It is in society that people normally acquire their memories. It is also in society that they recall, recognize, and localize their memories.” Within group formations, collective memory is not generated only through commemorative interactions between group members, but also draw on “publicly available commemorative symbols, rituals, and representations.”³² Collective memory is also distinct from autobiographical memory, historical memory and history:

Halbwachs[...] contrast[s] between “history” and “collective memory” not as one between public and private but as one based on the relevance of the past to the present: Both history and collective memory are publicly available social facts – the former “dead,” the latter “living.” [...] Autobiographical memory is memory of those events that we ourselves experience (though those experiences are shaped by group memberships), while historical memory is memory that reaches us only through historical records. History is the remembered past to which we no longer have an “organic” relation – the past that is no longer an important part of our lives – while collective memory is the *active past* that forms our identities.

In the context of the Gujarat pogrom, both law and aesthetics are “publicly available commemorative symbols, rituals, and representations,” that are in continuous

²⁴ Ibid.

²⁵ Mirzoeff

²⁶ Ibid.

²⁷ Martin Jay

²⁸ Sherwin, p.2

²⁹ Geertz, 184

³⁰ Sarat, 2

³¹ Halbwachs

³² Jeffrey K. Olik

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engagement with an “active past”: one whose, meanings and truths are being revealed and regenerated through continuous collaborative contestations – the ongoing investigations, trials, political rhetoric, and aesthetic memorializations. This section, thus, does not offer a historical background to the making of Gujarat 2002, but draws on the collective memory – an active past that can also be characterized as “a history of the present” – that offers *ways* of remembering³³ the pogrom. And some of these ways, as I will demonstrate in the next section, have the capacity to serve the ends ‘new’ India’s state building practices.

I understand ‘new’ India as a postcolonial nation-state that organizes its governance practices through economic developmentalism, constitutional secularism, rule-of-law legalism and the ideology of Hindutva. In postcolonial India, these practices have been deployed to relegate the Indian-Muslim to the status of the ‘outsider’, the ‘invader’, and the 2002 pogrom was part of a historical continuum of violent aggressions against Muslims in furtherance of Hindutva’s fascist ideology of establishing a Hindu nation. The expression ‘new’ refers to both the temporal marker of the year 1991, when India adopted a policy to liberalize, privatize and globalize its economy, and the accompanying rise of militant Hindu nationalism that followed, especially with the demolition of the Babri Mosque in 1992, to build a Ram Temple in its place. The newness, then, is in the way free market economics and Hindutva feed off each other.³⁴ Law and image have been the most potent tools for reifying this compact, especially with the rise of private 24/7 media’s engagement with politics that coincided with the Indian judiciary’s position on secularism and development post-1991.³⁵ The Gujarat pogrom is a direct consequence of this newness, and its memories are also being ordered through the governmental practices of ‘new’ India’s nation-building project.

Legal and aesthetic recollections and reconstructions of the pogrom are archives that both lend to and derive meaning from their collective public reception and response. This engagement is not restricted only to those who had experienced and survived the pogrom, but extends to all those – like me, who experienced it from a distance, through mediatized circuits – for whom Gujarat 2002 operates as an ideological marker shaping our identities and subjectivities in ‘new’ India. These ideological markers are framed by two roles that law is called on to play in the aftermath of mass atrocity: first, law’s technological role of instituting jurisdiction over the event of atrocity, of naming the crime, establishing culpability, convicting the accused, compensating the victims, legislating to curb future violence; and second, law’s coexistent aesthetic roles of promising justice, projecting criminalization as closure, listening to the wronged, line-drawing between right/ wrong, victim/ perpetrator and secular/ religious, setting up

³³ Berger

³⁴ Meera Nanda, *The God Market*

³⁵ Oishik Sircar, *Spectacles of Emancipation*

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social precedents of rule-of-law through its public performances. In both of these roles law operates through rehabilitative and violative registers, real and imagined.

The images that populate both the legal and aesthetic archives of collective memory – the horrific, unpresentable, the un-speakable brutality of the pogrom – operate as what Ronald Barthes would call the “punctum”: an image with the capacity to “prick” and bruise,” and one that “shoots out... like an arrow and pierces...” the viewer. Among these images, one that has played a meaning-making role beyond generating pure horror, is the haunting face of Qutubuddin Ansari – hands folded, crying, begging for mercy from a Hindu militant mob. The affect of sympathy that Ansari’s face generates in me, almost spontaneously attracts attention to another photograph that appeals to the affect of fear – the unknown Hindu militant, screaming hate, wearing a saffron bandana, both hands stretched out in victorious abandon (for having carried out a successful *pratikriya*), carrying a metal weapon. When arranged side-by-side, these two images offer a binarized imagination of life that formal law subscribes to: victim/ criminal, justice/ injustice, lawful/ lawless, life/ death, and the like. For me, imaginaries of (il)legality are intrinsically bound up in the ways in which images make us remember the pogrom.





Another, is the impossible imagery that we are forced to conjure in our minds, when we hear about what the mobs did to Kausar Bano, a pregnant woman. According to a witness' testimony: "They ripped open her stomach, removed the foetus with the tip of a sword, rotated it and flung it into the fire, before burning Kausar too."³⁶ Similarly, the three major criminal trials that have become legal landmarks for Gujarat 2002 – the Gulberg Society, Naroda Patiya and Best Bakery massacres – are ones whose facts tell the story of macabre forms of violence; archived in law and the media in such theatrical detail, that they automatically lent themselves to the film plots that I discuss in the next section.

The phenomenon of punctum also engenders collective memory to bring law and aesthetics together in the way they respond to images. This is when both are called on to bear witness. As Daneil Joyce comments on witnessing: "The [...] [image] and the criminal trial, human rights report, judgment or truth commission all then in some sense say to the world, this happened. Look for yourself, see, this image it is proof, read the testimony, hear my experience. I was there. This happened."³⁷ When the act of witnessing enters the legal space – courtrooms, for instance – the collaborative contestations between law and aesthetics are further entrenched. To quote Sherwin again:

In contemporary legal practice, lawyers, judges and lay jurors face a vast array of visual evidence and visual argument. From videos documenting injuries, crimes and accidents, or advocating the mitigation or enhancement of sentences in criminal cases, to computer displays of all manner of digital graphics and re-enactments, the search for fact-based justice inside the courtroom is increasingly becoming an offshoot of visual meaning making.

A paradigmatic instance of this scenario is what has come to be called the *Tehelka* sting operation. Ashish Khetan, a journalist with *Tehelka*, secretly filmed key members of

³⁶ http://articles.timesofindia.indiatimes.com/2003-12-13/ahmedabad/27182981_1_train-carnage-godhra-mob

³⁷ Daniel Joyce, *Photography and the Image-Making of International Justice*, p. 236

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Hindu right-wing political parties in Gujarat, who self-confessed, with smiling faces, how the violence was meticulously pre-planned, the orders that Modi gave to the police to not stop the mobs, and also encourage them to continue the killings. The revelations were so damning that the Supreme Court was forced to take its cognizance and asked the SIT to consider it as evidence in the Naroda Patiya massacre case. It was this visual evidence that secured the conviction of Maya Kodnani and Babu Bajrangi, the only two politicians to have been successfully prosecuted.

Images like these, generated through a range of aesthetic tools of cultural production, and the meanings that they make, call on the law to determine its veracity, or declare the law's incapacity in finding the truth. Collective memory, thus, both shapes law, by marking its limits in comprehending the trauma of the "expressionless" victim³⁸ as reconstructed in the aesthetic archive, and is shaped by the law, in the truths that get institutionalized within the legal archive,³⁹ where "a sound legal order," is constantly aiming to establish "command over [proliferating] images,"⁴⁰ to render them stable, intelligible, authentic. While it is extremely commendable that the *Tehelka* visual evidence resulted in convictions, there is a story to be told about what these convictions mean in the larger scheme of things.

As I will argue later in this chapter, responding to the Gujarat pogrom where all investments are directed at individual criminalization of perpetrators – a global trend to end impunity – does very little to challenge the historical, structural and ideological conditions that resulted in the pogrom occurring in the first place. Convictions can, in fact, create an illusion of the restoration of rule-of-law, the state's commitment to liberal rights, which demands that we repose faith in 'new' India's state building practices. As Ratna Kapur argues:

The story of the Gujarat riots and subsequent efforts to address the harms and injuries through prosecution and apology does not pay attention to the institutional discursive mechanisms within a democratic polity that can produce moments of extreme violence, moments that cannot be written off as aberrational and deviant [...] 2002 cannot be addressed exclusively within a prosecutorial, or reparations framework that seeks to prosecute individual wrongdoers who carried out such atrocities and provide compensation to those who suffered [...] the riots were a logical product or outcome of a discursive strategy partly in and through liberal rights discourse and not in opposition to such rights.

The very fact that there have been several other mass atrocities (of a lower intensity) against religious minorities that have taken place in other parts of India after the Gujarat violence – notably in Kandhamal (2008) and Muzzaffarnagar (2013) – suggests that

³⁸ Soshana Felman

³⁹ Savelsberg and Kind, *Law and Collective Memory*

⁴⁰ Cornelia Visman

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criminal convictions might only provide a temporary victory for those fighting for justice, but in the long run, it only strengthens the Hindu *Rashtra's* legal arm.

c. Mnemohistories

The law's ordering of images aims to control the narrative of collective memory to serve the rational ends of nation-building, whereas the aesthetic punctum resists such appropriation by the state and other hegemonic forces like the Hindu right. Images on which law is unable to exercise command – where the punctum overwhelms law's ordering tactics – is what constitutes narratives of collective memory that reveal the foundational antithesis between law and aesthetics that I discussed earlier. It is this collective memory of the Gujarat pogrom that can resist being co-opted by 'new' India's narratives of state-building.

This shifting form of collective memory – contained and expanded through the encounters of enriching asymmetry between law and aesthetics – makes it apparent that what is at stake in the act of witnessing is "... not the fact that we remember history, but the *way* in which we [are made to] remember it."⁴¹ This way of remembering, is trenchantly captured in Jan Assman's expression "mnemohistory": which "... is concerned not with the past as such, but only with the past as it is remembered."

Mnemohistory... calls for a theory of cultural transmission that helps us understand history not simply as one thing after another nor as a series of objective stages, but as an active process of meaning-making through time, "the ongoing work of reconstructive imagination."

The convictions, the ongoing trials, a surfeit of media reportage and aesthetic reconstructions of the Gujarat pogrom in film, literature and art, in fact, lend a mnemohistorical quality to the collective memory of the event. Two examples can explain what I mean here by a mnemohistorical collective memory. These are about the contestations around the timing and naming of this event.

These two examples also explicate the entanglement between law and image/ imagination that I have discussed. It is yet not settled how the event ought to be understood and described. The most popular reference to the 2002 violence is conveyed through the temporal expression 'post-Godhra riots'. When 'Gujarat 2002' is typed into Google the first link that comes up is the Wikipedia entry, and it starts with the following words: "The 2002 Gujarat violence was a series of incidents starting with the Godhra train burning and the subsequent communal violence between Hindus and Muslims..." A Google image search throws up photos, the first of which are images of the burning train

⁴¹ K. Asmal, L. Asmal, R.S. Roberts, *Reconciliation The rough Truth: A Reckoning with Apartheid's Criminal Governance* (Glosderry: David Philip Publishers, with Mayibue, University of the Western Cape, 1996), 26.

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compartment. The significantly detailed April 2002 Human Rights Watch report on the carnage titled *"We Have No Orders To Save You": State Participation and Complicity in Communal Violence in Gujarat* opens with the sentence: "The ongoing violence in Gujarat was triggered by a Muslim mob's torching of two train cars carrying Hindu activists on February 27, 2002." In several critical and closely documented publications on the violence – academic, activist, journalistic – Godhra has been marked as the moment of beginning of what came later. The 'post-Godhra riots' adage continues to be a part of the conscious and unconscious vocabulary for most Indians.

'Post-Godhra' sets up the burning of the train compartment as what Martha Nussbaum calls "the precipitating event," that we have been made to imagine is the legitimate reason for why the rest followed. The violence that began on February 28, 2002 is always traced back to Godhra, as if that did not happen the rest of the violence wouldn't have happened either. The banality with which the expression post-Godhra is used, in law, media and in everyday conversations, indicates that our memory-scales have a limit. Media recollections have made it difficult to look beyond Godhra; we think that should be the only source for our explanations; we treat Godhra as exceptional, so that what has followed it, despite the unprecedented levels of brutality, becomes routine.

The state's emphasis – which includes the law – on treating Godhra as the reason for the pogrom, in fact, explains why investigations and prosecutions for that event took precedence over all the other violence – not only because it came first, but also because it was only Hindus who died in the train. By turning Godhra into the reason for the pogrom, the Islamophobic image of the Muslim as terrorist was further strengthened in a political climate in India where a special security legislation called the Prevention of Terrorism Act (POTA) was rampantly being used to falsely charge Muslim youth as terrorists. In fact, some of the first charges against those Muslims arrested for the Godhra train burning and deaths were made under the POTA. This vilification of Muslims was also apparent in the press announcement that the state government of Gujarat released calling the train burning an act of "terror." A couple of days later Modi made a public statement accusing all Muslims of Godhra of possessing "criminal tendencies."

The term pogrom, in fact, is another indication of this entanglement between law and image. While the horror of the event can be imagined by looking at images, to make it legally intelligible, there is a need to name it. The scale of the atrocity was so vast, and the methods of organization so sophisticated, that Indian criminal law failed in its vocabulary to make it legally intelligible. So the popular referent was 'riot,' that the Indian Penal Code, 1860 comes closest to naming as an offence ("rioting") that is carried out by an "unlawful assembly," by using "force or violence," in furtherance of a "common object."⁴² Drawing on the legal, in popular, everyday use, Gujarat 2002 is known as a riot. The expression riot characterizes the violence as spontaneous and

⁴² Sec. 146, IPC

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momentary, as an outburst, thus, overlooking the ideology behind its organization, and reproducing the same narrative of this being a legitimate consequence of the Godhra incident.⁴³

But the singular targeting of the Muslim community, the way the violence was sophisticatedly pre-planned for over a year with state support, and the fascist ideology of establishing a Hindu India that drove it, led to many commentators, activists and fact-finding reports describing it as 'genocide' – with clear connections to the experiences of the Holocaust⁴⁴ – and drawing on the legal definition from the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. India acceded to the Genocide Convention in 1956, but has not passed a municipal law to that effect yet. Many activists and scholars believed that the 2002 violence will be an opportunity to push for a national legislation on genocide.⁴⁵ Of course, the symbolic weight of characterizing the violence as genocide also served the purpose of attracting international attention and shaming the state. Drawing on the provisions of the Genocide Convention and the Rome Statute of the International Criminal Code, civil society activists drafted an anti-communal violence bill, which provided for offences for the scale of violence in Gujarat not previously covered in the Indian Penal Code. After several years of campaigning and lobbying a much watered down version of the bill was tabled in the parliament by the Congress Party in December 2013, but was sent back to cold storage because of opposition by the BJP about the bill going against Indian federalism by allowing the central government to encroach on the sovereignty of state governments when mass violence takes place.

In contrast, some have characterised the event as a 'pogrom', an expression that I choose to use in this project to describe the violence. According to Parvis Ghassem-Fachandi: "A pogrom is driven by words and images as much as by the associations and invocations that accompany it. The enactment of the Gujarat pogrom followed a script collectively shared on the streets and in media representations"⁴⁶ In his detailed ethnographic study of the 2002 violence titled *Pogrom in Gujarat: Hindu Nationalism and Anti-Muslim Violence in India*, Ghassem-Fachandi observes that the pogrom was an enactment of an "imaginary script" of Hindu disgust and hatred towards the Muslim that was already being performed in Gujarat much before the actual violence began on February 28. This script was a "symbolic repository to imagine violence" against Muslims, animated in aesthetic

⁴³ Brass, Riots and Pogroms; Das, Mirrors of Violence

⁴⁴ See for example, Martha C. Nussbaum, *The Clash Within: Democracy, Religious Violence and India's Future*, Cambridge: Belknap Press (2009)

⁴⁵ <http://www.hindu.com/2002/04/10/stories/2002041000251000.htm>, Attempts in that direction led to civil society groups drafting an anti-communal violence bill that after much debate in the parliament in December 2013, was not passed. <http://www.ndtv.com/article/cheat-sheet/after-fierce-debate-anti-communal-violence-bill-is-dropped-here-s-why-479696>

⁴⁶ Parvis Ghassem-Fachandi, *Pogrom in Gujarat: Hindu Nationalism and Anti-Muslim Violence in India*, New Jersey: Princeton University Press (2012)

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products like print news, photographs and a mainstream Hindi feature film. As Ghassem-Fachandi writes:

The pogrom was an acting out of an imaginary script whose elements had special salience in the Gujarati context. This script appealed to sacrificial and culinary imagery that referenced ritual conceptions of sacrifice, the doctrine of nonviolence, practices of vegetarianism, the abduction of women, and Partition. As informed by this script, the pogrom violence was motivated not merely by an “initial” violent attack – the burning of Hindu pilgrims in Godhra – but by a mimetic desire that preceded the Godhra incident and provided a rationale for the enactment of violence.⁴⁷

The law is a collaborator in the making of this imaginary, and I must add mnemonic script that provided a rationale for the enactment of violence. Despite being a constitutionally secular country, India’s jurisprudence on secularism, especially in the wake of the rise of Hindutva, has time and again seen the courts speaking a language that casts secularism as the preserve of Hinduism, which is hailed as so tolerant a religion that it accommodates other minority religions. In effect, the court has projected secularism as the assimilation of minority religions into India’s imagined universal Hindu fold. That India is at its core a Hindu nation is the revivalist argument of the Hindu right, and the Hindutva agenda is to restore that purity. Interestingly though, in pursuing its agenda the Hindu right speaks the liberal rights language of secularism, treating freedom of religion as a matter of formal equality, stating that all religions are equal as long as minority religions embrace Hindu culture. However, if they don’t, violence against minority religions becomes legitimate.

Two landmark Supreme Court of India judgments have lent credibility to this Hindutva informed idea of secularism: the 1995 ‘Hindutva judgments’, in which the SC held that the idea of Hindutva, “the ideological linchpin of the Hindu Right’s efforts to establish a Hindu Rashtra [...] simply represented “a way of life in the sub-continent”.” In effect, as L.K. Advani, a BJP leader said, the judgment provided “a seal of judicial imprimatur” to the militant and fascist ideology of the Hindu right. Similarly, in the 2010 judgment regarding the disputed site of the Babri Mosque – which was demolished by Hindu mobs in 1992 because it was allegedly built by Babar, a Muslim ‘invader’ over the birthplace of Lord Ram – the court, asserted, without reference to any substantive archeological evidence that this fact “was borne out by ancient literature, which [...] should be accepted at face value without any fiddling.” The physical evidence of the mosque’s presence for several hundred years, and its demolition, did not matter for the court.⁴⁸

This apart, that the imaginary script is further strengthened by a national legal order that is heavily weighed against Muslims is borne out by some of these instances: the death penalties awarded to Muslim ‘terrorists’ convicted on flimsy evidence for carrying out an

⁴⁷ Ghassem-Fachandi, pp. 64-65

⁴⁸ <http://www.hartpub.co.uk/BookDetails.aspx?ISBN=9781849462341>

attack on the Indian Parliament in 2001, and the attacks in Mumbai in 2008, the arbitrary arrests and torture of young Muslim men after the Batla House ‘encounter’ case in Delhi in 2008, the continued occupation of Kashmir by the Indian Army under a special security act – that allows arrest and detention simply on suspicion – upheld by the Supreme Court as constitutionally valid.

Gujarat is part of this continuum. It was turned into a “Hindutva Laboratory,” which tested its potency in 2002. And the laboratory used a sophisticated combination of laws and images to plan and execute the pogrom. In the aftermath, the mnemohistory of the pogrom’s collective memory as reconstructed through aesthetics, continues to be framed through this law and image compact. This framing, does not overtly subscribe to the ideology of Hindutva, but reifies the legal order of ‘new’ India: at the cost of repetition, secular in appearance, neoliberal in conduct, Hindu to the core.

III. Reading Cinematic Justice through a Jurisprudential-Aesthetic Lens

In 2013 a mainstream Hindi feature film called *Kai Po Che!* received both popular and critical attention – not a very common feat for commercial Bollywood⁴⁹ cinema. The re-telling of the Gujarat pogrom, part of the film’s fictive plot and climactic conclusion, was one of the major reasons for this attention. While on the one hand it was hailed for taking a sensitive look at the 2002 violence and spoke of friendship, hope and forgiveness in the midst of mindless religious hatred, on the other hand there was a lot of criticism about the cunning ways in which the film avoided questions of accountability, even as it acknowledged trauma. I was on the side of those who felt that the film, in its narrative and aesthetic re-constructions of the 2002 violence, revealed – perhaps, not with purpose – a lot about the way in which nationalist and developmentalist rhetoric in postcolonial India textures the mnemohistory of collective memories. Not only did the film not depict the violence in all its nuances (which was the standard critique), it also glorified love for a Hindu Indian nation (a key element of Hindutva ideology that fueled the violence in the first place) as the panacea for everyone who was affected by it. To put it simply, I too felt that the film lacked in its re-telling of the events of 2002.

A few months after the film’s release a public interest litigation⁵⁰ was filed in the Gujarat High Court demanding that its censor clearance be cancelled. The news headline reporting the incident read: “PIL against *Kai Po Che* for ‘biased’ portrayal of Gujarat riots.”⁵¹ The petitioner, a lawyer named Bhautik Bhatt, took issue with the representation of the 2002 violence in the film. Bhatt was unhappy that the film depicted the violence “with biased intention and half-heartedly only with a view to defaming a particular group of people belonging to Hindu community.” The novel on which the film was

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⁵¹ http://articles.timesofindia.indiatimes.com/2013-05-03/news-interviews/39007874_1_po-che-the-3-mistakes-hindi-film

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based,⁵² the film's publicity and trailers, and even the release did not attract any attention from Hindu right-wing parties, let alone the BJP – as has been the case in the past with some other feature films on the pogrom. I was a little taken aback. It was secular-leftists like me who slammed the film for its bias in favour of Hindus, and for not depicting the atrocity in all its nuances.⁵³ And here, the petitioner felt that even in the film's soft pedaling of the violence by Hindus, it depicted them in a bad light. I did not think the petition stood any chance in court. The film could not have been challenged on its reconstruction of facts, because it did not make any claim regarding historical accuracy. It was, after all, a work of fiction, adopted from a novel.

Yet, it's interesting that the same sequence of fictive events in the film are considered a watered-down version of the 'real' violence by some like me, and by those like Bhatt as being biased against Hindus. This opens up a contestation about the truth claims that constitute collective memory in the realm of fictive re-constructions of mass atrocity. *KPC* participates in the "ideoscapes"⁵⁴ of collective memories which are mnemonic in nature: "the ongoing work of reconstructive imagination." This reconstructive imagination also points at the enriching asymmetry between law and the aesthetic. The aesthetic provides the fictive grounding for the film, while the legal provides the traction for making, or appealing to, truth claims. The critics of *KPC* – both groups that point at the film's pro and anti-Hindu bias – are engaged in a "politics"⁵⁵ about the ways in which the stories of the pogrom are reconstructed and remembered. Our legal investments in establishing the truth about the violence keeps alive a faith in the fictive as an active archive of collective memories.

The mnemohistory of Gujarat 2002 is actively reconstructed as collective memory in four ways. First, in the media, the pogrom is remembered through the images of phantasmagoric horror. Second, this horror is re-told through the legal signposts that have marked the pogrom's aftermath – forensic evidence, investigations, sting operations, trials, depositions, convictions, legislations. Third, it is repeated and reproduced in the aesthetic reconstructions in film, literature and art. And fourth, is a parallel discourse of aesthetic reconstruction in which law, media, capital and the nation-state come together to project and promote Gujarat as India's most developed state, the most favoured destination for foreign investments, and the rise of Narendra Modi as India's prospective prime minister.

Legal scholarship has remained mostly concerned with the institutional and rational discourse of trials, investigations, judgments and legislations, in its analysis of Gujarat 2002, focusing on criminal law issues related to impunity, constitutional issues related to

⁵² Chetan Bhagat, 3 Mistakes of My Life

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⁵⁵ Foucault, war without other means

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the rule of law and secularism, and human rights and international law issues related to freedom of religion, citizenship and transitional justice. These are extremely important interventions that populate the archive of analytical legal work on communal violence in India and on the Gujarat pogrom specifically. However, the aesthetic been given no space in this body of legal scholarship on Gujarat 2002. This is because, on the one hand, law in legal scholarship is rarely imagined as an aesthetic category, and on the other, law is constantly burdened by the demands of being a problem-solving category, meant only to deliver justice as quantifiable result. While the humanities and social sciences do take the aesthetic on board in their interventions, it has failed to engage with law as an aesthetic category.

Given law's presence – as matter and metaphor – in the way aesthetic memorial reconstructions of Gujarat 2002 are framed (as I will demonstrate through the readings of the films) it is imperative that law is understood as a discursive category that that does more than remaining restricted to the texts of legislations and judgment in its making of collective memory. In this section, I argue, that a jurisprudential-aesthetic reading of the films opens up the possibilities of developing an understanding of the work of law as aesthetics, and law in aesthetics in the context of Gujarat 2002. By law as aesthetics, I mean law's aesthetic incantations beyond its scriptural organization and ordering, and by law in aesthetics, I mean the form and place of law in aesthetic imaginations of justice. Such a reading could, I argue, renders visible the many roles law is called on to play – by the nation-state, its 'citizens' and 'others' – the making of mnemonic collective memory, and in managing its aftermath through developmental juridical rationality's ordering of such memories, to serve 'new' India's state building practices.

It is necessary at this point that I provide, briefly, some conceptual clarity regarding the way I deploy the terms aesthetic and jurisprudence, and offer an explanation of how I bring them together to build what I've been calling the jurisprudential-aesthetic lens. This, a central question is: how does jurisprudence account for aesthetics in the material construction and metaphoric imaginations of law? This concern becomes imperative when we hear Desmond Manderson's emphatic expression: "Where is the aesthetic in law? The answer is, everywhere."⁵⁶ If the task of jurisprudence, as Costas Douzinas understands it, is to "obsessively address[...] the question, "What is law?," "uncover[...] and pronounc[e] [...] the truth about law," and as Douzinas and Ronnie Warrington note to "interpret[...] texts of law to discover their meaning and reason," the jurispudent must take the aesthetic seriously. To be part of the age of law's "videospheres" – to borrow Régis Debray's expression⁵⁷ – means to think of law beyond the scriptural, the words, and open up to the image and imaginaries of law and its forms of transmission. As Peter Goodrich comments: "The law of print, the law of black and white spaces, has

⁵⁶ Manderson, *Songs Without Music*, p. 201

⁵⁷ Régis Debray, 'The Three Ages of Looking' (1995) 21 *Critical Inquiry* 529 (Eric Rauth trans).

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collapsed. It is time to move on and consider seriously the spectacular character of the legal enterprise and the mediated character of the transmission of law.”⁵⁸

To take the aesthetic seriously then, as Robin West remarks, is to recognize that, “... because legal theories are in part a product of our literary [or filmic, photographic, televisual and digitized] imagination, they must be read and understood, in part, as art.” Peter Rush and Andrew Kenyon identify these forms and modes that archive and transmit law’s imaginations – “the textual, the imagistic and the affective” – as the “alter-egos of law,” which “become the very singular subject of law, yet without losing their alterity.” The study of these alter-egos in all their complexity forms part of what Desmond Manderson calls “Legal aesthetics,” a method of analysis which acknowledges that “the discourse of law is fundamentally governed by rhetoric, metaphor, form, images and symbols.” In his book *Songs Without Music*, Manderson writes: “... aesthetic dimensions... lie at the heart of law and justice. Aesthetics is the faculty which reacts to images and sensory input to which we are constantly exposed, and which, by their symbolic associations, significantly influence our values and our society.”

A jurisprudential-aesthetic lens, thus, is one that, in its readings of law and its alter-egos pays attention to the sublime images and the imaginary of law to find answers to two questions: first, what aesthetic roles does law play in the work of reconstructing mnemonic collective memory? Second, what kind of juridical rationality orders, organises, manages and lends meaning to law’s institutions and ideas of justice as they are represented in the aesthetic?

In answering these questions, the jurisprudential-aesthetic lens is meant to do three things: first, it will reveal law’s “desire to dress the exercise of political power in legitimacy,” and how “legal institutions are centrally involved in organizing irresponsibility,” even as law speaks and performs in the sublime language of justice. Second, it will enable going beyond the portrayal of “law as a coherent [and rational] body of rules and principles,” to bring out the irrational traces in the aesthetic imaginaries of law that can resist the very hegemonic state-building practices that it is deployed to reify. In a similar vein, the jurisprudential-aesthetic lens will also remain suspect of the punctum in the image, as much it will remain suspect of the spectacle⁵⁹ of law. It is instructive to quote Gilles Deleuze in this respect: “what counts in the image is not its meagre content, but the energy – mad and ready to explode – that is harnessed, which is why images never last long.” In contrast, Peter Goodrich reminds us:

Lawyers are not good with things that vanish, the juridical preference for perpetuities, entailments, covenants, and of course precedents whose essence is longevity and whose

⁵⁸ Peter Goodrich, ‘Europe in America: Grammatology, Legal Studies, and the Politics of Transmission’ (2001) 101 *Columbia Law Review* 2033, 2035.

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claim to reality precisely their prior existence, their corporeality is as part of the system of body of law.

The jurisprudential-aesthetic lens offers the jurispudent with a tool with which a critical navigation becomes possible between the explosive temporariness of the image, and the laws obsessive propensity towards the permanent. This method of reading is aimed at exposing law's indeterminacy, even as it attempts to stabilize the image. In this way the jurisprudential-aesthetic lens makes it possible to interrupt and destabilize the totalizing narratives of collective memories that are continuously being ordered by developmental juridical rationality to serve the ends of strengthening the nation-state.

In the rest of this section I apply the jurisprudential-aesthetic lens to read moving images – four mainstream Hindi feature films – whose plots are informed by three major cases on the Gujarat pogrom – the Gulberg Society, Naroda Patiya and Best Bakery massacres. I read the films to both reveal how narratives of cinematic justice is are ordered by developmental juridical rationality, and how there are traces of irrationality in the cinematic that can resist such ordering to offer counter-narratives of cinematic justice that reconstruct mnemonic collect memory in ways that does not align with the state-building practices of 'new' India.

a. Law and Cinema in Bollywood Nation

An inquiry into law's habitations in the cinematic – especially in the context of mass atrocities like the Gujarat pogrom – is important because, as Austin Sarat, Lawrence Douglas and Martha M. Umphrey compellingly note:

Mass-mediated images are powerful, pervasive, and important as are other early-twenty-first-century social forces – for example, globalization, neo-colonialism, and human rights – in shaping and transforming legal life. Law lives in images that saturate our culture and have a power all their own, as the moving image provides a domain in which legal power operates independently of law's formal institutions.⁶⁰

This operation of legal power, within the domain of the cinematic, and by extension the fictive, does not necessarily have to do with law films, ones that speak directly about the legal process, courts, lawyers, trials. "Films not apparently about law," writes Richard Sherwin, "may provide insights into analytical methods, social values, and community aspirations that lie at the heart of the legal mind and culture."⁶¹ Thus, by cinematic justice, I do not only mean the representation of law and justice in film, that too, but more importantly, as Alison Young puts it, "how cinema is jurisprudence." By cinematic jurisprudence, Anthony Chase refers to "a way of looking at law through the lens of the cinema that projects an alternative view of legality, one every bit as likely to undermine ruling ideas about fairness and formal legal equality as to reinforce them." This double-

⁶⁰ Sarat, Douglas, Umphrey, *On Film and Law: Broadening the Focus*

⁶¹ Sherwin, *Imagining Law as Film (Representation without Reference?)*

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play, between law and the aesthetic language of cinema, one which undermines and reinforces imaginaries of justice simultaneously, is what the interpretive work of the jurisprudential-aesthetic lens aims to reveal in mainstream Hindi cinema's active reconstructions of the mnemonic collective memory of the Gujarat pogrom. Such a reading of the films tell us the way visions of cinematic justice does not make its consumers forget the pogrom, but orders the *ways* in which it is remembered.

Popular Hindi cinema of Bombay – called Bollywood – holds an extremely significant place in India's cultural and public life, and now increasingly in its economic and political life. What was once, in the words of Ashis Nandy "a slum's eye view of politics," has today also become, building on Nandy, "*haute bourgeoisie*," view of politics as well. Since 1991, when the Indian economy was liberalized, Bollywood cinema's form, content, reach and consumption has started appealing to a much wider and global – in class terms – audience of aspirational Indians. There does not, any longer, remain an older binary opposition between a "'low," popular, resistant Hindi cinema and a hegemonic "high" literary culture in India."⁶² What makes Bollywood cinema attract such wide-ranging appeal is what Ranjani Mazumdar refers to as its "techno-folk form":

... which combines folk traditions with new cinematic technology. What appears to the uninitiated as exotic, bizarre, and wild is in fact a dynamic form that draws its sustenance from everyday life and experience. Throughout its history, Indian cinema has responded to local traditions, displaying a strong desire to maintain a distinctive form. Drawing on various visual, literary and artistic traditions, each with its own distinct history, popular Indian cinema is an evolving, unabashedly hybrid cultural form that narrates the complicated intersection between tradition and modernity in contemporary India.

This hybridity is sustained by invoking symbols of developmentalist desire on one hand – the market, wealth, glitz, fashion, technology, exotic foreign locales, the good life – and on the other, by appealing to relational tropes of the family, community and most importantly, the nation. The complicated intersection between developmentalist desires and relational tropes does not always happen through neat categorizations of the former as markers of modernity and the latter as tradition. The Bollywood film industry produces privately funded cinema, so the films don't necessarily operate as propaganda for the state. Yet, as filmmaker Saeed Mirza has sharply noted: "[A] certain kind of cinema exists only because a certain kind of state exists." The existence of 'new' India, thus, results in the nation being a dominant trope in this kind of cinema. As Jyotika Viridi writes in *Cinematic ImagiNation*, her monograph on nationalism in Hindi cinema:

Popular films touch a major nerve in the nation's body politic, addresses common anxieties, and social tensions, and articulate vexed problems that are ultimately resolved by presenting mythical solutions to restore an [*sic*] utopian world. The situation, complication, action and resolution in all popular film narratives both creates and is created by a collective social imagination [...] The concept of nation subtends that

⁶² Viridi, xi

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imagination in Hindi films, and centres its moral universe. All ethical dilemmas revolve around the nation; good and bad, heroes and villains are divided by their patriotism and anti-patriotism.

Although popular Hindi cinema does not have a distinct 'law film' genre, like in Hollywood, the meta-trope of the nation, and the sub-tropes of community and family, draw on *Dharmic* thinking (from Hindu mythologies) in moments of "acute crisis," (Virdi's ethical dilemmas) "to close the gap between the fallible world of human law and a divine ontology of justice." As Anustup Basu explains, "Law, it must be remembered, is for judgment, not justice. The former is an earthly discursive phenomenon, prone to error and adjustment; the latter is a divine ideal toward which historical procedures of judgment aspire but never quite reach." This mythical framing of law/ justice in popular Hindi cinema, seems to coincide with what Sherwin has referred to as the "dream life of law," or the "mythic discourse," in the 'law film' genre in the west, where "[i]nasmuch as legal legitimacy is derived from society's perceptions of historical and cultural truths, generating myth is crucial to building legitimacy. To quote Sherwin: "The battle to control the constitutive norms of myth by taking over the means of cultural production is crucial to many aspects of law and politics."

The myth and the fictive coincide in the cinematic narratives of law/ justice, in the way it draws on *Dharmic* thinking, which marks the Hinduness of the nation's imagination in Hindi cinema. Keeping this fiction alive, even the ones that talk about fractures and fragments on the fictive canvas, is a formulaic script for popular Hindi cinema. The films that I read, in bearing surrogate witness, in their different narrative styles, to an event of mass atrocity, hold up various forms and imaginations of this fictive/ mythic nation-state to offer distinct ways of remembering the Gujarat pogrom. Each of these ways exemplify the roles law is called on to play in organizing justice in the aesthetic archive, which consequently contribute to the active reconstruction and ordering of mnemonic collective memory.

The pogrom is central to *Dev's* (2004), *Parzania's* (2007) and *Firaaq's* (2008) narratives, and in *Kai Po Che* (KPC, 2013), it is a sub-plot, but nevertheless an important one that contributes to the story's cathartic closure. The fictive story in each film is framed using facts from three major events of mass crime that took place during the pogrom: the Naroda Patiya, Gulberg Society and Best Bakery massacres. These films have been richer archives of popular sentiments, than journalistic or documentary accounts, both in terms of their content, reach and the response the films have generated. While photographic or documentary images of 2002 have focused on phantasmagoric violence, these films have woven fictive representations of violence with narratives of the everyday and ordinary that the multiplex audience⁶³ can connect with at the level of the quotidian and not the

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exceptional.⁶⁴ The use of music and songs add a texture to the fictive narrative that enhance their affective appeal.

Parzania opens with the message: "Inspired by a true story," and *Firaaq* with: "A work of fiction... based on a thousand true stories." Both are allusions to the fictive, and yet hold on to a claim to the authentic ('truth'), perhaps to establish some legitimacy for their content. *Dev* opens with a standard disclaimer: "All characters and incidents in this film are fictitious and bear no resemblance to any person living or dead or to any incident whatsoever. Any similarity so perceived is purely coincidental." Despite the fact that *Dev*'s story is located in Mumbai, and makes no mention of the Gujarat pogrom, the pure coincidence is that the key moments in its plot and narrative borrow from events that happened in 2002 in Gujarat. *KPC* offers no such disclaimers, the story being adapted from a literary work of fiction. Despite being fictive reconstructions, or referents, of 'real' events, all the films, barring *Dev*, are historically accurate about the location of their stories in Ahmedabad and of February 27, 2002 as the date when train burning incident happened in Godhra. The violence against Muslims and the train burning are represented as causal events. *Dev*, interestingly, even in its non-naming and non-identification with the Gujarat pogrom, frames its narrative in the same chronology as the 2002 pogrom, the death of Hindus in the train compartment is replaced by a bomb blast at a Hindu temple that becomes the trigger for the killing of Muslims. In fact, it was because of these striking similarities with actual events from 2002 that legal action was initiated against *Dev* by private petitioners who demanded a ban, claiming that the film could instigate communal tension.⁶⁵ The four films offer a clear representation of police participation and political manipulation in aiding and abetting the violence against Muslims. *Parzania* and *Firaaq*, in particular, are unambiguous about the fact that this was a pre-planned act of mass atrocity, made possible only by state complicity.

All the films have well-crafted stories with strong screenplays, they are cinematically appealing, and showcase commendable performances by both established actors and newcomers. The films have also received both critical and commercial success. *Parzania* was the only film which faced a lot of trouble releasing in Gujarat because theatre owners refused to screen it fearing Hindu right-wing backlash.⁶⁶ Apart from *Dev* – the first film to have at least coincidental resemblance with the pogrom – the commercial release dates for all the three films were planned around the anniversary of the fateful date in February,

⁶⁴ One would notice this in the case of the Babri Masjid demolition and the Bombay riots of 1992 as well. Middle classes remember the events through Mani Ratnam's feature film *Bombay* (1995) rather than through Anand Patwardhan's documentary films *Ram Ke Naam* (1992), or *Father, Son and Holy War* (1995).

⁶⁵ Haresh Pandya, "Govind Nihalani's *Dev* in Trouble," *Rediff India Abroad* (June 16, 2004), available at: <http://www.rediff.com/movies/2004/jun/16dev.htm>

⁶⁶ Urvish Kothari, "Parzania and the Dictator of Gujarat," *Himal Southasian*, <http://www.himalmag.com/component/content/article/1193-.html> (March 2007)

making the event of release an act of memorialising both Godhra and the pogrom as causal events. That feature films have been made on the pogrom, says something about the event's marketability in the culture industry, especially about the scaffolding of the fictive nation that is used to offer the reconstructions of the pogrom and its consequences.

All four films, in bearing surrogate witness, in their own narrative styles, to an event of mass atrocity, hold up various forms and imaginations of the mythic Indian nation-state to offer a distinct way of remembering the Gujarat pogrom. This way of remembering exemplifies the role law plays in organizing justice in the aesthetic archive, which consequently contributes to the active reconstruction and ordering of mnemonic collective memory.

IV. *Dev*: A Hindu Constitution?

Dev was the first mainstream Hindi film on the Gujarat pogrom, and was released in 2004. It released a few months ahead of India's general elections that year (in which the Hindu right wing party, BJP, was voted out), and soon after the controversial Best Bakery case (which was one of the major trials arising from the killing of 14 people at a bakery in the city of Vadodara during the pogrom),⁶⁷ was shifted out of Gujarat to Mumbai (to guard against subversion of justice by the State government).⁶⁸

Dev is set at a time in India - taking its cue from the Gujarat pogrom - that is rife with sectarian tensions. The main character in the film is Dev Pratap Singh, the joint commissioner of police in Mumbai. The film's tagline - "He chose to walk the razor's edge..." - is a comment on Dev's personality: a police officer who does not fear to stand by his convictions, and takes his responsibility as a policeman of upholding the rule-of-law and protecting the nation from 'terrorists' so seriously, that he is known for carrying out and defending extra-judicial killings. The film portrays this as Dev's virtue, especially in the way he declares in the film that he does not discriminate between terrorists based on their religion. Such a portrayal is, by extension, a comment on the rule-of-law as a value neutral idea that is purely committed to maintaining security by killing anyone, irrespective of identity, who poses a threat to the nation-state. Dev has a tragic history of having lost his son during an attack on his life by armed Muslim militants.

The other important character in the film is Dev's very good friend and colleague, Tejinder Khosla, also a man of convictions, though he clearly identifies Muslims as the Outsiders who are the reason for India's ills. His mission, in the fight against terrorism,

⁶⁷ *State Of Gujarat vs Rajubhai Dhamirbhai Bariya and others* (December 26, 2003), available at: <http://indiankanoon.org/doc/789410/>

⁶⁸ Urvi Mahajani, "Best Bakery: Case was shifted for fair trial," *Daily News & Analysis* (July 10, 2012), available at: <http://www.dnaindia.com/mumbai/report-best-bakery-case-was-shifted-for-fair-trial-1712893>

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is to root out all Muslims, to annihilate them. The Outsider metaphor has been a standard part of *Hindutva* ideology that invokes the Partition of 1947 to justify violence against Muslims, and has also been part of the imaginary script that laid the foundations for the pogrom in Gujarat.⁶⁹

A parallel narrative in the film portrays the lives of a young Muslim man called Farhaan Ali, who has just returned to Mumbai after completing his law degree from another city, and his girlfriend Aaliya, a college student in Mumbai. They live in a densely populated Muslim community housing complex called Noor Manzil, located in a working class area. Farhaan's father, Ali Khan, is a respected local Muslim leader, who has a lot of faith in Indian democracy and believes in the ideologies of non-violence and pacifism of anti-colonial leaders like M.K. Gandhi, and K.A.G. Khan. The trope that Ali Khan's character follows is that of a *good* Muslim, who believes in the constitutional vision of 'unity in diversity',⁷⁰ and is an exception to the rule of the *bad* Muslim as terrorist.⁷¹ Farhaan, however, feels that the lofty ideals of constitutional equality have turned into a sham, and that innocent Muslims are being persecuted by the Indian state and its police in the name of fighting terrorism.

Farhaan encounters Dev at a peaceful protest demonstration against police brutality led by his father, where, after the crowd turns violent, Dev orders his cadres to open fire, and Farhaan's father is killed. Farhaan decides to take revenge on Dev. Taking advantage of Farhaan's rage, a fundamentalist Muslim politician offers to train Farhaan as a *jihadi*. The politician's character, of course, is created using the tropes of the bad Muslim, in contrast to that of Ali Khan. Farhaan's first attempt to kill Dev fails, but he gets arrested on suspicion. During the interrogation Dev develops a liking towards Farhaan when he gets to know that he is Ali Khan's son and a trained lawyer. He realizes that Farhaan is being brainwashed by fundamentalists. Dev lets him off with some advice about how Farhaan is being used by the politician to serve his own narrow sectarian ends. Farhaan is later asked by the Muslim politician to deliver a package to an unknown person outside a major Hindu temple. The package contained a bomb that Farhaan was unaware of.

The bomb blast – akin to the Godhra incident – kills several Hindus, provoking a retaliation against Muslims. This *pratikriya* (retributive action), of the kind that followed the Godhra train burning – is openly led by a right wing Hindu politician, pointing at the

⁶⁹ Above, n. 7, Ghassem-Fachandi, pp. 83-89. See also, Asghar Ali Engineer, "Gujarat Riots in the Light of the History of Communal Violence," *Economic and Political Weekly* 37:50 (December 14-20, 2002), pp. 5047-5054.

⁷⁰ See generally, Mahendra P. Singh and Surya Deva, "The Constitution of India: Symbol of Unity in Diversity," *Jahrbuch des Ofentlichen Rechts der Gegenwart* 53 [Yearbook of Public Law, Germany] (2005), pp. 649-686.

⁷¹ See generally, Mahmood Mamdani, *Good Muslim, Bad Muslim: America, The Cold War, and the Roots of Terror*, New York: Doubleday (2004).

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connivance of political leaders in fomenting the Gujarat pogrom. The violence is represented as a reactionary and spontaneous outrage, like a riot, and not a sophisticatedly pre-planned pogrom. Farhaan survives the blast, and realizes that he was being used as a foot soldier by the Muslim politician to serve a fundamentalist agenda. Aaliya also survives the retaliatory violence against Muslims, though she witnesses the killing of all her family members. She goes into a shock, but is taken care of by Dev's wife, who is a doctor at the public hospital where she is admitted. Dev had helped Farhaan take Aaliya to the hospital in the middle of the violence, and this effects a change of heart in Farhaan and his hatred for Dev ends.

When the Hindu mobs were on the rampage killing Muslims, Dev as part of the anti-terrorism team led by his friend and colleague Tejinder, was ordered not to take action to stop the mobs. This order came from the Hindu Chief Minister, who much like Narendra Modi (the Chief Minister of Gujarat), asked Tejinder to ensure that Hindus get to freely vent their anger against Muslims for this blast. Noor Manzil, a working class Muslim housing community like Naroda Patiya in Ahmedabad, is specifically targeted, and pregnant women and children are killed – recalling Kausar Bano's rape and murder in Gujarat.⁷² Then the whole housing complex is put on fire, which is reminiscent of the Gulberg Society massacre in which 69 people were incinerated to death during the pogrom.⁷³ Dev arrives at the scene to find that Tejinder is waiting with the police squad, but is allowing the Hindu mobs a free rein in killing Muslims. Dev ignores Tejinder's orders and goes ahead with his team of policemen to stop the killings, but his efforts are in vain and several people die.

Dev is deeply distraught about not being able to uphold the rule-of-law to save the victims, in spite of having the opportunity to do so. He realizes the ideological differences between him and Tejinder. Despite political pressure, Dev organizes a public hearing at the site of Noor Manzil, where he urges people to come forward to lodge their First Information Reports (FIR), and also identify any police or politicians who were involved in carrying out the violence. This space of the public hearing is constructed as an extra-judicial court where Dev is the judge and jury. Through an alliance between fundamentalist Hindu and Muslim politicians, the surviving residents were forewarned not to depose in front of the police. Aaliya, having seen her friends and family being

⁷² Kausar Bano's rape and murder was one of the most gruesome incidents of sexual violence carried out during the Gujarat pogrom. Bano, a pregnant woman, was killed by Hindu mobs. Her Belly was slit, and her fetus was thrown into fire. She was also burnt to death. See, Ruth Baldwin, "Gujarat's Gendered Violence," *The Nation* (September 30, 2002), available at: <http://www.thenation.com/article/gujarats-gendered-violence#>.

⁷³ Times News Service, "What was the Gulberg Society Massacre?" *The Times of India* (December 27, 2013), available at: <http://timesofindia.indiatimes.com/india/What-was-the-Gulbarg-society-massacre/articleshow/27997241.cms>.

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raped and killed, gathers the courage to speak up. Aaliya's character is built on that of Zahira Sheikh, who was the lone witness to testify in the Best Bakery case.⁷⁴ Aaliya identifies two policemen and names the Hindu politician who she had seen instigating the mobs. Her courage inspires other women in Noor Manzil, and all of them agreed to testify as eyewitnesses.

Meanwhile, the fundamentalist Muslim politician, on instructions from his Hindu counterpart, decides to kill Aaliya, to stop her from testifying. Farhaan and Aaliya take refuge at Dev's home, where it is decided that Dev will present his eyewitness account of police and political inaction and collusion in carrying out the violence. He submits his report to the Chief Minister (CM), but also decides to depose in the court, since he is aware of the CM's anti-Muslim ideology. Farhaan expresses his fear that Dev's life will be under threat if he goes ahead with his decision to expose police and political complicity. Dev emphasizes that life or death does not matter as long as he continues to fight for the truth to uphold the rule-of-law until his last breath. Tejinder tries to dissuade Dev, by reminding him about the terrorists who killed his son, and that he cannot now take the side of the 'enemy'. But Dev stands by his convictions. In the climactic scene, set right outside a symbolically imposing court house, Dev is shot dead by Tejinder. In a show of secular solidarity Farhaan, a Muslim, lights fire to the Hindu Dev's funeral pyre, a duty that in Hinduism is supposed to be the privilege of the son. Later, unable to deal with having murdered his friend, Tejinder kills himself. The film ends with Dev's wife handing over a file with all the necessary evidence that Dev had collected, to Farhaan, who finally dons the lawyer's attire and walks up the stairs of the court house, with Dev's words about relentlessly fighting for truth playing in the background. The symbolic message, with which the film ends, is that Farhaan, having given up on the path of violence to seek justice, will now follow the path of the law.

With specific regard to the Gujarat pogrom, *Dev's* story, offers a reconstruction that presents religious strife in India purely as the consequence of the sectarian agendas of individual fundamentalist politicians – much like the post-Gujarat 2002 focus on Chief Minister Narendra Modi – who spread hate to gain political mileage. This presentation conceals the ideological and structural foundations that lend legitimacy to such hatred. The film's assessment of religious violence is that ordinary Hindus and Muslims are the victims, first as pawns in the hands of politicians who brainwash them to propagate their violent agendas, and second as the innocents who get killed because of this violence. That both Hindus and Muslims bear the brunt of this equally, lends a democratic logic to communal violence. The film's emphasis is on the fact that both sides suffer, that communal violence does not choose its victims based on religion, much like how Dev

⁷⁴ See, "Zahira Sheikh: Judiciary's Finest Hour," in Colin Gonsalves, *Kaliyug: The Decline of Human Rights in the Period of Globalisation*, New Delhi: Human Rights Law Network (2011), p. 359.

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does not kill terrorists based on their faith. Interestingly though, the retaliatory cycle of violence is initiated by Muslims, to which Hindus respond. This ordering of events has been a standard refrain of the Hindu right to justify violence against Muslims, citing *inter alia* the 'invasion' of India by the Mughals and the Partition in 1947 as precipitating events.

Reading *Dev* through a jurisprudential-aesthetic lens enables me to do two things: first, to understand how the film projects law *as* and *in* aesthetics; and second, to determine what aesthetic role law plays in the work of reconstructing collective memory, and identify the kind of juridical rationality lends meaning to law's institutions and ideas of justice as they are represented in the aesthetic.

Law occupies an extremely significant role in the film, both in metaphoric and material forms. Its aesthetic incantations are metaphorically personified in the character of the film's protagonist Dev. Dev embodies the characteristics of the ideal nationalist: Hindu, secular, and an unshakeable believer in the rule-of-law. Dev's beliefs are so powerful, that they can on the one hand justify extra-judicial killings, and on the other inspire a young Muslim gone astray to repose faith in the law in his quest for justice.

Law's aesthetic incantations are further exemplified – and represented to be mythical in proportion – in the way it resolves the ethical dilemmas that *Dev's* protagonists confront. For Dev, the primary dilemma was on the one hand to uphold the rule-of-law to end terrorism and sectarian violence, and on the other to stay loyal in his friendship with Tejinder. Dev's decision to stand firm on his rule-of-law conviction comes from a certain belief in constitutionalism that becomes apparent in a very didactic scene in the film in which Dev and Tejinder are discussing over a drink what the foundations of their conscience are. The location of this discussion, in Dev's elite living room, for me is a telling scenario of the role class plays in determining who gets to pontificate on issues of constitutionalism. Dev uses the metaphor of the *Bhagwad Gita* (the sacred text for Hindus) to refer to this foundation. He says that for him the Constitution of India and the idea of rule-of-law are his *Gita*, and that's where he derives his foundational beliefs from. Tejinder disagrees, and says that only if there is a nation, will there be a constitution, will there be laws. His *Gita*, is power; the power to annihilate all the enemies of the nation, who, for him, are Muslims. A constitution, he says, will make sense only after that. Dev calmly argues that power does not come from the police, the army or weapons; the power of the nation-state comes from its political framework (in this case democracy), economy (which is neoliberal development), justice delivery system (which is the criminal law), social equality and secularism – and that all of these virtues are founded in the Constitution. In an innocuous way Dev's assertions about the Constitution point at his passionate investments in the triad of developmental juridical rationality. It is this belief in the rationality of the Constitution that convinces Dev to depose in the court against the misdeeds of the police and politicians in supporting the pogrom, the court for him being the ultimate objective institution that upholds the Constitution.

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In the *law as aesthetics* register, the Constitution of India is equated to the *Gita*. Dev's conscience, thus, considers the idea and imagination of the Constitution to be sacred. By doing this, Dev Hinduises not only his, but also the conscience and legal foundations of the nation, in keeping with the Indian courts' jurisprudence conflating secularism and Hinduism.⁷⁵ Dev is the hero of the film – he is characterized as a progressive and liberal person, he does not hate Muslims, but at the same time considers the Constitution to be Hindu, which in a recursive way was the foundation of the imaginary script on which the pogrom was planned and executed.

This script has also been the secular rhetoric on the basis of which Narendra Modi had appealed for votes during his prime ministerial campaigns. Time and again Modi has referred to the Constitution as the “holy book” that should drive his “India First” mission.⁷⁶ This secular rhetoric of constitutionalism that I have discussed in Chapter 2 has been a part of Indian juridical governance techniques since 1976 when the word ‘secular’ was inserted into to text of the Constitution for the first time through The Constitution (42nd Amendment) Act.⁷⁷ Dev's valorization of the Constitution as his holy book, is a narrative that even the secular left in India would subscribe to. The secular rhetoric, thus, works as a mask to cover the Hindu foundations of the Constitution. Pointing out the “Hindu bias,” in the Indian Constitution, Pritam Singh writes: “The progressive and genuinely secular forces in India need to recognize a bitter truth, namely that uncritically claiming a secular heritage from [...] the Constitution of India is to play a potentially losing game from the very beginning against their *Hindutva* opponents.”⁷⁸ The appeal to the Constitution, like in *Dev*, as the panacea for all injustices against Muslims, and the contradictory projection of it as a sacred text that is secular, is in fact, is institutionalized within India's juridical imagination.

Take for instance, the Best Bakery case, where the Supreme Court, after ordering that the case be shifted out of Gujarat (for fear for political manipulation) to uphold Constitutional standards of fair trial, tries Zahira Sheikh – the key witness who turned hostile due to political threats against her and her family – and holds her guilty for contempt of court. In sentencing Zahira, the same court that expressed anguish over how the justice process in Gujarat was weighed against its Muslim minority population, and how that was an affront to our Constitutional principles of secularism, began, per Pasayat J, “by citing verses from the Manusmriti on the role of witnesses.”⁷⁹ The Manusmriti is considered to be an ancient text that serves as the basis of what constitutes Hindu law.⁸⁰ In upholding the secular Constitution, the court, much like Dev, Hinduises it.

⁷⁵ Ronojoy Sen, Articles of Faith

⁷⁶ <https://in.news.yahoo.com/video/india-first-govts-religion-andconstitution-134400807.html>

⁷⁷ <http://indiacode.nic.in/coiweb/amend/amend42.htm>

⁷⁸ Pritam Singh, Hindu Bias in India's Secular Constitution

⁷⁹ Pratiksha Baxi, “Mock Trial”

⁸⁰ See Wendy Doniger & Brian K Smith, *The Laws of Manu* (London:

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For Farhaan, the dilemma was between subscribing to his father's belief in the non-violence and pacifism of freedom fighters like Gandhi and Khan, as the way to respond to the discrimination faced by Muslims in India, or to take the path of violence. After his brush with violence, and seeing Dev firmly standing his ground to side with his constitutional beliefs, Farhaan also reposes faith in the justice system, the courts – by taking up litigation to fight for Dev's cause and for the Muslims of India, and in turn, to resolve his own dilemma. Aaliya too – in resolving her dilemma of whether to speak up as an eyewitness in front of the same police force that aided and abetted the violence – believed in Dev's promise at the public hearing, ensuring that if people lodge FIRs, the police will ensure justice by arresting and charging the individual wrongdoers – a gesture towards individual criminalization as a way of ending impunity.

In the *law in aesthetics* register, the legal process, particularly the criminal law, is represented as the ultimate location for justice seeking. Like the protagonists of the film, the audience is called on to repose faith in the law. This is the performance of a particular kind of rationality that displaces structural concerns about state accountability. Legal culpability is individualized, and is singularly focused on specific politicians. Responding to the Gujarat pogrom where all investments are directed at individual criminalization of perpetrators, does very little to challenge the historical, structural and ideological foundations that resulted in the pogrom occurring in the first place. Convictions can, in fact, create an illusion of the restoration of rule-of-law, the state's commitment to liberal rights, which demands that we repose faith in 'new' India's state-making practices.

By extension, the film calls on citizens of India, including Muslims, to repose faith and trust in the Constitution and the courts. The material text of the Constitution and the institution of the court are represented as incorruptible foundations of the nation-state which can weather all crises, and can in consequence unshakably guard the nation. The court house outside which Dev is murdered, and the steps of which Farhaan climbs in his advocate's attire, is an imposing building with baroque architecture, painted white, and its environs look sanitized. This material location of law, and the location of the elite drawing room where Dev and Tejinder pontificated on constitutionalism, are set-up, in my reading, in contradistinction to the squalid and lawless Muslim ghetto of Noor Manzil. For those like Farahaan and Aaliya, who are the victim-survivors of the pogrom, they had to exit that lawless location, find refuge in the Dev's home, and then enter the ostensibly secular space of the court house in search of justice. The material locations of law and legalism are, thus, clearly identified in its aesthetic representations.

The *way* of remembering that *Dev's* reconstruction of the pogrom engenders, is that religious strife is a doing of individual evil politicians, that violence begets violence (and

Penguin Books, 1991); <http://www.britannica.com/EBchecked/topic/363055/Manu-smriti>

Muslims generally tend to start it), so trust the Constitution and courts, they are secular, they will ultimately deliver justice. More importantly, it is the trust in the Constitution and the conviction to stand by the rule-of-law that also resolves the enmity between the Muslim Farhaan and Hindu Dev. The intensity of the Constitutional resolution is so powerful that Farhaan is able to overlook the fact that it was because of Dev's extra-judicial orders that his father and many other Muslims were killed in police firing. Despite developing an endearing feeling towards Farhaan, Dev, in fact, never expresses any remorse about his orders that killed Farhaan's father – that was in the realm of his duty to protect the nation. Farhaan, similarly, never demands justice for Dev's act of ordering the killing of his father.

The film, thus, actively enables a *way* of remembering where, while the phantasmagoric violence is not forgotten, the structural Othering of Muslims in India is rationalized. Through such a rationalization, secular Hindus like Dev, despite their belief in the Hindu foundations of the nation and its Constitution are rehabilitated in the eyes of the Muslim audience, as being fair to Muslims as long as they stand by the Constitution and the rule-of-(criminal)-law. The Muslim victim-survivors of the violence ultimately repose faith in Dev's Hindu Constitution, and the secular courts as the ultimate arbitrators of justice. It is this form of rationality, one that elides the Hindu foundations of the Indian nation-state, its Constitution and courts that orders and lends meaning to law's institutions and imaginaries of justice. The memorialization of the pogrom in *Dev*, thus, happens through the projection of the performance of state legalism, which is designed to restore faith in the mythical capacity of law to deliver justice. Interestingly though, in its cinematic representation, *Dev* ends outside the courtroom and the audience does not yet know whether the court is able to perform the promise of its powers that the film has projected.

V. *Parzania*: The Impossible Promise of Secular Law

Parzania is the story of the Pithawalas, a happy Parsee family in Ahmedabad, and the tragedy they come to face at the time of the Gujarat pogrom. Parzan, the 10-year-old son of Cyrus and Shernaz Pithawala disappears while escaping a murderous mob of Hindu militants with his mother and sister, while his father is away at work. The rest of the film follows the trials and tribulations of Cyrus and Shernaz trying frantically to search for their son, and consoling their daughter, Dilshad, that her brother will return and then she can tie him a *rakhi*.⁸¹ Their search results in encounters with the callous and corrupt police system. While the film shows that the violence unfolds after the Godhra train burning incident, it does not hold this up as the precipitating event. Rather, right from the beginning of the film it is shown how Hindu right-wingers have been involved in planning the pogrom. In fact, it is the only film that characterizes the violence as

⁸¹ A Hindu ritual where the sister tied a thread on the brother's wrist and the brother promises to protect her from all evil. That a Parsi family will also mark the rakhi ceremony, is used by the film to project it as a syncretic practice.

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“genocide,” and even compares the Parishad, the Hindu militant political party in the film that organized and perpetrated the violence,⁸² to the fascist and xenophobic politics of the Klu Klux Klan.

Although in a particular scene Muslims are shown bursting crackers to celebrate Pakistan's win in a cricket match, the film overall does not stereotype Muslims. In fact, the housing complex in which the Pithawalas live is multi-class (mostly working class and lower middle classes), multi-religious and all families have very friendly relations. Yet, the majority-minority dynamics vis-a-vis Parsees and Hindus (and by extension Muslims), and in the larger context of national identity is made clear in two pretty innocuous sequences. The first is in Parzan's history class in school where the teacher discussing the 1947 partition, mentions how thousands of Hindus were persecuted in Pakistan and had to flee, but most Muslims in India decided to stay back in this “great secular democracy.” Clearly, the events that follow in the film are meant to put question marks on both this colored telling of history (which has been the case with the ‘saffronisation’ of history textbooks for school students in Gujarat),⁸³ as well as whether we can still call ourselves secular and democratic after what happened in 2002. In raising these concerns, the film retains its liberal faith in secularism and democracy, rather than questioning them as majoritarian constructs.

In the second sequence, Shernaz, while putting Parzan and Dilshad to bed, tells them a story about who the Parsees are and how they arrived in India. She says that when the Parsees arrived in Gujarat a thousand years back in a ship from Persia, the king of Gujarat told them that there was not enough place to accommodate them. The king demonstrated this by filling a bowl with milk till the brim. In response a Parsee priest took a spoonful of sugar and mixed it with the milk and told the king that like this sugar which blends with the milk we will blend with the Indians and make your culture sweeter. Shernaz ends her story by saying: “Since then Parsees and Indians have lived in peace and harmony.”

I'd like to read this explanation about the relationship between Parsees and Indians within the film's narrative at two levels. First, it says that although Parsees were outsiders, they assimilated so well into Indian (read: Hindu) culture, that their community has never been a reason for any acrimony (unlike the Muslims). This story in many ways sets up the film's critique of the tragedy to follow, that despite the fact that Parsees are a peaceful community, only because they also have Arabic names (like the Muslims), the Pithawalas were targeted by Hindu mobs. Second, and this is where this explanatory story ceases to be innocuous, that even thousand years back the core of the

⁸² Seems like a direct reference to the Vishwa Hindu Parishad, a militant Hindu political outfit active in perpetrating violence in 2002.

⁸³ <http://www.epw.in/commentary/saffronisation-education.html>

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Indian nation was Hindu, and not only Parsees, but also Muslims, even today remain on the margins of this core. However, as Gyanendra Pandey has pithily argued in his article “Can a Muslim be an Indian?” while the Hindu nation thought of both Parsees and Muslims as outsiders, the former were accepted as Indians because they were thought to be refugees fleeing persecution, while the latter were looked at as aggressors. Moreover as a microscopic minority, Parsees were never thought of as those with the capacity to threaten the Hindu core of the Indian nation. As Pandey analyses the Hindu logic behind the nation's construction that holds good even today:

The Parsis remained different in religion, culture, and “language” [...] but they had contributed significantly to “our” political, economic, intellectual, and social development. The Muslims had, on the other hand, put forward their own, separatist demands, and had stood in the way of the united struggle against the British. They had not accepted “our” conception of India: they were therefore not Indians.

It, however, remains unclear as to whether the film makes space for Shernaz’s story to offer a comment about the construction of the Indian nation, or to distinguish Parsees from Muslims and to foreground their harmonious relationship with the Hindu nation. Either way, it establishes and holds on to the idea that India was historically (and thus naturally) Hindu. The ‘Parsee question’, as it were, interestingly is raised and addressed in an identical fashion in the Gujarat High Court’s judgment in the Best Bakery case. The court invokes the identity of the Indian Parsi to state how we “have to learn the patriotic feeling to be Indian along with personal religious observations from Parsis.” The court contends that Parsis are a test case for demonstrating how this can be achieved without “obstruction.” Clearly then, the judgment singles out Muslims, without naming them, as the “anti-national [...] who does not adhere to the essential nature, culture and religion of India.” This essential nature, culture and religion, by default is considered Hindu by the court.

The didactic narrative of *Parzania* unfolds through the eyes of a white American man called Alan who has been living in Ahmedabad, researching on Gandhi for his thesis, coming to terms with his own complicated Christian past, and drinks country liquor incessantly from his hip flask in alcohol banned Gujarat. It seems that the film-maker wanted to make the events intelligible for an urban, English-speaking and even international audience, and hence the use of a foreign, ostensibly objective, narrator, who is finding peace in his readings of Gandhi. Interestingly, when the Pithawalas start living in the refugee camp after the pogrom, it is Alan who finds them and invites them to come stay in his house. This could be read both as an unqualified act of kindness, or a problematic representation of white savior instinct. I mention this, because it is difficult to remain agnostic to the politics of this representation.

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With a measured mix of sentiment, compassion and fact, the film successfully offers a strong critique of Hindu militancy, representations of state complicity, and sensitive portrayals of how despite not being Muslim, the Pithawalas were affected by the mindlessness of the violence. Not surprisingly, the film's referent point for making sense of the violence is Gandhi, the so-called 'father of the nation'. And it here that the film succumbs to the seduction of the idea of the nation. Instead of offering a critique of nationalism as the ideology of the *Hindu Rashtra* which was at the root of the pogrom and continues to be a justification for it, the film instead posits Hindu militant nationalism as opposed to Gandhi's soft-Hindu secularist nationalism, thus drawing a fragile distinction between good nationalism and a bad one, and in effect letting the violence of the nation form escape scrutiny. For the middle-class, liberal, secular audience this is the easiest route to redemption: condemn the violence, but love the nation, without linking the violence to the very idea of the nation. This is akin to condemning violence against women, but not questioning patriarchy.

Rahul Dholakia, the director of the film has said that he drew inspiration for the story from the real life incident of the disappearance of Azhar Mody during the Gulbarg Society massacre on February 28, 2002. *Parzania* ends with a message asking the audience to write in if they find any information on Azhar (who is still missing). The message has an accompanying photograph showing Azhar holding up the Indian flag. I wouldn't like to read the use of this particular photograph as innocent: it's a call which says that in this violence what is at stake is the health of the nation, and finding Azhar is that small step that the viewer can take - outside of the sentimental pleasure of watching the film - to stop the idea of the fictive unified nation that Gandhi imagined from disintegrating.

To invoke the jurisprudential-aesthetic lens in reading *Parzania*, is to return to the search for law's aesthetic role in reconstructing collective memory, and the rational ordering of such mnemonic memories through a reification of a juridical imaginary of justice. A significant part of the second half of *Parzania* is dedicated to the public hearings of a human rights commission. In this state law organised space, braving the presence of several Hindu right-wingers, Shernaz Pithawala speaks with conviction and demands that her son be returned to her, and that she will wait forever if she has to. She, in no ambiguous words, says that the government was responsible for taking care of her son, and that the police had failed to provide any protection. In the *law in aesthetics* register, the film's plot credits the same state that organized and executed the pogrom, which has now made this space available for her voice to be heard through the organization of this quasi-legal redressal forum. In the *law as aesthetics* register, the film makes the audience take up the role of judging. But judgment in this case is inevitably tied to the generation of the audience's trust for the nation-state, in its performance of legality through the quasi-legal process of the human rights commission. The audience is called on to judge judge the violence events that Shernaz's testimony bears witness to. But in this act of

judgment the audience will have work within the framework of the secular nation-state, which, despite the breakdown of law and order is projected as remaining committed to lending an ear to the victims, to listen to their stories. That Shernaz will wait forever is not only representative of her courage to continue the search for Parzaan, but also her faith in the secular legal process and the Hindu nation, despite its failures. The Hindu nation-state and its juridical ordering of justice, is thus rendered beyond judgment.

The same faith is demonstrated by another character in the film – a Muslim man who used to live in the same housing community as the Pithawalas – whose father is killed in the pogrom by Hindus. In the refugee camp this person is seen mobilizing other Muslims to plan a retaliation against Hindus. However, when the commission begins its hearings, he undergoes a change of heart hearing the story of Shernaz's courage. He gives up on the idea of violent revenge, and goes to depose at the commission. Again, the resolution to his ethical dilemma is brought about by the creation of a quasi-legal space constituted by the secular nation-state that allows the Muslim to speak of the violence, with the hope that this will lead to justice.

The reconstruct of memory in *Parzania*, thus, happens through the projection of the performance and impossible promise of state legalism, and the quasi-legal process is designed to restore faith in the mythical capacity of law to deliver justice. In comparison of *Dev* – where the actual working of the legal system was not shown – in *Parzania*, the initiation of the process marks an interesting progress in cinematic imaginations of justice. It is yet not known, where the process will lead. *Kai Po Che*, take us there.

VI. *Kai Po Che!*: Law's Neoliberal Vicissitudes

KPC released eleven years after the pogrom and is was watched by not only those middle classes who consumed the live feed of the pogrom in 2002 (and thus have a visual-experiential reference), but also those who were born around that time, or were too young to understand what the violence meant. For the second lot of young people who are either on the verge of joining a neoliberal workforce, or who are still in school/ college but well trained in being ideal consumptive citizens, *KPC* holds up both an apt reflection of their aspirations, as well as a compelling story of how a commitment to developmentalism and nationalism is the perfect antidote for tiding over all forms of adversities and emerging victorious. The event of the pogrom is not central to the film's story, yet it has become what the film has been most noticed for.

KPC is the story of friendship between three young Hindu middle class men – Ishan, Omi and Govind – from Ahmedabad's old city area. They are regular middle class young men, living regular lives, and thinking of very regular ways of making their lives economically productive. The heart-touching regularity of it all is possibly what connects *KPC* to its middle class viewers and has made it commercially successful. Even critics have given

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the film a thumbs-up. And it is this same regularity of the characters, their beliefs and their responses to the destruction that surrounds them, that makes *KPC* a troubling reflection of the way we remember Gujarat 2002.

Ishan loves cricket, and is also a great player. But he has been unsuccessful in making it through the state team. He's hot-headed and violently over-protective of his sister, Vidya. His mother is dead, and his father is upset with him for not doing much with his life, apart from obsessively watching cricket on TV. Omi's father is the chief priest at the local temple. His maternal uncle Bittu, leader of a Hindu right-wing political party, is constantly asking him to join politics. Govind is the most rational of them all. He offers mathematics tuitions to school children, but wants to do something big in life by opening a sports academy and running this business with his friends. He requests Ishan's father for some money as initial investment. But due to Ishan's belligerent behaviour his father tears off the cheque that he promised. Omi then approaches Bittu and he provides them with a space adjoining the local temple where they start their business. Omi takes care of the store that sells sports equipment, Ishan provides cricket training to young boys, and Govind offer math lessons at the academy and also takes care of all the finances. Their life seems to be in order. They are earning well, enjoying the work that they do, everyone is happy. They are developmentalism's ideal responsabilised subjects: they believe in and practice private enterprise, keep nationalist pride alive through their love for cricket, and their behaviour is apolitical. And as is the case with responsabilisation, there comes a natural leap in the aspiration to accumulate: they want to move out of the small store in their locality to a big one in a mall, in a city with rapidly developing real estate. This move will require a huge amount of money, and Bittu again agrees to give them a loan, after expressing some reservations about the Muslim broker they were dealing with. They acquire the new place.

Meanwhile, the story takes two interesting twists. First, Govind starts offering math lessons to Divya for her up-coming board exams. And they start a romantic relationship, which Ishan is unaware of. Second, Ishan meets a cricket prodigy in a young Muslim boy from a working class family called Ali Hashmi. Ali is very shy and introvert, and hardly speaks in the film. All the three friends go to Ali's father - who runs a *zari*-making workshop from home, and is also a member of a secular political party - for his permission to train Ali. He agrees. Ali's encounter with other Hindu boys at the sports academy reveal their prejudice against Muslims. Ishan puts in committed efforts to train Ali and to get him to play in the up-coming club-level tournament. He provides Ali with a cricketing uniform because he would come to play, stereotypically, in *shalwar-kameez* and a skull cap. The western white man as saviour in *Parzania*, is now the secular Hindu man in *KPC*. The subject attracting saving is Ali, a Muslim (and in *Parzania* it was Parsees, both minority populations). As a critic has asked: "Would the success of Hashmi be

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possible without the benevolence of Ishan?"⁸⁴ In other worlds, will recognition for Muslim talent in India come only through the charity of Hindus?

The happy narrative of entrepreneurial success now meets with two blows, which then snowball into a rift between the three friends, and then an irreversible tragedy. First is the 2001 Bhuj earthquake. Ishaan had become very close to Ali and his family. After the earthquake, he brings a large group of displaced Muslims from Ali's community to the relief camp for Hindus run by Bittu's political party. This clearly indicates – as was the case – the discrimination Muslims had faced in accessing relief after the earthquake. Omi along with other party members say they cannot provide for them because they are not "our people." This results in a scuffle between Omi and Ishaan, and they stop speaking to each other.

The earthquake had also affected their business badly. The building in which they had acquired the new store had broken down, and that psychologically devastated Govind. However, they return to the old store in their locality and start working hard to re-build the business. What passes off as hard work is not just that but also the social capital they possessed because of their religion, caste and class and the political patronage network they benefited from. At this time Govind finds out that whatever money that they were left with has gone. Ishaan, in another act of charity, had given that away to Ali's family to rehabilitate them. The relations between all three friends are on tender-hooks now. Divya comes in to convince Ishaan to make up with Omi. He tries, but fails. But what brings them together again is nationalist pride in India winning a cricket match against Australia.

The second crisis is the 2002 pogrom. Bittu, after losing the local elections is campaigning hard for the upcoming state elections. Omi reluctantly joined the party and is active in campaigning. As part of these efforts Bittu decides to send a group of Hindus to Ayodhya for *kar seva* to build the Ram temple, and asks Omi to convince his parents to go as well. It is the train in which his parents would return from Ayodhya that'll get burnt at Godhra. The film identifies the Godhra train burning incident as the reason for attacks on Muslims, re-stating the action-reaction story. Post the burning the right-wing political party is shown organising for *pratikriya*. Ishan reaches Ali's place to 'rescue' them, but Ali's father declines his help because he has to be there for the other Muslim families who have taken refuge in his house. Ali's father's character in this situation is reminiscent of that of Ehsaan Jaffrey, in whose house several Muslims had taken shelter in the Gulberg Society. Ishan asks Govind to come over as well, and in the middle of this tense situation he comes to know of Govind's relationship with Divya (by reading an SMS on Govind's mobile), and beats him up. His secular benevolence towards Ali and his patriarchal

⁸⁴ (Mahmudabad 2013).

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protective attitude towards his sister are in fact two sides of the same coin, and is reflective of a pretty insidious middle class liberal mindset. In the meantime, Omi reaches Ali's house with Bittu and a huge mob wielding arms. The mob breaks into their house and start killing the many others who had sought refuge there. Bittu attacks Ali's father. The fight results in Bittu being shot dead. Omi chases Ali's father, Ishan intervenes, and when Omi shoots, the bullet hits Ishan.

Omi serves prison time for killing Ishan. He is released from prison several years later, a broken man. Govind comes to receive him in a large car. They drive on lovely roads and through scenic locales. Take a break at a nice coffee shop, and then arrive at a huge stadium where Ali, part of the Indian cricket team, is making his international debut. Govind introduces Omi to his son, who he has named Ishan. Govind had married Ishan's sister. He is now a very successful businessman. The small boy hands Omi the Indian flag. In the stadium Omi meets Divya and breaks down. The closing scene shows Ali hitting a perfect cover drive boundary, the exact shot that Ishan had trained him in. The scene fades in and out with Ishan's smiling face, memorialising his sacrifice that has made Ali what he is today.

A jurisprudential-aesthetic reaching of *KPC* identifies how legalism and developmentalism work together to maintain the imaginary of the Hindu nation-state alive. *KPC* takes law into the realm of adjudication and conviction. The law recognises Omi as lawless and thus in need of incarceration and reformation. In the eyes of the audience the legal machinery has played its role, the faith in law is restored despite the thousands killed. The performance of rationality displaces concerns about state accountability. Legal culpability is privatised, and is singularly focused on Omi. This rationality is in actual operation as well through the Naroda Patiya and Ode convictions. Modi's decision to seek the death penalty for ministers in his party, Maya Kodnani, Babu Bajrangji and other Hindu right-wing leaders convicted by the court, might rile other Hindutva political partices like the Shiv Sena, and it might also alert human rights activists to how this strategy will deflect attention from Modi's own culpability.⁸⁵ But it strengthens the capital punishment loving secular middle class belief in the judiciary, their faith in Modi's commitment not only to governance and development, but also in the rule of law. The audience, however, is happy for Omi not being sent to the gallows in the film, because his act was merely an accident. Interestingly, Modi's recent decision to put the death penalty on hold for seeking legal opinion from the advocate general will

85 Special Correspondent, "Gujarat government to seek death penalty for Kodnani, Bajrangji," *The Hindu*, <http://www.thehindu.com/news/national/other-states/gujarat-government-to-seek-death-penalty-for-kodnani-bajrangji/article4626829.ece> (April 17, 2013); Press Trust of India, "Modi's decision to seek death penalty for Maya Kodnani a deadly attack on Hindus: Shiv Sena," *The Indian Express*, <http://www.indianexpress.com/news/modis-decision-to-seek-death-for-maya-kodnani-a-deadly-attack-on-hindus-shiv-sena/1105307/> (April 20, 2013)

make the secular middle classes deify him further for this ostensibly attests to his belief in due process.

In *KPC*, developmentalism re-inscribes the nation and decorates it with smooth roads, coffee shops, huge stadiums, entrepreneurial success, and cricket. *KPC* does not work to erase memories of 2002, in fact, it gives us a glimpse into how developmentalism, nationalism and law work together in the reconstructions of mnemonic collective memory. Whose death does the film mourn? It's Ishan's: the Hindu who was killed (by another Hindu) trying to help Muslims and keep secularism alive. Ali seems to have no reason to deal with any trauma. He has emerged unscathed, without a trace of memory of what happened. We don't know where his family is, or what happened to them. We are happy about the secular credentials of the Indian cricket team, and that a talented Muslim now plays for India, despite living through the pogrom. We are happy that Govind is married, has a son, and because of his business sense is so successful. These are success stories worthy of celebration we are told. It is only Omi's trauma which matters. And who comes to soothe Omi's soul? The aspirational figure of Govind's child, handing him an Indian flag. The innocent gesture of the child is the seductive cue for the audience to feel buoyant about the jubilant nation. The figure of the child has for long been a symbol for representing both nationalist desire and consumptive reason.⁸⁶ The tragedy faced by the child is the most painful blow to the secular nation. And the popular consumption of hope is also extracted through the child.

It doesn't really matter if it is a pogrom or an earthquake. Nationalism, legalism and developmentalism regularises any tragedy, and emphasises how following the scripts of private enterprise, responsabilisation, constitutional secularism, and the rule-of-law will ultimately make us immune to such interruptions and make the nation-state unshakeable. The death and destruction is ordinary damage and should only remain sympathetic markers of 'new' India's glorious progress.

VII. *Firaaq*: Law's Descent into the Ordinary

The jurisprudential-aesthetic reading of the three Hindi feature films have demonstrated the aesthetic role law is called on to play in forming imaginaries of cinematic justice, and in rationally ordering a set of ways in which mnemonic collective memory of the pogrom is actively reconstructed in cinema. There are distinct *ways* of remembering that the three films engender, and law frames each of these ways. While all the three films recognize the scale of the violence (chronology and facts aside), they repose enormous faith in the constitution and rule-of-law as unquestionable paths to justice and closure. *Parzania* goes closest to understanding the pogrom as a consequence of sophisticated planning. While all the three films condemn the violence, and mourn the dead, at the same time they also

⁸⁶ Uberoi 2009

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reify constitutional secularism, legalism and developmentalism as part of 'new' India's state-building arsenal the embrace of which will be the most effective closure. The foundational Hinduness of the nation-state, and its buttressing by developmentalism and legalism is never questioned by any of the memorial reconstructions of the pogrom in these three films. The landscape of cinematic justice that is painted rationalizes the pogrom as aberrant – not that fits the way the Indian nation-state conducts governance – and offers visions of reconciliation and resolution that are deeply invested in the very structures that enabled the pogrom in the first place.

It is this particular form of ordering of collective memory that I call 'developmental juridical rationality': the ordering of collective memory through the combined working of developmentalism, constitutional secularism and legalism. *Firaaq*, the fourth film that I will read through the jurisprudential-aesthetic lens, opens up that space to resist the workings of developmental juridical rationality, and offer traces of what cinematic justice might look like outside of the realms of legalism, developmentalism and secularism.

Firaaq is an unsettling narrative of fractures in the aftermath of the pogrom, and makes apparent that spaces for redemption are continuously getting constricted in an atmosphere of fear and hate, and there is hard work to be done if we need to get closer to hope and peace. This fracture is made powerfully apparent in the opening scene of the film which shows truckloads of dead bodies arriving at a mass grave in Ahmedabad. Two deeply traumatised Muslim men are burying the bodies, wondering when all this mayhem will end, when the younger of them discovers the dead body of a Hindu woman and wonders what to do with her. How will he bury a Hindu corpse? At that moment the older man erupts in rage and tries to hack that body into pieces. The younger man stops him with a desperate question: "How will you kill the dead?" The older man breaks down in tears, and the opening credits begin.

Precarious intersections between trauma, rage and reason animate the rest of film which narrates five separate stories of people who are navigating through their lives and losses a month after the pogrom in the city of Ahmedabad. A working-class Muslim couple (Hanif and Munira) with a newborn baby have come back from hiding to find their home burnt to rubble; an upper class inter-religious married couple (Sameer Sheikh and Anuradha Desai) decide to leave for Delhi after the Muslim husband's store gets looted despite his business partner being a Hindu; a Hindu housewife (Aarti) finds refuge from her Muslim-hating and abusive husband in her kitchen where she burns her arms with hot oil every day to repent for not saving a Muslim woman who repeatedly cried out for help at her door running from Hindu mobs; an ageing Muslim classical singer (Khan Saheb) first wonders what draws people to commit such atrocities and then, on finding that an ancient shrine of the Urdu poet Wali Mohammed Wali was destroyed to dust and paved over with coal tar, laments that even music doesn't have enough power to respond

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to this murderous madness; a small orphaned Muslim boy (Mohsin) walks around the city searching for his father, who is already dead. For a short while he meets Aarti, who brings him home and hides him in the kitchen, but then he runs away when her husband beats her up.

Characters in all the stories share fragile connections that are marked by either antagonism and humanism, or both. Unlike the linear narrative of the other three films, *Firaaq* moves back and forth in time and space to confront the many layers of the quotidian that people live through in the face of grave losses. This confrontation allows for the inauguration of new wounds, fears, distrust and prejudice; discovery of new friends; lends strength to move on, fight back, hope; and exhale submission. The stories and the tragicomic turns they take open up spaces of alternative imaginings of justice, reconciliation and resistance that don't necessarily align with the standard script of developmental juridical rationality that we have seen in operation in the previous films. It is the "the descent into the ordinary," as Veena Das has observed, "through which victims and survivors affirm the possibility of life" (2003). Stories of such alternative spaces of living - not transcendental, but everyday - in the wake of atrocity that makes *Firaaq* powerful. Although Das made the above observation in connection with the ethics of the anthropologist's act of witnessing human suffering during the anti-Sikh violence of 1984, it seems to apply to the work of the critical jurisprudent as well, who is interested in imaginaries of justice that are not captive in the formality of legalism.

The power of *Firaaq* lies in its disturbing the stability of the Hindu and secular nation-state that is able to suture its wounds through the enforcement of rule-of-law. The film evicts their violent presence out of the everyday lives of survivors (though it continues to stealthily lurk in the background through the presence of the police in the film); not letting it hijack the very regular experiences and interactions of trepidation, contradictions and resistance through which people live with violence. *Firaaq* is not interested in contributing to keeping the fictive nation-state together. It brings into disturbing relief the fractures on the body politic and on human minds and bodies. Several sequences in the film's fictive narrative have television news reports by private news channels running in the background, as a constant reminder of the 'real' breakdown of the nation.

The film's end is tragic, buoyant and indeterminate. Muneera emerges out of a suspicion against her Hindu friend who she believed participated in burning her house; Hanif, on a misadventure to find a pistol to avenge the burning, escapes the police, but gets killed by a man who drops a stone slab on his head from a verandah; Sameer and Anuradha gathers courage to stay back in Ahmedabad; Aarti leaves the house, may be in search of Mohsin; Khan Saheb begins to sing and his disciples, which includes Anuradha, come back for lessons; and Mohsin finds his way to a refugee camp where he declines to play

with other children. The film ends with Mohsin looking straight into the camera with his innocent eyes implicating the audience in his suffering.

Reading *Firaaq* through a jurisprudential-aesthetic lens offers insights that are very different from the three previous films. The aesthetic role of the law in *Firaaq* is imagined outside of formal governmental legal arrangements and rationalities. By not trying to offer a closure or resolution to the trauma of its protagonists, *Firaaq* militates against the role of law as one that leads to justice through convictions. It does not even consider formal law as one that can open up any space for the survivor to speak of trauma. The descent into the everyday and ordinary offers a cue for developing imaginations of 'lawful conduct' that cannot be framed or even made intelligible in the language of state legalism. Drawing in the work of Shaunnagh Dorsett and Shaun McVeigh, "lawfulness" is about "what it means to belong to, and to live with law [...] [it] is a material practice, concerned with how we inhabit the world." Such a reading of law reconstructs collective memory as one that lends deep humanity to the survivors – those who have the capacity to live with trauma, and yet not succumb to the seductions of developmentalism, secularism or legalism.

Yet, the resistance that *Firaaq* offers to developmental juridical rationality, might be a fragile one, because its emotive power exposes the film to being co-opted by liberal and secular discourses of compassion that sentimentalise suffering, and fall into the very trap of legalism that it wanted to escape. It condemns the rabid characters in the film, but then says: see, people have the power to move on and that's the human spirit we should celebrate. The displacement of the nation-state from the film's narrative, erases the need for establishing legal accountability – of both the state's complicity and the Hindu secular audience's condoning of it – from our moral vision. In not visibilising the nation form in all its sophisticated menace, it escapes scrutiny. This allows the audience to cry, but not ask political questions about legal justice. The audience emerges with a sympathetic heart on watching the film, but as Susan Sontag writes: "Sympathy is an inappropriate response. It proclaims our innocence as well as our impotence" (2002).

VIII. Conclusion

My reading of the films through the jurisprudential-aesthetic lens has demonstrated the aesthetic role law plays in forming imaginaries of cinematic justice, and in rationally ordering a way in which collective memory of the pogrom is actively reconstructed in cinema. Despite not being law films, the ways of remembering that *Dev*, *Parzania* and *Kai Po Che!* engender is framed by an imagination/ imagery of law and legalism. The three films recognize the scale of the violence (chronology and facts aside), and also reposes enormous faith in the Constitution, rule-of-law and development as unquestionable paths to justice. While the films unanimously condemn the violence, and mourn the dead, at the same time they also reify Constitutional secularism, legalism and

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developmentalism as part of 'new' India's state-making arsenal, the embrace of which will provide the most effective closure to the trauma of the pogrom. The foundational Hinduness of the nation-state, and its buttressing by secularism and legalism is never questioned by the memorial reconstructions of the pogrom in the films. The landscape of cinematic justice that is painted rationalizes the pogrom as aberrant – one that does not fit the way the Indian nation-state conducts its governance – and offers visions of reconciliation and resolution that are deeply invested in the very structures that enabled the pogrom in the first place.

It is this particular form of ordering of collective memory that I call 'developmental juridical rationality': the ordering of collective memory through the combined working of the triad, secularism, legalism and developmentalism. Drawing on Michel Foucault's concept of "governmental rationality," and later critiques and interventions by postcolonial and other critical scholars, I develop this conceptual category that explains how 'new' India conducts its state-building practices. Foucault notes that the purpose of government is to secure the "welfare of the population, the improvement of its condition, the increase of its wealth, longevity, health et cetera."⁸⁷ To do this, writes David Scott, government "arrange[es] things so that people, following only their self-interest, *will do as they ought*."⁸⁸

Secularism, developmentalism and legalism are projected by the Indian state as governmental practices for the welfare of its population, which is legitimated by the filmic reconstructions. The subjects who are called on as citizen-subjects, consider these practices to be virtues of governance, and hence, conduct themselves *as they ought*. According to *Hindutva* ideology, such conduct involves the pursuance of self-interest for welfare, health, wealth, and longevity, which is attainable only through the revival of Hindu India. The existence of Muslims, thus, is a hindrance to the achievement of welfare of populations.

In Foucault's formulation, the conduct of government in modernity arrived through a periodization from control over the body, to the control over minds. Achille Mbembe argues that in postcolonial and neoliberal locations the operation of governmental rationality combines both of these, where the control over minds is coexistent with violence over bodies. Thus, by developmental juridical rationality, I mean a particular way in which a state's governance tactics order the conduct of politics in a neoliberal "postcolony."⁸⁹ Such a tactic valorizes accelerated legalism and developmentalism as

⁸⁷ Above, n. 5, Burchell, Gordon and Miller, p. 100.

⁸⁸ David Scott, "Colonial Governmentality," *Social Text* 43 (Autumn, 1995), pp. 202-203 [emphasis in original].

⁸⁹ I deploy postcolony as a cartographic and ideological category, and not simply a geographical one. To quote Mbembe at length:

"The notion 'postcolony' identifies specifically a given historical trajectory -that of societies recently emerging from the experience of colonisation and the violence which the colonial relationship, par excellence, involves. To be sure, the postcolony is chaotically pluralistic,

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primary markers of secular constitutionalism, and is simultaneously accompanied by a conjuncture of violence and violation against minority groups, that remain implicitly tied to the Indian state's rational performances and enactments of legalism, not exceptionalism.

In this paper my aim was draw on the traditions of law and aesthetic scholarship to develop a form of reading called the jurisprudential-aesthetic lens. In reading the feature films through this lens, my objective was to demonstrate how aesthetic reconstructions of the Gujarat pogrom offer an insight into the content of mnemonic collective memory, the aesthetic role that laws plays in the making of such memories, and enable an understanding of how such memories are ordered by the working of a juridical developmental rationality that recognizes the violence of the pogrom, but at the same time reifies the state-building practices of 'new' India that were the foundations of the pogrom. In reading the films, I also looked for traces of resistance that were available in the cinematic narrative.

My reading of the three feature films in this chapter was not an attempt at doing film criticism. Rather my aim was to understand cinema as a historical and legal text. Mainstream Hindi cinema is a very rich archive of popular and national sentiments. My analyses of the three films was not meant to be about their drawbacks. I offer close readings not to say what the films could have done better. The stories that each of the films tell, if read in the chronological context of their release, demonstrates the way in which the pogrom is remembered.

Dev reposes all its trust in the Constitution and rule-of-law to enable closure; *Parzania* recognizes that it is only law that opens up the space for victim-survivors to speak and be heard; *KPC* privatizes criminalization and considers developmentalism as the most effective antidote to trauma; and *Firaaq* re-imagines forms of lawful conduct in the quotidian where negotiations with the violent past will happen. These reconstructions of the pogrom order collective memory in a particular way. The imagery of violence is

yet it has nonetheless an internal coherence. It is a specific system of signs, a particular way of fabricating simulacra or re-forming stereotypes. It is not, however, just an economy of signs in which power is mirrored and imagined self-reflectively. The postcolony is characterised by a distinctive style of political improvisation, by a tendency to excess and a lack of proportion as well as by distinctive ways in which identities are multiplied, transformed and put into circulation. But the postcolony is also made up of a series of corporate institutions and a political machinery which, once they are in place, constitute a distinctive regime of violence. In this sense, the postcolony is a particularly revealing (and rather dramatic) stage on which are played out the wider problems of subjection and its corollary, discipline."

See, Achille Mbembe, "Provisional Notes on the Postcolony," *Africa: Journal of the International African Institute* 62:1 (1992), pp. 3-37

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disturbing, but the Hinduness of the nation (which is passed off as secularism), and its developmentalist promises of progress are a cause for comfort.

Distanced “consumer-spectators” of these cinematic reconstructions can be said to have elicited three kinds of responses from urban Hindi middle-classes: they were either happy about what happened to Muslims (because they deserve it), or they were repulsed by them (too much gore is not good for our happy lives), or it generated, as Anuja Jain says, “a ‘politics of pity’, which had the polarizing implications of creating a binary of the ‘fortunate us’ and ‘unfortunate them’.” (Jain 2010). Pity is the closest that the elite and middle-classes have come to express some sentiment of attachment with the victim-survivors. This sentiment does not include feelings of injustice done to Muslims, rather these have exacerbated identitarian difference and entrenched a deeper belief in the need for Muslim assimilation into majority ways of living and behaving. The course that legislations, trials and Modi’s rise has taken since the pogrom bear testimony to this.

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