

# Bollywood's Law: Collective Memory and Cinematic Justice in the New India

Oishik Sircar\*

*Law tells stories, just as stories are told about law.*

Peter Goodrich

## 1. The work of reconstructive imagination

In 2013, a Bollywood film<sup>1</sup> called *Kai Po Che* (Kapoor 2013)<sup>2</sup> received both popular and critical attention from audiences and commentators alike. The re-telling of the 2002 anti-Muslim pogrom in Gujarat—a sophisticatedly planned ethnocide targeting Muslims, unlike its popular characterization as a riot, which is spontaneously provoked mob violence<sup>3</sup>—is part of the film's fictive plot and cathartic closure,

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\* Teaching Fellow and Doctoral Scholar, Institute for International Law and the Humanities, Melbourne Law School.

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1 Though it is commonsensically understood to be so, especially outside of India, Bollywood is not synonymous with the Indian cinema. It is one kind of Indian cinema. Bollywood can be loosely understood as Hindi mainstream cinema produced in Bombay/ Mumbai. In this essay I use it in this way, remaining attentive both to the uniqueness of the genre and to its universalising weight that flattens the idea of the Indian cinema.

2 The English title of the film is *Brothers for Life*.

3 Later in the essay I provide a brief re-telling of what this event was, and also an explanation for why I use 'pogrom' to characterize the violence.

and was one of the major reasons for this attention. While on the one hand it was praised for taking a sensitive look at the pogrom and spoke of friendship, hope and forgiveness in the midst of mindless religious hatred (Patel 2013), on the other hand there was a lot of criticism about the cunning ways in which the film avoided questions of accountability, downplayed the enormity of the event, even as it acknowledged trauma (Janmohamed 2013). When I first watched it on a pirated DVD in Melbourne, I felt that the film, in its narrative and aesthetic re-constructions of the pogrom, revealed—more than conceal—the workings of a nationalist, secularist and developmentalist rationality in postcolonial India that has come to texture the mnemohistories of collective memory of the pogrom. As I read it, not only did the film not depict the violence in all its nuance (which was the standard critique), it also glorified love for the new India: a neoliberal and Hindu nation (a key element of Hindu right wing discourse which provided the ideological justification for the violence) 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 Litigation (PIL) was filed in the Gujarat High Court in Ahmedabad, demanding that its clearance by the Central Board of Film Certification in India be cancelled.<sup>4</sup> A news headline reporting the incident read: 'PIL against *Kai Po Che* for "biased" portrayal of Gujarat riots' (*The Times of India*, May 3, 2013). The petitioners, a lawyer named Bhautik Bhatt and another applicant, took issue with the representation of the 2002 violence in the film for its anti-Hindu bias. As the judgment noted, the two reasons for which the petitioners approached the court were: first, 'the film defames group of a certain community, in the guise that the members of the minority community were victimized'; and second, 'the film does not approach the topic evenhandedly and projects one community being more responsible than the other' (*Bhautik Vijaykumar Bhatt v. Central Board of Film Certification*, September 23, 2014, 1).

I was a little taken aback.<sup>5</sup> It was primarily secular-leftists like me who slammed the film for its bias in favour of Hindus, for not depicting the atrocity in all its nuances, and for explaining the causes of the violence through *realpolitik* framings that displaced its deep ideological foundations (Sircar 2013a; Mukherjee 2013; Ghufuran 2013). And here, the petitioners felt that even in the film's soft pedaling of the violence carried out by Hindus, it depicted the majority community in a bad light. I did not think the petition stood any chance in court. The film could not

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4 The Central Board of Film Certification (CBFC) in India, also known as the Censor Board, a statutory body established by the Indian Cinematograph Act of 1952 makes it mandatory for films to apply for a censor certificate before they can be publicly exhibited. The CBFC also classifies films based on their content for universal or restricted viewing. The CBFC's decisions to censor films considered sexually explicit or communally sensitive tend to reflect the moral and political views of the government in power. CBFC's decisions have met with resistance from both free-speech advocates and right-wing conservatives. On the history and politics of film censorship in India, see Bhowmik 2009; Mazzarella 2013.

5 *The 3 Mistakes of My Life*, the novel on which the film was based (Bhagat 2008), the film's publicity and trailers, and even the theatrical release did not attract any attention from Hindu right wing parties—including the ruling Hindu nationalist Bharatiya Janata Party (BJP) in Gujarat at that time—as has been the case in the past with most other feature and documentary films on the pogrom (Menon 2004; Bandukwala 2007).

have been challenged on its reconstruction of facts, because it did not make any claims regarding historical accuracy. It was, after all, a work of fiction, adapted from a novel. The court in its 2014 judgment rejected the petition by stating why the freedom of speech and expression of the filmmakers cannot be curtailed, especially because it was ‘made on an imaginary [sic] topic’. It might have been possible to restrain exhibition if the film had provoked sectarian violence because of the reasons that the petitioners had stated. However, as the judges noted: ‘Nothing untoward has happened or reported. The viewers across the country, with due maturity, have absorbed the theme’ (*Bhautik Vijaykumar Bhatt v. Central Board of Film Certification*, September 23, 2014, 3).

Yet, the same sequence of fictive events—or ‘imaginary’, as the court called them—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 encounter between law and film opens up a contestation about the truth claims that constitute collective memory in the realm of filmic re-constructions of mass atrocity. *Kai Po Che* (KPC) participates in the ‘ideoscapes’<sup>6</sup> and ‘lawscapes’<sup>7</sup> of collective memories which I consider to be mnemonic in nature, doing, what Jan Assman would describe as ‘the ongoing work of reconstructive imagination’: ‘the past cannot be stored but always has to be “processed” and mediated’ (Assman 1997, 14).

This reconstructive imagination also points at the complicated intimacies between law and the aesthetic, and the ways in which their encounter processes and mediates collective memory. 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 contestations about the ways in which the stories of the pogrom are actively reconstructed and remembered. In recognition of this law/aesthetic conversation, this essay attempts to chart a response to the question: Do our legal investments in establishing the truth about the violence of Gujarat 2002 keep alive a faith in the aesthetic (in this case the cinematic) as an active archive of collective memory, and consequently as a credible jurisprudential source that engenders imaginations of justice?

Law and image/imagination have played an important 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 postcolonial India (Ohm 2010, 123-144). The event’s contested narratives are shaped through a set of

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6 Arjun Appadurai understands ‘ideoscapes’ as ‘composed of elements of the Enlightenment world-view, which consists of a concatenation of ideas, terms and images, including “freedom”, “welfare”, “rights”, “sovereignty”, “representation”, and the master term “democracy”’ (Appadurai 1996, 299).

7 Drawing on the work of Andreas Philippopoulos-Mihalopoulos, I understand the ‘lawscape’ as imaginations of justice that are ‘so thick with law that, just like air, the law is not perceived. It becomes “invisible”, white noise, thin air. It becomes an *atmosphere*—there but not there, imperceptible yet all-determining’ (Philippopoulos-Mihalopoulos 2012, 2, emphasis in original).

iconic photographs—like Qutubuddin Ansari begging for mercy with folded hands or Ashok Mochi's war cry against Muslims with outstretched arms (Sahni 2012; Hazra 2012)—and landmark legal signposts—like the Best Bakery and Gulberg Society cases (Dhavan 2003; Katakam 2012)—that have not only produced a surfeit of reportage but have also offered templates for popular culture and aesthetic reconstructions in film, literature, art. Despite their perceived incommensurability, law and image/imagination are porous archives seeping into each other constantly, and they share a tendentious intimacy in making, managing and ordering collective memory.

Law and image, notes Cornelia Vissman, share 'a troubled relationship' (Vissman 2008, 1). 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' (ibid.). As Peter Goodrich critically observes: 'law [...] is a text that negates its images and denies the figurations of fluidity in its texts' (Goodrich 1995, x). Commenting on the 'aesthetic question' in law, Costas Douzinas and Lynda Nead 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' (Douzinas and Nead 1999, 3).

However, despite this historical opposition between law and aesthetics, one is deeply implicated in the other; they share a relationship that is troubled because of their collaborative contestations, and not because of their antithetical orientations. There is an 'enriching asymmetry of their encounter', that connects 'justice [or injustice] and beauty [or the ugly]' (Ben-Dor 2011, 1). Clifford Geertz's observation that law, 'here, there, everywhere, is a distinct manner of imagining the real' (Geertz 1983, 184) is a reminder of 'the imaginative life of the law and the way law lives in our imagination' (Sarat 2011, 2). 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. (Sherwin 2011, 3.)

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 Émile Durkheim, and subsequently developed by his student Maurice Halbwachs—is a mode of active remembering, unlike the hegemony of history—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' (Halbwachs 1992, 38). 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 technologies' (Olick, Vinitzky-Seroussi and Levy 2011, 21): 'collective memory is the *active past* that forms our identities' (Olick 2007, 20, my emphasis).

In the context of the Gujarat pogrom, both law and cinema are 'publicly available commemorative symbols, rituals, and representations' that are in continuous 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. Legal and filmic reconstructions of the pogrom are archives that both lend to and derive meaning from their collective public reception and response.

## 2.A small re-telling

Gujarat 2002 has been one of the most litigated, mediatized and politically polarizing events of mass atrocity in contemporary India. The version of the events of the pogrom and the narrative that I hold on to through this essay, is aimed at foregrounding the 'small voices,' to borrow historian Ranajit Guha's expression (Guha 1996, 1-12), that struggle to keep alive a certain memory of the pogrom in an India where they are constantly being 'drowned in the noise of statist [and increasingly corporatist] commands' (ibid., 3), that propagate a dominant memory.

It has been over a decade since the western Indian state of Gujarat experienced one of independent India's most violent mass atrocities against its Muslim minority population.<sup>8</sup> Postcolonial India has experienced many incidents of anti-minority mass religious violence since the Partition in 1947 (Pandey 2002), notably the anti-Sikh violence of 1984 in Delhi (Mitta and Phoolka 2008), and the anti-Muslim violence of 1992 in Bombay (Menon 2011), and all of these events have been part of a larger script that animates the violence of postcolonial state making. However, during Gujarat 2002, the sophisticated organization of the violence, the macabre forms of brutality and extent of state involvement, particularly police inaction and complicity, was unprecedented (Chopra and Jha 2014). Although official estimates state that the violence lasted for three days, many Gujaratis say that it lasted for as long as three months (Ghassem-Fachandi 2012, 1). The mayhem continued unabated, and despite a complete breakdown of law and order and grave instances of police

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<sup>8</sup> The account that follows is based on a select set of fact-finding reports, investigative and academic works that can be broadly and loosely classified as left-secular, human rights affirming. I am sympathetic to these tellings, and draw on them, because of my own ideological and political alliance to the left-secular and human rights groups and individuals that have authored these, and also because these have been considered credible accounts by victim-survivors of the pogrom. I spent time in Ahmedabad, the capital city of Gujarat in 2002, right after the pogrom, as part of a fact-finding team constituted by the South Asia Human Rights Documentation Centre, New Delhi. I revisited Ahmedabad and Baroda in 2014 for my doctoral research. On both these occasions, in my conversations with victim-survivors, some of the reports that they have expressed faith in are the ones that I draw on in my brief retelling of the pogrom in this essay. All these sources have also been consistently referenced in the literature on the pogrom that I have read.

inaction (both of which are state subjects in the Constitution of India), a central state of emergency was not declared, thus revealing how the central government—which at that time was the Hindu nationalist Bharatiya Janata Party (BJP) led National Democratic Alliance—condoned the event,<sup>9</sup> rendering it non-exceptional in political and public consciousness, even though it could be considered to be a rule of a state of exception.<sup>10</sup>

Starting on February 28, 2002, Hindu militant mobs ran rampage across both urban and rural Gujarat singularly targeting Muslims: killing close to 2000 people (which included some Hindu, Christian and Parsi casualties as well) and driving tens of thousands homeless (Human Rights Watch 2002). Sexual violence was rampantly used to murder Muslim women, including pregnant women, which in turn was meant as humiliation of the entire Muslim community (International Initiative for Justice in Gujarat 2003). Homes and property owned by Muslims were pillaged and burnt. Several mosques were desecrated and razed to the ground, and roads paved over them. The violence targeted Muslims across the board, irrespective of their class status and residential locations (Engineer 2003).

Even over a decade later, there were several Muslims languishing in refugee camps, many victim-survivors were still awaiting compensation for damages, and the criminal justice processes that they had initiated had seen no to very little progress (Amnesty International 2012; Choksi 2014). For the few criminal trials that did result in convictions of the perpetrators, or are underway, they have been at the receiving end of powerful State manipulations to subvert the justice and evidence gathering processes (Jaffrelot 2012, 77-89).

Over these many years, Gujarat, under the chief ministership of Narendra Modi (now India's Prime Minister) of the BJP, has been celebrated as one of India's most developed states with great urban and industrial infrastructure, and is a preferred destination for corporate investments by huge multinationals. Such has been the spectacular projections of growth rates by the State taking on a post-ideological persona that it has come to be showcased by both political parties as well as industrialists, as the 'Gujarat Model', meant for emulation by the rest of India. Many on the secular-left in India, including me, have questioned this rhetoric of growth that clearly excludes marginalized populations like Muslims, Dalits and *Adivasis* in Gujarat, and also consider this to be a form of neoliberal whitewashing of the

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9 This was evident in the way the then BJP prime minister, Atal Bihari Vajpayee, at a speech delivered in Goa in April 2002, justified the pogrom, by citing Muslim separatism as its foundational cause, and rationalizing such alleged Muslim behaviour as an affront to Indian secularism. He is recorded to have said: 'Wherever Muslims live, they don't like to live in co-existence with others, they don't like to mingle with others; and instead of propagating their ideas in a peaceful manner, they want to spread their faith by resorting to terror and threats' (Quoted in Varadarajan 2002, 450-451).

10 The imposition of Emergency, or President's Rule, has been a practice of considerable debate in Indian Constitutional jurisprudence, especially given the history of the widespread abuse of power and the violent throttling of dissent under Emergency rule experienced from 1975-77 during Prime Minister Indira Gandhi's leadership. I draw attention to the non-imposition of an Emergency during Gujarat 2002 as an attempt by the State to treat the event as an ordinary occurrence, not recognizing the complete breakdown of law and order and the Gujarat government's failure to control the violence.

memories of 2002 (Sood 2012; Sud 2012; Chandoke 2012, 10-11; Sircar 2013b).

Modi is also considered by the left-seculars as the one who—along with other politicians in the Gujarat BJP—meticulously planned and sanctioned the 2002 violence, as a step towards establishing India as a Hindu *Rashtra* (nation), in furtherance of their neo-fascist ideology of *Hindutva* (Gregor 2006, 197-227), that considers India to be the holy land of Hindus, and thus Muslims and Christians as outsiders, who must assimilate, or be annihilated.<sup>11</sup> Gujarat has been considered by many as the ‘Hindutva Laboratory’ that experimented with the pogrom in furtherance of its neo-fascist mission by teaching Muslims in India a lesson (Spodek 2010, 349-399). Modi and many of his ministers in Gujarat have been named in independent fact-finding reports (Concerned Citizens Tribunal 2002), survivor testimonies (Citizen’s Initiative 2002), revelations by public servants (*The Hindu*, August 20, 2009; *The Times of India*, October 1, 2012), media investigations (*Tehelka*, November 2, 2007), and statements by the Supreme Court (*Zahira Habibulla H. Sheikh vs State Of Gujarat*, 12 April, 2004) for having ordered the police to step back and let the mobs rein free, for having instigated the mobs with their inflammatory anti-Muslim speeches,<sup>12</sup> and for justifying the pogrom by citing the Godhra train-burning incident of February 27, 2002, that killed 58 *Kar Sevaks* (Hindu pilgrims) as the legitimate cause for this *pratikriya* (retributive action) by angry Hindus.

The incident of the burning of compartment S-6 of the Sabarmati Express, carrying *Kar Sevaks* returning from Ayodhya,<sup>13</sup> allegedly by Muslim mobs at Godhra station in Gujarat, has come to stand as the temporal and ideological justification for the pogrom, or as the ‘precipitating event’ (Nussbaum 2004). In line with the Newtonian explanation that Narendra Modi provided to rationalize the violence—‘every “action” has an equal and opposite “reaction”’<sup>14</sup>—almost all references to the Gujarat pogrom till today continue to replay this cause and effect logic of equivalence: the Muslims burnt the Hindus in the train, so now the Hindus are taking their

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11 ‘Hindutva (“Hindu-ness”, shorthand for Hindu nationalism) in India is a chauvinist and majoritarian nationalism that conjures up the image of a Hindu Self vis-à-vis the threatening minority Other’ (Anand 2011, 1). Leftist scholarly works in India have traced the origins of *Hindutva* ideology to that of European Fascism (see Ahmad 2002, 129; Sarkar 1993, 163-167; Basu et al. 1993). Italian Historian Marzia Casolari has done extensive archival work on how *Hindutva* ideology draws on both Nazi and Italian Fascism (Casolari 2000, 218-228; Casolari 2011). The Hindu Right in India is a consolidation of political parties and other outfits collectively called the Sangh Parivaar (United Family), which includes not only the BJP, but also the Rashtriya Swayamsevak Sangh, the Vishwa Hindu Parishad, the Bajrang Dal, and the Shiv Sena, among others.

12 Rakesh Sharma’s 2002 documentary film *Final Solution* carries footage of several such hate speeches by Narendra Modi and many others. To watch the film, go to: <<https://vimeo.com/ondemand/32491/110332012>> (last visited May 20, 2015).

13 In Ayodhya, on December 6, 1992, militant Hindu mobs, led by key leaders of the BJP, demolished the Babri Masjid (built in 1527 by Babur, the first Mughal Emperor of India) because they claimed that the mythological Hindu god Ram was born exactly where the mosque stood. The demolition led to widespread anti-Muslim violence, and erupted in the Bombay riots of 1992. Both the demolition and the Bombay riots catapulted the BJP as a party of national significance, leading to them winning the general elections in 1998 and installing Atal Behari Vajpayee as India’s first BJP Prime Minister.

14 Quoted in Mitta 2014, 237.

revenge on Muslims.<sup>15</sup> Collective memory of the pogrom has thus been mobilized through the marking of Godhra as a singular history-vanishing 'flashpoint'<sup>16</sup> that turns Hindus into victims, and blinds us to the deep and dispersed structures of prejudice which informed how the pogrom was meticulously planned much before the train caught fire. It also blinds us to the historical antecedents of *Hindutva* in Gujarat that did not erupt only as a spontaneous and reactionary response to Godhra (Yagnik and Sheth 2005).

The foregrounding of this small re-telling gains special significance at this particular point in contemporary Indian history, because Narendra Modi, the current Prime Minister of India, representing the Hindu nationalist BJP, was the Chief Minister and Home Minister of Gujarat in 2002. The pogrom was orchestrated under his watch, and it has been argued on the grounds of empirical evidence that it is the pogrom that consolidated the Hindu vote in Modi's favour, that led to him winning four consecutive State elections in Gujarat as Chief Minister since 2002 (Kumar 2002, 270-275); and in 2014 a sophisticated, media managed mixture of soft Hindu nationalism and robust neoliberal developmentalism was the resounding campaign call that got Modi elected as Prime Minister in an election that saw a clear majority emerge for a single party for the first time since 1984 (Bobbio 2013, 123-134; Chacko and Mayer 2014, 518-528; Simpson 2006, 331-348).

During the run-up to his prime ministerial campaign Modi was exonerated in 2012—given a 'clean chit'—by a Supreme Court of India appointed Special Investigation Team (SIT), whose independent functioning has rigorously been questioned for procedural, investigative and ethical lapses, especially in the way it has been complicit in protecting Modi from being criminally prosecuted (Mitta 2014; Setalvad 2013, 10-13). A protest petition by Zakia Jafri, a victim-survivor, against the SIT's exoneration of Modi was also dismissed by a court in Ahmedabad in 2013, upholding the 'clean chit' (*Hindustan Times*, December 26, 2013). In response to this judicial exoneration of his accountability as head of state, Modi had tweeted 'truth alone triumphs' (Ibid.). In fact, if postcolonial India's ostensibly secular legal system, with particular regard to the Apex court, had to write its autobiography, it would repeat and echo Modi's tweet with equal exuberance when it comes to the judiciary's performance in delivering justice in cases of mass anti-minority violence, including Gujarat 2002 (Grover 2002, 355-388). Despite the failures in investigation and prosecution, judicial rationality—even in its condemnation of Modi as a 'modern day Nero' (*Zahira Habibulla H. Sheikh vs State Of Gujarat*, 12 April, 2004)—has projected

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15 Atal Bihari Vajpayee, the BJP prime minister in 2002, buttressed this logic to justify the pogrom when he said at the Goa speech: 'What happened in Gujarat? If a conspiracy had not been hatched to burn alive the innocent passengers of the Sabarmati Express, then the subsequent tragedy in Gujarat could have been averted. But this did not happen. People were torched alive. Who were those culprits? [...] The subsequent developments were no doubt condemnable, but who lit the fire? How did the fire spread?' (quoted in Varadarajan 2002, 450-451).

16 Jasbir K. Puar, citing David Kazanjian, understands a 'flashpoint' as 'a centripetal turbulence of illumination so powerful that it may blind the past even as it spotlights the present and lights up the future' (Puar 2007, xviii).



itself as an almost transcendental arbiter, uncontaminated by any complicities with the deep structures of anti-Muslim prejudice of *Hindutva* that formed the foundations of the pogrom. In fact, in 1994, it was the Supreme Court of India that granted judicial imprimatur to the idea of *Hindutva*, recognizing it as a way of life, rather than neo-Fascist ideology, providing much fillip to the institutionalization of *Hindutva* which has only been strengthened over time (Cossman and Kapur 2001; Ronojoy Sen 2010).

Modi's version of the truth about Gujarat 2002 can be deciphered from his response in an interview to *Reuters*, where he likened his feelings for the victims as the sadness that a person in a car would feel if the driver runs over a puppy (Colvin and Gottipati 2013). Regarding continuing to fund relief camps for the Muslims displaced by the pogrom, Modi has expressed eugenicist panic about how they can turn into 'child producing centres' that will breed more Muslims (*Outlook*, September 30, 2002). The possibility of him expressing even an iota of remorse for the pogrom had turned so absurd, that a news outlet had to speak of it in the form of an April Fool's day joke (*Firstpost*, April 1, 2013). His standard refrain whenever asked about the 2002 violence has been to say 'Why even talk about 2002? [...] It's the past. What does it matter?' (Quoted in Dalrymple 2014).

### 3. Beyond an amorphous politics

It is this rhetoric of Modi's "let's move on" that has animated a lot of the dominant legal and aesthetic discourses about how to remember the Gujarat pogrom. This history-vanishing point of view, however is not reflective of a practice of denial, but one which even while acknowledging the horror of the pogrom, either traces everything about it back to what it believes to be its originary cause, that is Godhra, or it relegates 'all violence to an amorphous "politics"' (Ghassem-Fachandi 2012, 2). Such relegation works to guard against 'summoning a past that still vividly lurks in the present,' (Ibid., 2-3) and as Ghassem-Fachandi notes:

Such interpretations elide the more disturbing realization that not only do political parties manipulate constituencies for electoral gain, but people themselves become complicit in this by inhabiting representations, participating in acts and thoughts that have effects beyond the mere political calculations of those who organize violence. The political machinations of the pogrom reveal only half the story. (Ibid., 3.)

It is an attention to the mnemohistories of collective memory that can open up space for ways of remembering the pogrom that do not necessarily use the scaffolding of an amorphous politics to make the pogrom intelligible for public consumption and memorialization. The work of reconstructive imagination in the way I use it in this essay is thus, not about testing the mimetic accuracy of *a posteriori* narratives of the pogrom—in this case law and cinema—but to lend solidarity to the 'right to story-telling that the vulnerable in Gujarat are asked to, [and sometimes have been forced

to] abandon' (Visvanathan and Setalvad 2014, 122).

This essay is interested in understanding the discursive intimacies and encounters of law and cinema in doing the work of reconstructive imagination that engender collective memories of the Gujarat pogrom. In these times of information overload—particularly in the way Gujarat 2002 has been spectacularized in media publics (Jain 2010, 163-179)—I argue that what should concern the critical jurispudent is not a contest between memory and forgetting, as most on the secular-left in India continue to claim and fear with regard to the neoliberal whitewashing of the memories of the Gujarat pogrom, but rather the *ways* of remembering that are brought into being by the collective workings of law and cinema.<sup>17</sup>

In the last thirteen years since the 2002 pogrom, a significant archive of memorialization in Bollywood films has come to exist. The most notable of these films are *Dev* (Nihalani 2004), *Parzania* (2006), *Firaaq* (2007) and the previously mentioned *Kai Po Che*—all which use the Gujarat pogrom as part of their narrative plots to reconstruct the events of the pogrom, and also to offer political and cultural commentary on the event.<sup>18</sup> Rather than *Kai Po Che*, which I referred to in the beginning, in this essay I will focus on *Dev*—the first Bollywood film memorializing the pogrom to be released in 2004.

*Dev* is a part of popular Hindi cinema of Bombay, which in recent times, as Ashish Rajadhakshya notes, has 'Bollywoodized' Indian cinema,<sup>19</sup> having turned it into a 'culture industry', that is constantly 'being created and marketed' as an aesthetic genre, industrial product and economic practice (Rajadhyaksha 2008, 20). In its culture industry avatar, the cinema occupies an extremely significant place in India's cultural, political and public life and in the wake of Bollywoodization in its

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17 I have repeatedly used the expression secular-left in this essay to identify a certain political position that I ally with. In making the instant claim, my aim is to in fact argue against that very position. This particular political juncture in the new India is indeed a moment of reckoning for the secular-left for having failed to offer any meaningful resistance to the collective rise of the combined forces of *Hindutva* and neoliberalism, a brand of politics of which Modi is the torchbearer. Despite its best intentions, the secular-left's failure in its attempts to keep alive the small memories of Gujarat 2002 can be blamed on its logic of positing secularism and *Hindutva* in untouchable opposition. Such a clear opposition overlooks how *Hindutva* politics speaks and gains recognition through the very language of secularism and liberal rights. The secular-left's Manichean logic of thinking of *Hindutva* as evil and secularism as sacred forecloses readings of the practices of postcolonial secularism that are foundational to the advancement of *Hindutva* politics and neoliberalism, and even works as a cover for the secular-left's own complicities with developmentalism, legalism and indeed *Hindutva*.

18 As far as I am aware, there are four other Bollywood films in which the pogrom features either centrally or marginally as part of the fictive plots. These are: *Chand Bujh Gaya* (2005), *Road to Sangam* (2009), *Mausam* (2011), and *Rajdhani Express* (2013). Of these, *Chand Bujh Gaya* was involved in litigation to fight cuts demanded by the Central Board of Film Certification because the character of a minister in the film allegedly resembled Narendra Modi, and *Rajdhani Express* was taken to court by Qutubuddin Ansari, a pogrom victim-survivor, who alleged that the film used his photograph, which had turned him into the iconic face of the pogrom, without consent.

19 Bollywood does not carry a stable meaning. As M. Madhava Prasad writes: 'It is precisely the act of naming that is the most interesting aspect of Bollywood. It is a strange name, a hybrid, that seems to at once mock the thing it names and celebrate its difference [...] Today, the term "Bollywood" has become naturalized not only in the English-language media, which is probably the term's original habitat, but also the Indian-language press, not only among journalists but also film scholars' (Prasad 2008, 41).

transnational economic lives (Mishra 2002; Ganti 2013). M. Madhava Prasad has called the Indian cinema ‘a site of ideological production [...] as the (re)production of the state form’ (Prasad 1998, 9). Bollywoodization has entrenched this further, with the emergence of ‘techno-nationalism’ as ‘*the* Bollywood thematic’ (Rajadhyaksha 2008, 29, emphasis in original). This thematic proffers ‘a discourse of love and a discourse of law—the two fundamental registers of universality’ (Prasad 2008, 46) that has made Bollywood cinema ‘indispensable to the State’ (Rajadhyaksha 2008, 34). It has made the film industry win ‘for itself, a distinct, even unique, space for spectatorial address and spectatorial attention that even today is not shared by any of its other ancillary industries [like] [...] television...’ (Ibid., 35). Bollywoodization’s spectatorial affects, both inside and outside the theatrical space, and across geographical locations, are sutured through the cinema’s address that produces a distinct public of cinematic citizens (Liang 2005, 366-385) where the ‘ticket-buying [or DVD buying] spectator assumes certain rights like that of ‘the right to enter a movie theater, to act as its privileged addressee’ (Rajadhyaksha 2008, 33). As Rajadhyaksha notes: ‘It is important [...] to recognize that spectators were, and continue to be, symbolically and narratively, aware of these rights, aware of their political underpinnings, and do various things – things that constitute the famous “active” and vocal Indian film spectator...’ (Ibid.) as a cinematic citizen.

These are very significant observations because it is in the realm of the state/nation/affect analytic that cinema’s relationship to law and memory is both forged and fraught. Bollywood cinema, thus, provides a valuable archive for an analysis of how collective memories of the Gujarat pogrom and its relation with law, are actively engendered and ordered. While photographic or documentary images of 2002 have focused on phantasmagoric violence, films have woven fictive representations of the violence with narratives of the everyday and ordinary that Bollywood cinema’s many publics can connect with at the level of the quotidian and not the exceptional. The use of music and songs, typical of the Bollywood genre, add texture to the fictive narrative that enhance their affective appeal, especially how it has been used in the conjuring of a national imaginary in the new India (Dutta 2013, 231-245).

Bollywood cinema’s reconstructive imagination of the pogrom not only commemorates the event, but also develops a vision of cinematic justice that calls on imaginations of law to play a specific role in the memorialization of the pogrom. I will demonstrate how *Dev*, even while recognizing the horror of the pogrom, offers a vision of justice that valorizes the violent techniques of postcolonial state-making, which actually formed the foundations for the pogrom. In its memorialization of the Gujarat pogrom, *Dev*’s filmic archive of collective memory works as a ‘narrative compact’ (Basu 2012, 12) between law and cinema to engender a particular way of remembering: one that aligns itself with the state-making practices of the new postcolonial India, even as it acknowledges the horror of the event. This way of remembering works through what I provisionally call a ‘developmental

juridical rationality', practiced through the triad of secularism,<sup>20</sup> legalism<sup>21</sup> and developmentalism.<sup>22</sup> This rationality, even as it condemns the visible violence of religious sectarianism, keeps the deep-seated structural and ideological violence of the putative secular postcolonial Indian nation against its Muslim minorities intact.

#### 4. Cinema as minor jurisprudence

In its examination of the Gujarat pogrom, legal analysis has remained mostly concerned with the institutional discourse of trials, investigations, judgments and legislations, focusing on criminal law issues related to impunity, constitutional issues related to 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 analyses; however, the aesthetic dimensions of law have not been attended to in this body of legal work on Gujarat 2002, despite the fact that law occupies a significant place in all aesthetic reconstructions, particularly films.<sup>23</sup> As I understand, this is because, on the one hand, law in jurisprudential analysis of the pogrom has seldom been imagined as an aesthetic category and on the other, law is constantly burdened by the demands of being a problem-solving practice, meant only to deliver justice as quantifiable result: convictions, compensation, reparations and legislations.

I understand cinema as a credible source of jurisprudence that we encounter as the subterranean other of the hegemonic jurisprudence of state legalism. The state in practicing its sovereign craft to mete out justice for the victim-survivors of the pogrom, has turned *parens patriae*. This doctrine which has been used as a 'spectacle of emancipation' and parental care by the state to absolve itself of accountability in cases of mass harm in India (Sircar 2012, 527-573), is aptly captured by the Ciceronian maxim *salus publica suprema lex* (the safety of the state is the supreme law). The working of state law towards justice for victim-survivors is a means for the very state that enabled the pogrom, to secure its symbolic and sovereign power, to keep intact the 'weighty mythology', of what Sudipta Kaviraj has called 'the imaginary institution of India', born out of a 'narrative contract' between history-making and the nation, which makes the idea of the Indian nation an 'ideological construct' (Kaviraj 2010, 167).

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20 'The modern concept of secularism in India [...] is borrowed from western history and has been, during the last one hundred years or so, a symbol of the efforts to interject history and redesign contemporary Indian life according to the demands of that history. This concept has a clear normative component: religion and ethnicity should be banished from the public sphere and an area should be marked out in politics where rationality, contractual social relationships, and *realpolitik* would reign' (Nandy 1995, 41, emphasis in original).

21 'Legalism' is understood as a governmental obsession with 'rule following', and an over-reliance on law reform as forms of governance practice (see Shklar 1964; Brown and Halley 2002).

22 'By developmentalism—to be distinguished from development—I mean an ideological orientation characterized by the fetishization of development, or the attribution to development of the power of a natural (or even, divine) force which humans can resist or question only at the risk of being condemned to stagnation and poverty' (Dirlik 2014, 30-31).

23 Two notable exceptions are: Nussbaum 2007 and Kapur 2006, 885-927.

Aesthetics, and in this case cinema thus, enters this story not as an end to state law, but as an encounter with what Peter Goodrich calls a ‘minor jurisprudence’, that repeatedly challenges ‘the dominance of any singular system of legal norms’, and ‘neither aspires nor pretends to be the only law or universal jurisprudence’ (Goodrich 1996, 2). It is necessary to clarify that I do not think of minor jurisprudence as equivalent to legal pluralism. I use the concept to not talk about a diversity of legal imaginations, but how law needs to be understood as an assemblage, or what Deleuze and Guattari have termed ‘the machine of justice’ (Deleuze and Guattari 1986, 81). A recognition of law as an assemblage of minor jurisprudences is an assertion that there is nothing like a major jurisprudence—because the machine of justice is a constantly mutating assemblage based on the jurisdictions of minor jurisprudence that it is located in.

I also don’t valorize minor jurisprudence in the aesthetic archive merely as a romantic category of resistance to hegemonic state law. Creating a hierarchy between law and aesthetics defeats the very aim of thinking about their conjoined habitus—‘narrative compact’—in the making of collective memory, and their consequent ordering through juridical developmental rationality. Rather, my account of minor jurisprudence, in reading *Dev* is a story of complicities—between law and aesthetics, their inflections and contaminations. Understanding minor jurisprudence as such becomes necessary given why I have chosen to characterize Gujarat 2002 as a *pogrom*, and not as riot or genocide, as it has generally been understood in most of the existing literature on Gujarat 2002.<sup>24</sup>

I draw on the work of Parvis Ghassem-Fachandi, who understands a pogrom as: ‘an event driven by [the narrative compact of] words and images, as much by the associations and invocations that precede it as by those that accompany it. The enactment of the Gujarat pogrom followed a script collectively shared on the streets and in the media representations’ (Ghassem-Fachandi 2012, 1): ‘the pogrom was an acting out of [this] imaginary script’ (Ibid., 64-65). The narrative compact of law and cinema—in the ways in which it has contributed to the making of a disgusting Muslim subject—has been ‘the symbolic repository to imagine violence’ (Ibid., 65) that was already being performed in Gujarat much before the actual violence began on February 28, 2002. And by extension, has also contributed to imaginations of post-violence justice. Ghassem-Fachandi writes:

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

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24 For a discussion on conceptual distinctions and similarities between these terms see Brass 1996 and Brass 2006. The terms pogrom and genocide carry derivative valence, and enable making Gujarat 2002 intelligible to a primarily international audience for whom the Holocaust is the most identifiable point of historical reference. Riot has remained the preferred term in India, given that it is the only way collective violence is defined in the law. During my field travels in Gujarat these English terms were seldom used to identify 2002. Some of the vernacular terms used were *dhamaal*, *hullad*, *aandhi*, *toofan* and *qayamat*. I point at this politics of naming to provide a sense of the difficulty in drawing equivalences between the English and vernacular expressions through translation.

mimetic desire that preceded the Godhra incident and provided a rationale for the enactment of violence. (Ibid., 65.)

This script of violence emerges out of the entanglements and intimacies between law and aesthetics, both as method and meaning, that frames and orders collective memories of the pogrom. Taking minor jurisprudence of the cinematic archive seriously, can reveal what Soshana Felman calls the 'juridical unconscious' (Felman 2002) in this script, which is the affective life of the law, as lived in the cinematic publics of Bollywood.

### **5.A jurisprudential-aesthetic reading of Bollywood's Law**

Given law's symbolic and spectral presence in the way the filmic reconstructions of Gujarat 2002 frame collective memory, it is imperative that law is understood as a discursive category that is not restricted only to the texts of legislations and judgments in its making of collective memory, but also informs aesthetic imaginations of justice. I use a jurisprudential-aesthetic lens as a method of reading *Dev* to understand the work of law *as* and *in* aesthetics, in fashioning particular ways of remembering the pogrom. By *law as aesthetics*, I mean law's aesthetic incantations beyond its scriptural organization and articulation, and by *law in aesthetics*, I mean the form and place of law in aesthetic imaginations of justice. Such a reading renders visible the workings of the law/cinema narrative compact in the making of collective memories of the pogrom, and managing the aftermath of atrocity.

Building on such an understanding, the jurisprudential-aesthetic lens as a methodology of reading cinema seeks to avoid the two standard approaches in law and film scholarship. The first, is to not 'reduce film to a resource for specific legal issues, points or questions', and second, to not let 'each medium [law and film that is] retreat [...] to its own corner relatively unscathed and looking pretty much as it had before the encounter' (Seymour 2007, 107). In other words, this method will read law's representations, not in the corrective or mimetic, but the 'affective register', i.e., to read film as a jurisprudential event (Buchanan and Johnson 2009, 33-60). *Dev* will not be read only for the story of the pogrom that it tells, but also the intensity it generates through its visual and auditory dimensions in engendering particular ways of remembering the pogrom (Ibid., 39).

The minor jurisprudence of cinema, will thus be considered as a system of memory (Goodrich 1996). The significance of unravelling minor jurisprudences in the aesthetic archive of cinema lies in the fact that the 'moving image provides a domain in which legal power operates independently of law's formal institutions' (Sarat, Douglas and Umphrey 2005, 1). In lending meaning to social relations, law and film share a relationship, in which they use their distinctive and discursive narrative styles to make powerful symbolic gestures toward witnessing and truth telling. As Jessica Silbey writes:

The affinity of law and film lies in their mutual manufacture of truth through strategies of representation and storytelling and also in the power of these truth

claims to structure and regulate social relations. Film, no less than law, changes our perceptions of reality; it shapes our understanding of the world. The power of both film and law derives at first from the intensity of the personal faith in believing what we see [and hear] (*bearing witness and judging based on the act of witnessing*). (Silbey 2014, 26, my emphasis.)

Imaginations of cinematic justice, thus, emerge from this relationship that law and film share in their ability to open up the space of affective reception such that the act of embodied witnessing and the responsibility of judging coalesce in the spectator. By cinematic justice I do not only mean the representation of law and justice in film, but more importantly, as Alison Young puts it, ‘how cinema is jurisprudence’, in how it generates judgment outside of the scriptural confines of law books, and architectural confines of the court room (Young 1997, 31). A double-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 *Dev* as an instance of Bollywood cinema’s mnemonic reconstructions of collective memories of the Gujarat pogrom. Such a reading shows us the way Bollywood’s visions of cinematic justice do not make its spectators forget the pogrom, but at the same time orders the *ways* in which it is remembered.

Since 1991, when the Indian economy was liberalized—that temporal marker of the birth of the new India—mainstream Hindi cinema’s form, content, reach and consumption started appealing to an audience that cuts across class, caste, religion, gender and national barriers. What was once, in the words of Ashis Nandy ‘a slum’s eye view of politics’, has today also become a ‘*haute bourgeoisie*’, view of politics as well (Nandy 1999, emphasis in original). 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’ (Viridi 2002, xi). What makes Bollywood cinema attract such wide-ranging appeal is what Ranjani Mazumdar refers to as its ‘techno-folk form’—like Rajadhyaksha’s ‘techno-nationalism’ discussed before—which is achieved ‘[by] combin[ing] folk traditions with new cinematic technology [that offers an] unabashedly hybrid cultural form that narrates the complicated intersection between tradition and modernity in contemporary India’ (Mazumdar 2007, xvii). This hybridity is sustained by invoking symbols of developmentalist desire on one hand—democracy, rule of law, wealth, the market, glitz, fashion, technology, urbanity, exotic foreign locales, the good life—and on the other, by appealing to tropes of relationality in the family, community and most importantly, the nation.

The complicated intersection between developmentalist desires and tropes of relationality does not always happen through neat categorizations of the former as markers of modernity and the latter as tradition, particularly at a time in the new postcolonial India, where the lines between the state and the market are increasingly getting blurred. Bollywood primarily produces privately funded cinema, so while the films can be said to have deep investments in a proto-neoliberal ethos, they cannot be said to have a direct connection with promoting state propaganda. Yet, as filmmaker Saeed Mirza has sharply noted, ‘[a] certain kind of cinema exists only

because a certain kind of state exists' (quoted in Prasad 1998, 1). M. Madhava Prasad in his book *The Ideology of the Hindi Film* studies 'cinema as an institution that is part of the continuing struggles within India over the form of the state' (Prasad 1998, 9). Although written in 1998, within a few years of India liberalizing its economy, Prasad's observations still carry trenchant currency:

Cultural production too registers this reality through the recurring allegorical dimension of the dominant textual form in the popular cinema. [...] What the allegorical dimension of texts represents is the continuing necessity to conceive the state form which will serve as the ground for cultural signification. Through the allegorical scaffolding, texts register the instability of their ground of practice and signification, as well as the continuing possibility of struggles *over* the state, of struggles to reconstitute the state. (Ibid., emphasis in original.)

The most potent site for contests over the allegories of the state form is cinema in general and Bollywood cinema in particular. In the mythology of the new India—marked by the narrative contract between *Hindutva* and neoliberalism—the state and the nation seamlessly merge as a dominant allegorical trope in this kind of cinema, which, historically, as many have claimed has been 'an exemplar of secularism,' with 'Islamicate roots' (Chadha and Kavoori 2008, 131). As Jyotika Viridi writes in her analysis of representations of the "nation" in mainstream cinema:

Popular films touch a major nerve in the nation's body politic, address common anxieties, and social tensions, and articulate vexed problems that are ultimately resolved by presenting mythical solutions to restore an 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 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. (Viridi 2002, 9.)

Law, in all its discursive forms is the scaffolding that plays the role of framing the allegories of the nation-state form. The Indian cinema does not have a distinct "law film" genre, although, as Prasad has pointed out, in the wake of Bollywoodization, a 'post-national aesthetic' has developed 'where the old dramatic courtroom confrontations seem to have lost their place,' replacing law as one of the fundamental registers of cinematic universality with a rise in an Anglicized register of love (Prasad 2008, 47). This replacement, however, as I understand is that of law's statist symbols, like that of the courtroom. But even in this new discourse of love, the meta-trope of the nation, and the sub-tropes of community and family, draw on *Dharmic* thinking (traditions of Hindu Law founded on the *Dharmaśāstra*)<sup>25</sup> in moments of 'acute

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25 As Donald R. Davis, Jr. writes: *Dharmaśāstra* are 'a specific genre of text in the Sanskrit language,' that 'contain Hindu jurisprudence, a way of thinking about law from a distinctively Hindu perspective' (Davis 2010, 12-13). *Hindutva* ideology has historically drawn its inspiration from the *Dharmaśāstra*, among other classical Hindu legal texts (Sharma 2002, 1-36).



crisis, (Viridi's ethical dilemmas) 'to close the gap between the fallible world of human law and a divine ontology of justice' (Basu 2010, 3). As Anustup Basu, drawing on Derrida, 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' (Ibid.).

This ancient-mythical rendering of justice in Bollywoodized cinema, seems to coincide with what has been 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' (Sarat, Douglas and Umphrey 2005, 11). 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' (Sherwin 2005, 106). The trope of the myth, as Silbey notes, plays a role in connecting law, film and memory: 'film, like memory can be mythic [...] This mythic memory is law's popular consciousness' (Silbey 2014, 31). The mythic in the cinematic allegories of law and justice draws on *Dharmic* thinking, which affectively marks the Hinduness of the nation-state's imagination in Bollywood cinema. Keeping this myth alive, even when fractures and fragments on the nation's filmic canvas contest it, is the ideological script for Bollywood cinema. This mode of *Dharmic* address is directed at the spectatorial publics of a community of cinematic citizens for whom the secular nationalism of Hindu thought is held up, as Tejaswini Niranjana notes as 'a marker of the readiness to enter the "modern" age, and the modern person produced as "Indian" was the free, agentive, romantic subject of liberal humanism' (Quoted in Liang 2005, 372). This modern cinematic citizen is also a mythic construction: 'while allegedly a neutral category, is invariably marked invisibly as middle class, upper caste, Hindu and male' (Ibid., 373).

## 6. *Dev*: A Hindu Constitution?

Made by critically acclaimed filmmaker Govind Nihalani, with super-star Amitabh Bachhan in the lead, the violence of Gujarat 2002 is central to *Dev*'s (2004) narrative, though it is not represented as a pogrom, but as a riot. *Dev* was the first Bollywood film made on the Gujarat pogrom. Its theatrical release took place few months ahead of India's general elections in 2004 (in which the Hindu right wing BJP was voted out at the Centre, though continued to win elections in Gujarat), 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), was shifted out of Gujarat to Mumbai (to guard against subversion of justice by the State government).<sup>26</sup>

*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

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<sup>26</sup> See Dhavan 2003.

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. The violence against Muslims in the film is preceded by a precipitating event like that of the Godhra train burning incident. *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, much like *KPC*, who demanded a ban, claiming that the film could instigate sectarian tensions (Pandya 2004).

As journalist Ayesha Khan reports, when *Dev* released in Vadodara, cinema theater owners put out advertisements in local dailies calling on both Hindus and Muslims to come and watch the film, to get as much business as possible, fearing that it might be banned by a court order. The fact that *Dev's* story was similar to events related to the pogrom, especially the Best Bakery massacre that took place in Vadodara, was apparent from the text of an advertisement, which read: 'Watch Vadodara's Zaheera Sheikh-inspired Kareena Kapoor's role. Naked portrayal of riots, inactive police force and non-performance at the behest of the chief minister'. In fact, as Khan noted, the audiences would shout out 'Zaheera Sheikh' when the actress Kareena Kapoor appeared on the screen (Khan 2004). *Dev*, it is possible to argue, brought into being, through its surrogate address about sectarian violence, a cinematic public that identified the film with the Gujarat pogrom, despite its disclaimer of being fictitious.<sup>27</sup> This identification also wasn't mere familiarity with the event. As Martha Nussbaum wrote commenting on her experience of watching the film in an Ahmedabad theater: 'the mood of the audience was staunchly anti-Muslim' (Nussbaum 2007, 10).

Like any other Indian film approved for public exhibition, *Dev* inaugurates the legal-aesthetic narrative contract/compact of cinematic citizenship by displaying a certificate from the CBFC (Fig. 1), that declares its images and sounds as legitimate speech, an archive of state sanctioned memory, and its audience are made the contractually rightful recipients of its memorial narrative. The film was classified for viewing by 'Adults Only', constituting an imagined mature cinematic public, as was referred to in the *KPC* judgment discussed at the beginning of the essay, who might be able to absorb the film without being provoked to resort to violence, unlike the murderous mobs during the pogrom. One might think of the censor certificate as what Peter Goodrich has called 'obiter depicta' (Goodrich 2014): an iconic legal

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<sup>27</sup> This particular spectatorial identification also carried strong juridical-aesthetic traction, given that Zaheera Sheikh in the Best Bakery judgments was repeatedly referred to as the 'star witness'—like that of a movie star—and was accorded fallen celebrity status by the media, not so much for the violence she witnessed and experienced, but for being the unreliable Muslim who flip-flopped on her testimony, ultimately being convicted for perjury by the Supreme Court of India.

emblem that any film-watching Indian will be extremely familiar with, which is the working of a governmental rationality, lending life and form to the relations between law, cinema, nation-state and the citizen. I would like to understand this rationality as part of Bollywood's 'cinematic apparatus and its pedagogic role as the disseminator of modernity' (Prasad 2008, 46).

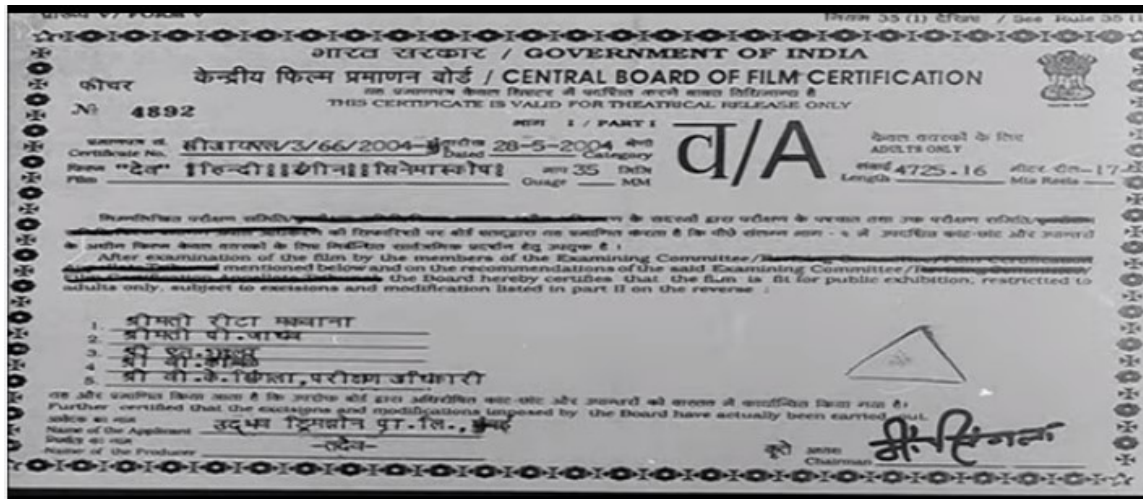


Figure 1: 'Obiter Depicta': Adults Only

The English and Hindi titles of *Dev* digitally stylized to emerge out of flames, suggesting a trial by fire (Fig. 2), is accompanied by an intense background score in which a chorus of deep male voices recites a Sanskrit *shloka* (chant) from Chapter 2, Verse 27 of the *Bhagavad Gita*: '*Karmanye Vadhikaraste Ma Phaleshu Kadachana, Ma Karmaphalaheturbhurma Te Sangostvakarmani*'. Its English translation would mean: 'You have a right to perform your prescribed duty, but you are not entitled to the fruits of action. Never consider yourself the cause of the results of your activities, and never be attached to not doing your duty' (Prabhupada 1983, 69). It is this message from the *Gita*—'of action without consequence' (Kapila and Devji 2010, 271)—that frames the ethico-juridical universe that the film conjures.

The invocation of the Hindu holy book and the use of language in the title sequence offer a telling instance of how *Hindutva* ideology subliminally informs *Dev*'s affects of initiation and spectatorial address. The use of English and Hindi in the titling suggests the practice of what Prasad has called the 'structural bilingualism of the Indian nation-state': 'a state of affairs where the multitude of Indian languages (here counted as one) function under the direction of a meta-language in which alone the national ideology can be properly articulated' (Prasad 2008, 45). It is through Bollywood cinema that the meta-languages of English and Hindi have thus emerged as 'defining the linguistic order of new India' (Ibid.), in which English works as the language of secular neoliberal aspiration, and Hindi as that of secular nationalist unity: a classic instance of techno-nationalism, or folk-nationalism at work. What this has done is to wipe out the Islamic presence of Urdu—much in line with what the proponents of *Hindutva* would ideally want—as a language that would always

appear on film posters (Mazumdar 2003), and opening title sequences of Bollywood cinema 'as a matter of routine' (Prasad 2008, 46).

The seamless blending of the Sanskrit *shlokas* from the *Bhagavad Gita*, and the English-Hindi titling of *Dev*, initiates the pedagogical project of Bollywood cinema in naturalizing *Hindutva's* secular narrative that reduces anti-Muslim violence to tragedy and politics, and celebrates the mythical Hindu foundations of modernity in India that the Constitution is popularly believed to enshrine.<sup>28</sup>



Figure 2: 'Structural Bilingualism'

*Dev's* story 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 (played by Amitabh Bachchan), a joint commissioner of police in Mumbai. The film's subtitle—'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-state from 'terrorists' so seriously, that he is known for carrying out and defending extra-judicial killings. The film portrays Dev's belief in the supremacy of law as a virtue, especially in the way he repeatedly declares in the film that he

28 While the use of English has powerfully aided the processes and practices of Bollywood in its transnational developmentalist avatar, the way in which Hindi has come to displace Urdu can be read as the fulfilling of a juridical mandate enshrined in Articles 343 and 351 of the Indian Constitution that make Hindi the official language of India, and directs the state to be duty bound to promote and spread it 'relying *primarily* on Sanskrit', considered by Brahmins to be the language of the Gods (Singh 2005, 921, emphasis in original).

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 national security by killing anyone, irrespective of identity, who poses a threat to the nation-state.

The other important character in the film is Dev's very good friend and colleague, Tejinder Khosla (played by Om Puri), whose ideology turns him into Dev's antagonist. Tejinder identifies Muslims as the Outsiders who are the reason for India's ills. His mission, in the fight against terrorism, is to root out all Muslims, to annihilate them. The Outsider metaphor has been repeatedly used in Bollywood cinema in its representations of Muslim characters; and despite continuing to narrativize the Muslim as exoticized, marginalized or, and more increasingly, demonized (Chadha and Kavoori 2008, 131), *Dev* in Bollywood's 'techno-nationalist' tradition rehabilitates the fractured nation through the tropes of familiarity, diversity, nationalism and a belief in the rule-of-law.

A parallel narrative in the film portrays the lives of a young Muslim man called Farhaan Ali (played by Fardeen Khan), who has just returned to Mumbai after completing his law degree from Vadodara, and his girlfriend Aaliya (played by Kareena Kapoor), 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 pluralism and believes in the ideologies of non-violence and pacifism of anti-colonial leaders like Mohandas Karamchand Gandhi, and Khan Abdul Gaffar 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' (Singh and Deva 2005, 649-686) and is an exception to the rule of the *bad* Muslim as terrorist (Mamdani 2004). 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. It is here that an invocation of law sets up the crisis in the film, which unfolds as an ideological conflict, on the one hand, between Farhaan, as a Muslim and a law graduate, whose lived experience considers the Constitution to be a document worthy of suspicion, and on the other, Dev, as a police officer, whose lived experience suggests that even extra-constitutional violence by the police is justified to uphold the Constitution.

At a peaceful protest demonstration against anti-Muslim police brutality, Farhaan's father is killed by the police, when Dev orders his cadres to open fire after the crowd turns violent. 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 fails an assassination attempt against Dev, but is then surreptitiously, without his knowledge, made to plant a bomb outside a Hindu temple. The bomb blast—akin to the Godhra incident, but in this case made clear as to have been carried out at the behest of the Muslim politician—kills several Hindus, provoking

retaliation against Muslims. This *pratikriya*, of the kind that followed the Godhra train burning—is openly led by a right wing Hindu politician, pointing at the 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 his sectarian agenda. Aaliya also survives the retaliatory violence, though she witnesses the killing of all her family members. In the middle of the violence, Dev helps Farhaan take Aaliya to the hospital, 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, asked Tejinder to ensure that Hindus get to freely vent their anger against Muslims for this blast. Dev arrives at the scene to find that Tejinder is waiting with the police squad as onlookers, 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 and authority to do so. He realizes the ideological differences between him and Tejinder. Despite political pressure, Dev organizes a public meeting 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. Despite threats to her life Aliya comes forward to testify, and inspires other women to do the same.

The *mise-en-scène* (Fig. 3) comprises a large makeshift tent, which has been erected right outside Noor Manzil. Inside the tent there is a table with the necessary legal documents in which FIRs will be filed. There are local leaders sitting on chairs behind the table. Dev speaks through a microphone that carries his voice to residents of Noor Manzil who have gathered on their verandahs to hear him speak and be spectators of what is on offer, lending a theatrical feel to the space. This space of the public meeting can be read as an allegory for what Dorsett and McVeigh have called a 'jurisdiction of conscience,' (Dorsett and McVeigh 2012, 112) in which it is not the victims who have to go to the law—that is to go to police stations to file their FIRs to put the law in motion—but it is the law that has ceremonially travelled to them. The jurisdictional boundaries between the private space of Noor Manzil, and the public space of the police station merge, and Dev embodies state law and carries it to Aaliya and other victim-survivors. The theatrical arrangement of the space also lends to it the form of a public court handing out popular justice outside of the architectural confines of a courtroom. However, here Dev presides as the judge and jury—he is the sole embodiment of the majesty of law. This is especially the case when on Aaliya's identification of the erring policemen, Dev suspends them without a hearing, and orders that a charge sheet be filed against them.



Figure 3: Noor Manzil's 'Jurisdiction of Conscience'

Meanwhile, 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 invokes the morality of the Sanskrit *shloka* from the *Bhagavad Gita* with which the film opened to emphasize 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, but Dev stands by his convictions. In the climactic scene, set right outside a symbolically imposing court building, 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 the trauma of 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, following Dev's instructions that he must keep faith in the law and start litigating. Dev, in an all-black attire, seated against a black background, in his transcendental post-death avatar fades in, repeating with singular intensity, in Amitabh Bachhan's famed baritone, the *Gita's* morality of relentlessly fighting for truth irrespective of consequence. The symbolic message, with which the film ends, is that the Muslim Farhaan, having given up on the path of violence to seek justice, will now follow the path of the secular law to seek justice for the violence against his community, and as a tribute to the Hindu Dev's courage and sacrifice.

*Dev* offers a memorial reconstruction of Gujarat 2002 that reduces religious strife in India to an amorphous politics, and portrays it 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 memorialization 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 religious violence, and equalizes its consequences on both majority and minority communities. The film's emphasis is on the fact that both sides suffer, that sectarian violence does not choose its victims based on religion, much like how Dev's secularism tells him not to kill terrorists based on their faith, but kill them nevertheless. Interestingly though, the retaliatory cycle of violence is initiated by Muslims, which is the reason why Hindus are forced to respond. As Sunera Thobani writes:

In the cinematic Gujarat—and India—[...] [t]he deeply institutionalized inequities and imbalance of power between Hindus and Muslims is rarely allowed to enter the frame, and if it is, the good intentions of the secular Hindu hero/heroine becomes a mitigating factor—his/her ideals and values, his/her personal acceptance of Muslims will set everything right. The Muslims who do not abide by these ideals and values are hopelessly naïve, and the proof of Muslim loyalty is, without exception, subservient to the values and embrace of enlightened Hindu characters, most of whom are secularists. (Thobani 2014, 493.)

This memorial ordering of reconstructive imagination 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.

Law occupies an extremely significant role in the film, both in metaphoric and material forms. Its aesthetic incantations are metaphorically embodied in the character of the film's protagonist Dev. Dev embodies the characteristics of the ideal nationalist: a benevolent patriarch, Hindu, secular, liberal and an unshakeable believer in the rule-of-law—he is the good secular Hindu hero. 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. In the traditions of the classic psychoanalytic reading of the law of the father, the good secular Hindu in Dev, and his unwavering belief in the rule-of-law, turns him into a father figure for the father-less Farhaan, and in the film's affective address to the cinematic public. In the ‘world of danger’ that the film conjures, Dev and his *Gita* inspired juridico-moral universe offers succor for ‘certainty and security’ and embodies the role of the ‘father substitute’ (Sarat 2000, 13). ‘[T]he father is the infallible Judge,’ writes Jerome Frank, ‘the Maker of definite rules of conduct. He knows precisely what is wrong and... sits in judgment and punishes misdeeds. The Law... inevitably becomes a partial substitute for the Father-as-Infallible-Judge...’ (quoted in Sarat 2000, 14).

Law's aesthetic incantations are further exemplified 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 (Fig. 4).



**Figure 4: Drawing room Constitutionalism: *Gita* as Conscience**

The location of this discussion, in Dev's elite living room, 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 *Bhagawad Gita* 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 powers 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, economy, justice delivery system, social equality and secularism, and that all of these virtues—democracy, development, and the justice system as I understand them—are founded in the Constitution for Dev. In an innocuous way Dev's assertions about the Constitution point at his passionate investments in the triad of developmental juridical rationality as well as its sacrality. 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.

In the *law as aesthetics* register, the Constitution of India is equated to the *Gita*. Dev's conscience—captured in the affective force of the Sanskrit *shlokas* that opened the film—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 both the Indian Supreme Courts' jurisprudence that did not find any reason for *Hindutva* ideology to be antithetical to secularism (Sen 2010; Cossman and Kapur 2001), and how the *Gita* has served as the inspiration for the founders of *Hindutva* ideology (Chaturvedi 2010, 417-435).<sup>29</sup> Dev is the hero of the film—he is characterized as progressive, secular and liberal (the unmarked Hindu in secular police uniform), he does not hate Muslims, but at the same time likens the Constitution to the *Gita*, which in a recursive way was the foundation of the imaginary script on which the pogrom was planned and executed. The film, interestingly, draws a distinction between Dev's good Hinduism, and Tejinder's bad version. The good version rationalizes, modernizes and secularises the imagined Hindu foundations of postcolonial India by using the Constitution as an alibi, whereas the bad version offers extra-constitutional justifications for the annihilation of Muslims. Both these versions ultimately celebrate soft and hard versions of *Hindutva* ideology. Dev's version speaks more to *Hindutva*'s neoliberal avatar that understands developmentalism and legalism as a means of assimilating the Muslim as 'reluctant citizen' (Visvanathan and Setalvad 2014, 125) into the Hindu nation's fold. If Muslims resist this governmental tactic, it will be 'read in jurisprudential terms as a self-imposed injury of an ethnic group caught in a time-warp and reluctant to embrace citizenship and development' (Ibid.). Farhaan's lawyerly transformation into the good Muslim citizen, as a seeker of justice using constitutional means, rehabilitates him and champions the promise of Dev's *Gita* as Constitution.

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 (*Business Standard*, January 12, 2014). Similarly, since after Modi's win in 2014, there have been attempts to include the *Gita* as a secular pedagogical text in school curriculums in BJP ruled states in India (Mohan 2015). This secular rhetoric of constitutionalism 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 (42<sup>nd</sup> Amendment) Act.<sup>30</sup> 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' (Singh 2005, 911, emphasis in original). The appeal to the Constitution, like in *Dev*, as the panacea for all injustices

29 The *Bhagavad Gita* is a complex political text, and might be read in myriad ways that do not necessarily lend it entirely to *Hindutva* appropriation (See Kapila and Devji 2013). However, under the present political dispensation it has served to strengthen *Hindutva* ideology in India than provide any meaningful resistance to it.

30 Available at <<http://indiacode.nic.in/coiweb/amend/amend42.htm>> (last accessed 20 June 2015)

against Muslims, and the contradictory projection of it as a sacred text that is secular, is in fact, institutionalized within India's juridical imagination.

In the Best Bakery case (*Zahira Habibulla H. Sheikh vs State Of Gujarat*, 12 April, 2004), where the Supreme Court, after ordering that the case be shifted out of Gujarat for fear for political manipulation by the State and to uphold Constitutional standards of fair trial, tried Zahira Sheikh—the key witness who turned hostile due to political threats against her and her family—held 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 the judgment by quoting from the *Manusmriti*—a classical Hindu religious scripture that also forms the basis of Hindu law—on the duties of a witness.<sup>31</sup> In upholding the secular Constitution, the court, much like Dev, Hinduised it. As Kalpana Kannabiran notes:

[...] by drawing justification from the Manusmriti to negate the liberty of a Muslim survivor of Hindu fundamentalist assault—the Supreme Court demonstrated by its own example the way in which discrimination interlocks with the loss of liberty in the case of persons belonging to religious minority communities, especially the women of these communities. [...] [T]he normativization by constitutional courts of conservative Hindu legal traditions embodied in the Manusmriti, and the situated reading of the constitution within the ideological frameworks of orthodox Hinduism, sharpens the crisis of constitutional disarticulation on the critical issue of non-discrimination. (Kannabiran 2012, 298.)

Moving on: 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,

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<sup>31</sup> The *Manusmriti* form a part of the *Dharmaśāstra* texts and serves as an important source of what constitutes Hindu law. Several parts of the *Manusmriti* are out rightly discriminatory towards women, and Dalits (see Doniger & Smith 1991). As has been argued, it is in fact the anti-Dalit foundations of Hindu scriptures that form the basis of the birth of *Hindutva* ideology in India (See, Menon 2006). For the historical connections between caste, *Hindutva* and violence in Gujarat see, Shani 2007.

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 or a prejudiced police officer like Tejinder. 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. As Ratna Kapur has argued in her assessment of the justice seeking mechanisms post the Gujarat violence:

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 [...] [T]he 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. (Kapur 2006, 889.)

By extension, the film addresses its cinematic publics, especially Muslims, to repose faith and trust in the Constitution and the courts. The idea 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, the sun shining on him, is an imposing building, painted white, and its environs look sanitized (Fig. 5). These material locations 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—which when introduced early on in the film, was shown to be a hideout for a Muslim militant. 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 secular home, and then enter the ostensibly secular space of the court in search of justice. The jurisdictional organization of the city and that of law and legalism are, thus, clearly identified in its aesthetic representations.



Figure 5: Farhaan meets the Court/ No more 'Reluctant Citizen'

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 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—he is placed above the audience's moral judgment because that was in the realm of his *Gita* inspired *Dharma* (juridico-ethical duty) to protect the nation. Farhaan, similarly, never demands justice for Dev's act of ordering the killing of his father, and many other Muslims at the protest rally.

*Dev*, thus, reconstructively imagines 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 cinematic citizen, as being fair to Muslims as long as they stand by the Constitution and the rule-of-law. The Muslim victim-survivors of the violence in the film 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, which 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 law is able to perform the promise of its powers that the film has celebrated.

## 7.A provisional closure

My reading of *Dev* through the jurisprudential-aesthetic lens has demonstrated the aesthetic forms that law takes in the making of imaginaries of cinematic justice, and in rationally ordering a way in which collective memory of the pogrom is actively reconstructed in Bollywood cinema. Despite not being a law film, this way of remembering that *Dev* engenders is framed by a Bollywoodized imagination/imagery of law and legalism. *Dev* recognizes the scale of the violence (chronology and facts aside), and also reposes enormous faith in the Constitution and rule-of-law as unquestionable paths to justice. While *Dev* condemns the violence, and mourns the dead, at the same time it also reifies Constitutional secularism and legalism 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 film. 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 have called 'developmental juridical rationality': the ordering of collective memory through the combined working of the triad of secularism, legalism and developmentalism. My reading of *Dev* was aimed at demonstrating the working of the first two techniques in the triad, and offer some brief sense of how the third works. Drawing on Michel Foucault's analytic of 'governmental rationality', and later critiques and interventions by postcolonial and other critical scholars, I provisionally 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' (Foucault 1991, 100). To do this, writes David Scott, government 'arrange[es] things so that people, following only their self-interest, *will do as they ought*' (Scott 1995, 202-203, emphasis in original). Secularism, legalism and developmentalism are projected by the new Indian nation-state as governmental practices for the welfare of its population, which is legitimated by the filmic reconstructions. The cinematic public is addressed to identify with these practices as virtues of governance, and hence, conduct themselves *as they ought*. According to *Hindutva* ideology—its two different hues embodied by *Dev* and *Tejinder*—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 who behave as reluctant citizens, thus, is a hindrance to the achievement of welfare of (Hindu) populations.

In Foucault's formulation, the conduct of government in modernity arrived through a periodization from control over the individual body (punishment), to panoptic control (discipline), to inducing violence free self-discipline *en masse* (biopolitics). Achille Mbembe argues that in postcolonial locations the operation

of governmental rationality works in ways where control over minds is coexistent with brutal violence over bodies (Mbembe 2003). 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'.<sup>32</sup> Such a tactic valorizes accelerated legalism and developmentalism as primary markers of secular constitutionalism and modernity, and is simultaneously accompanied by a conjuncture of violence and violation—thanatopolitics: 'killing rather than simply as allowing to die or exposing to death' (Gupta 2012, 17)—against minority groups, that remain implicitly tied to the Indian state's rational performances and enactments of legalism, not exceptionalism.<sup>33</sup>

In this essay, my attempt was to bring into conversation law and aesthetics and Indian film studies to take the minor jurisprudence of Bollywood cinema seriously as a memorial archive through which we can read the Gujarat pogrom both as a concentrated instance of the making of collective memory and the managing of its aftermath through cinematic imaginations of justice. In reading *Dev* through the jurisprudential-aesthetic lens, I demonstrated how aesthetic reconstructions of the Gujarat pogrom call on law to generate a way of remembering that is ordered by the workings of a juridical developmental rationality that recognizes the violence of the pogrom, but at the same time valorizes the state-making practices of the new India that laid the foundations of the pogrom.

The many cinematic publics of Bollywood reconstructions of the pogrom—including the other films that have memorialized the pogrom—can be said to have elicited three kinds of responses from urban, Hindu middle-classes who voted Modi to power: they were either happy about what happened to Muslims (because they deserved 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

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32 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, 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. (Mbembe 1992, 3.)

33 There is enough evidence to support the fact that brutal violence and institutionalized forms of prejudice against Muslims continues in India since Gujarat 2002, with legal impunity and social sanction. For instance, these have ranged from mass killings and displacement of Muslims in Muzaffarnagar in 2014 (Rao et al 2014); wrongful framing of Muslim youth in terror cases (Sethi 2014); and social and economic boycott in cities (Gayer and Jaffrelot 2011). Such treatment of Muslims in the new India does not always require the cover of *Hindutva* any longer, given how normalized anti-Muslim prejudice has become.

implications of creating a binary of the “fortunate us” and “unfortunate them” (Jain 2010, 163). Given how Modi has been deified in India, and the landslide victory of the BJP in 2014, pity, in my reading, is the closest sentiment of attachment that the elite and middle-classes, as well as the secular-left, have come to express for the victim-survivors of the Gujarat pogrom. This sentiment even while expressing feelings of injustice done to Muslims, have exacerbated anti-Muslim prejudice manifold and entrenched a deeper belief in the need for Muslim assimilation into Hindu ways of living and behaving; else their annihilation can be successfully rationalized and memorialized for national posterity—in law, in cinema, in our storytelling of small lives in the new India.



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