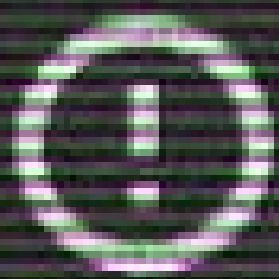


LAW AND MEDIA

RESEARCH DIARIES



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Shikhar Goel

Shruti Kaushik

Sagorika Singha

Susan Sreemala Yadavalli

Sonali Chugh

Media and the Constitution of the Political

Research Diaries: Law and Media | Media and the Constitution of the Political

Produced and Designed at the Sarai Programme, Delhi

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Introducing the TM-7 Research Diaries

Ravi Sundaram and Ravi Vasudevan

In 1955, the famous anthropologist Claude Levi-Strauss published *Tristes Tropiques*, a memoir/travelogue of encounters and analysis. Following earlier traditions of traveller journals, *Tristes Tropiques* significantly expanded the definition of an academic monograph.

The last two decades have vastly increased the formats of academic writing with the rise of digital media and online archives. In recent years academics have begun to take seriously the scholarly value of ethnographic encounters during the course of the research process. We now see the publication of research diaries, blog posts, annotations, and intellectual essays while research projects are under way. Citation indexes like the Chicago Manual of Style now have templates for citing online content, where social media is recognised for academic value, for both insight and misinformation. In every sense, academic value has been expanded beyond the research monograph and the journal article, with a greater acknowledgement of the provisional process of research. The value of this interim process was highlighted during the Covid-19 pandemic, as researchers issued temporary report cards and shared preprint publications.

The diaries by researchers associated with the Thematic Module 7 (TM-7) 'Media and the Constitution of the Political', the media module of the M.S. Merian – R. Tagore International Centre of Advanced Studies 'Metamorphoses of the Political' (ICAS:MP), must be seen in the context of this expansion of academic writing. What is presented here are records of a series of provisional encounters with research sites, materials, persons. Many of these encounters took place around the devastating circumstances of the COVID-19, which gives these diaries their unique charge. Everyone had to cope with personal tragedy. Even as researchers weathered individual loss and loneliness, it was near impossible to undertake old-style field work, interviews were often done remotely, and a scraping of online archives became an important resource in straitened times. To keep a discipline going, the research team would continue to post research notes and meet once a week online to discuss their work.

For media researchers in particular, the encounter with research objects is dynamic. Today, the traditional official archive has been expanded, ranging from online private collections, blog posts, Facebook, and twitter threads. As media is a time-technology which both records and intervenes in social landscapes with search algorithms, we are confronted with a dizzying array of material traces, which offer both riches and pitfalls for researchers. Social media users periodically share official documents and historical images from personal

collections, resources which had to be to cross checked by researchers. During the pandemic this digital process was accelerated as governments, citizens and courts went online. In every sense this has been a learning process.

The weekly diaries were assembled from archives of image, text, video, and audio material, including oral interviews which, during the pandemic, were undertaken by phone. The postings come across as journeys of discovery as researchers encounter new materials and try and make sense of them. The lengthy footnotes, screenshots, and archival material reproduced in these diaries are meant to capture the research process. Some research encounters have the wonder of a new discovery, some texts a phatic quality of transient encounter. In short, these should not be considered definitive accounts, but partial approximations generated within the constraints of time and space of biomedical catastrophe. We have preserved the provisional research vernacular of the writing and diverse writing styles to capture the variety of approach and engagement. Some researchers went on to write peer-reviewed journal articles, books, and chapters in edited volumes. It is interesting to compare how provisional encounters in this diary format sit alongside the formal academic work. We would suggest that the hinterland from which the rigorous scholarly argument is drawn has its own special status and validity as intellectual and experiential record.

Law and Media: The Diaries

Ravi Sundaram

The domains of law and media have shared a relationship of proximity and contagion since the coming of video in India since the 1980s. With the rise of digital social media infrastructures, the legal and the medial transact on a daily basis. Law is now a dynamic intermedia junction producing media events, forensic theatres and technologies of judicial record keeping and circulation. The legal trial has been a productive site for the constitution of media practices, researchers see a legal landscape whose material forms, practices and symbolic edifice are constituted by media.

The law and media collection of research diaries deals with these transformations over different sites and histories. The diaries are particularly interested in the media-technological conditions of the legal event. Researchers have mapped legal practices, law courts, forensic procedures, and the complicated phenomena of the media trial. In this collection researchers have looked the relationship between media evidence and law (Shikhar Goel), media spectacles and gendered violence in North-East India (Sagorika Singha), crimes against the state and media evidence (Shruti Kaushik), media witnessing, public speech, and humanitarianism (Susan Sreemala), and the histories of scandal and the legal event (Sonali Chugh).

An important note: These diaries are not authoritative legal commentaries on law and justice, but provisional encounters with the larger, shifting domains of legal culture.

Media Evidence and Law

Shikhar Goel

This collection is a representative sample of the work I did at The Sarai Programme of the Centre for the Study of Developing Societies, Delhi (CSDS) as a researcher from January 2019 to July 2021 funded by the M.S. Merian – R. Tagore International Centre of Advanced Studies 'Metamorphoses of the Political' (ICAS:MP). For the purpose of this collection, I have extracted some samples of the weekly research diary entries that I maintained during my time there. You will find here an array of material ranging from book summaries, annotated bibliographies of old newspaper articles, meditations on case law, ethnographic witnessing of trials in Delhi's District Courts, and interviews with lawyers and court clerks. Together, these diary entries document a period of transformations that Indian courts are undergoing as they find themselves working in a new media ecology littered with internet and camera-enabled mobile phones, social media, computer software, hard disks, and CCTV cameras. I observe this transformative period along the registers of jurisprudence, courtroom infrastructures, everyday lawyering strategies, and popular discourse. In line with ethnographic academic conventions, names of those interviewed have been changed.

Unfortunately, my work was cut short by the pandemic lockdowns and the subsequent deadly Covid-19 waves in India. This collection only marks the beginning of a larger intellectual project that aims to understand the constitutive relationship between law and media. Even though I left Sarai and the ICAS:MP team in July 2021, I continue thinking along these lines as a Ph.D. student at the Department of Media, Culture, and Communication, at New York University.

January 16, 2019

New Delhi

I used the previous week to think about a research project for myself. I am reading a book titled *Mechanical Witness: A History of Motion Picture Evidence in U.S. Courts* (Oxford University Press, 2009).

Here is what I am thinking:

The Research Objective

To investigate the history of image practices in the Indian courts.

The Provocations

1. The 2016 Jawaharlal Nehru University sedition case.¹ Here, videos (moving images) became the foundation for the case and as well as the media discourse around the events.
2. The abundant use of CCTV as anti-theft and security devices in our surroundings and city neighbourhoods.
3. The proliferation and democratization of cameras through mobile phones and other devices and their excessive use in recording critical and everyday events.
4. Indian Police now routinely video record protests, demonstrators, etc.
5. The ongoing debate around broadcasting the courtroom proceedings live on television.

Questions

How have images (paintings, photographs, films, x-rays, videos, etc.) been used in the Indian courtrooms? How have courts made sense of these media forms? How were/are they admitted as *admissible evidence*? What are the legal precedents that govern their use in the courts? What kind of legal, philosophical, and infrastructural challenges do these media forms bring to the courtrooms? How have different juridical agents such as lawmakers, lawyers, judges, jury members, police, forensic experts, private detectives, interested parties, scholars, and journalists, among others, responded to different image forms? What are the laws, guidelines, protocols, rules, and principles that govern their use in the courtrooms? What are the conventions of image interpretation for juridical purposes? Are they any

¹ *Kanhaiya Kumar vs State of NCT of Delhi*, Delhi High Court (2016). Available at <https://indiankanoon.org/doc/77368780/>. Accessed 14 January, 2019.

different from how images are understood in other contexts? How has advancing technology around these image forms impacted their use in the administration of justice? What does it mean to live in a world where justice goes beyond human capacities and becomes technologically aided? How do image practices in Indian courts differ from and interact with image practices in other institutions such as television, cinema, educational institutions, hospitals? How have image practices impacted the idea and procedure of justice? What can such an inquiry tell us about the relationship between images, truth, and law? How does it illuminate our understanding of the ontological foundations of the medium itself?

Possible sources

1) Evidence laws in India; 2) Case law around various image forms; 3) Newspapers; 4) Interviewing various agents; 5) Legal journals; 6) Trial transcripts.

April 8, 2019

New Delhi

Dear All,

On 25th March, I partly attended a conference “Future of the Digital Economy: Cross Currents in Emerging Regime.” I sat through two panel discussions, and these are some points that I found worth putting down.

Panel discussion 1: Data Security: Emerging Discourse on Encryption and Localization.

- Data regulation at some point is a sovereignty issue.
- Algorithms around data are more important than data itself. One of the panellists called for algorithm regulation. The reason for highlighting algorithms was that they help companies manipulate user’s online and offline behaviour.
- Data localization as a policy move was a major point of debate. Questions like “is data localization the best way to preserve privacy? Is data localization smart economics? Is data localization more about controlling people, than their privacy?” etc., were being asked. While the Reserve Bank of India, Srikrishna Commission, and the Government of India are pushing for data localization, some panellists thought it was not a good policy move.²
- Benefits of data localization
 - 1) Aids in police investigation,
 - 2) New jobs
 - 3) AI research boost.
- Harms of data localization
 - 1) Perception of protectionism (economically)
 - 2) Infrastructure costs
 - 3) Consumers pay more.

² Committee of Experts on a Data Protection Framework for India under the chairmanship of (retired.) Justice B.N. Srikrishna. *A Free and Fair Digital Economy: Protecting Privacy, Empowering Indians*. New Delhi: Ministry of Electronics & Information Technology, Government of India, 2018. https://www.meity.gov.in/writereaddata/files/Data_Protection_Committee_Report.pdf. Accessed 2 April, 2019.

- Data encryption and bilateral or multilateral data sharing arrangements between jurisdictions were being suggested as more globalization friendly solutions.
- Data ownership and Data monopolization came up as big issues. Big companies like Facebook control large amounts of data which is dangerous, what to do with the ownership structures of these tech giants was presented as a question to think about.
- Data ownership is a legally interesting issue to think about. Who owns the data one produces while interacting with various platforms on the internet? Is it the company, the user or the Government?
- Madan Oberoi, Special Commissioner of Delhi Police (Special and Tech cell), was part of the panel. I missed his introductory remarks where he had talked about police investigations. But I did hear his closing remarks where he lamented that people do not trust the Government, and service providers. "Trust is lacking between Government and users, and, users and service providers" were his exact words.

Panel discussion 2: Identity and Authentication in India's Digital Economy

- Vaibhav Kakkar, a corporate lawyer, pointed out that India's Information Technology (IT) policy over the last two years has been really fuzzy. There have been disruptions for the sake of disruptions. Demonetization promoted the e-wallet industry, and e-wallet industry's main source of income was some rule that banks would not charge a certain amount on transactions, but then the banks ganged up when they saw profits there, and then the guidelines were changed, which has harmed the Financial Technology (FinTech) industry.
- Consumer KYC (Know Your Customer; a process for authenticating the identity of the consumer) is extremely costly for the e-wallet industry and making it mandatory, even for small transactions, was being presented as a huge problem. The Supreme Court in the Aadhaar judgment, struck down clauses that allowed private parties to use Aadhaar data, which has made KYC even more difficult.³ As a result of this policy paralysis, FinTech companies have no idea what to do with authentication.

³ *Justice K.S. Puttaswamy (Retd) vs Union Of India*, Supreme Court of India (2018). Available at <https://indiankanoon.org/doc/127517806/>. Accessed 4 April 2019.

- Another corporate speaker, Wriju Ray, said that Aadhaar was not the only way to authenticate. He said there are other ID cards as well. Technology could be developed to incorporate those systems as well.
- Apar Gupta, an activist lawyer in the space of IT law, said that choosing an ID system is one of the core political choices we make as a society.
- Corporate speakers in the panel seemed to agree that privacy was a vital issue and needs to be factored in policymaking. But they were critical of the government for its arbitrary policy regime in the tech space.

July 17, 2019

New Delhi

Dear all,

This week I have started working on my new research brief around the idea of tracing the discourse around video and electronic evidence in the Indian courts from the 1990s to the contemporary. To begin, I have opened two archives – 1) Times of India (ProQuest) 2) Indian Kanoon (<https://indiankanoon.org/>). As a part of theoretical readings, I am going to be revisiting *Mechanical Witness* and *Mengele's Skull* again in the coming weeks.^{4 5} I shall also be digging into the bare act of the Indian evidence law as I read case material and get references to important sections of the Act (The Indian Evidence Act, 1872). I am for now making an index of important cases and news items which I will be elaborating on in the coming weeks. I shall also be presenting case notes on important cases in the coming weeks. Please find the indexes below, with the court case locations when present. I will wait for your comments and suggestions as to how to take this work forward.

Times of India Index

28 October, 1990 – Newstrack, a private news video company, records the video of a police firing killing a youth during the Mandal commission agitation in Delhi. The court issues notices to the police commissioner. This notice came as a response to a Public Interest Litigation (PIL) filed by two local lawyers P.V. Kapoor and Anil K Sharma. < Delhi High Court>

31 October, 1990 – In the anti-Mandal agitation case, where Mr. Devender Kumar Sharma is killed in police firing, the police order the State Television channel *Doordarshan* to preserve the video recording of that day. Living Media Ltd., the company that owns Newstrack is not made a respondent to the case. The police informed the court that they resorted to firing because the agitators had acid bulbs etc. The court in return asked the cameramen present at the site to file an affidavit

⁴ Schwartz, Louis-Georges. *Mechanical Witness: A History of Motion Picture Evidence in U.S. Courts*. Oxford Academic. New York: Oxford University Press, 2009. <https://academic.oup.com/book/3006>. Accessed 15 July, 2019.

⁵ Keenan, Thomas, and Eyal Weizman. *Mengele's Skull The Advent of a Forensic Aesthetics*. Frankfurt am Main: Sternberg Press / Portikus, 2012.

to confirm the case. The October 1990 edition of Newstrack is said to have contained the 'evidence' of the alleged incident. < Delhi High Court>

26 January, 1991 – A video cassette, *Avahan and Avahan*, prepared by a certain Mr. Jadhav, which was used by Bharatiya Janata Party (BJP) and Shiv Sena candidates during the elections to polarize the voters on the grounds of religion was examined in the case. In it, the petitioner of the Janata party alleged that the election was bogus and that the Shiv Sena candidate won by religious polarization and polling bogus votes. < Bombay High Court>

3 March, 1991 – Rajmohan Gandhi vs. Rajiv Gandhi. A video cassette possibly containing evidence of electoral malpractices becomes a part of the case filed by Rajmohan Gandhi. The case is initially dismissed by the Allahabad High Court on the grounds that Rajmohan Gandhi had not given a copy of the video cassette and poster to Mr. Rajiv Gandhi, but the law states that the petitioner is not obliged to submit the document of which he/she is not in possession of.

29 March, 1991 – An advertisement of Venus Detective and Security Services situated in Bombay to obtain documentary evidence for divorce, marital investigation etc.

6 April, 1991 – The Shiv Sena candidate is found to be guilty for electoral malpractices. The video that circulated formed an integral part of the judgment. This case can perhaps be read as an early example of video evidence for hate speech.

10 May, 1991 – Global Detective Services and Venus Detective Agencies have put out their advertisements.

Important Cases in the Supreme Court of India

1. State (N.C.T. Of Delhi) vs Navjot Sandhu (Parliament attack case, 2005).⁶
2. Anwar vs. Basheer (landmark electronic evidence case, 2014).⁷ [These two cases are being read together on the rules about admissibility of electronic evidence and what does the original document mean in the context of the digital?] The Court held that for any electronic evidence to be admissible in its secondary form, it is necessary to meet the mandatory requirements of Section 65-B (Indian Evidence Act, 1872), which includes giving a certificate as per terms of Section 65-B (4), *at the time of proving the record and not anytime later*, failing which the electronic record will be considered inadmissible.

This was a shift away from the earlier legal position in *State (N.C.T of Delhi) vs Navjot Sandhu* which had held that regardless of compliance with requirements of Section 65-B, there is no bar in adducing secondary evidence even for electronic records as per Sections 63 and Section 65. The court had held that even if a certificate containing the details as stipulated by sub-section (4) of Section 65-B is not filed, it does not render the evidence inadmissible, as secondary evidence under Section 63 and Section 65 can still be adduced.

3. Tomaso Bruno and Anr. vs. State of UP. (2015).⁸ [Following *Anwar vs. Basheer* on electronic evidence law, the court acquits a person charged with murder because CCTV footage was not used by the prosecutor in framing the charges against the accused.]
4. [Delhi High Court] P.V. Kapoor and Anr. vs Union Of India And Anr.⁹ (Anti-Mandal agitation Newstrack case- 1991).

⁶ *State (N.C.T. Of Delhi) vs Navjot Sandhu @ Afsan Guru*, Supreme Court of India (2005). Available at <https://indiankanoon.org/doc/1769219/>. Accessed 12 July, 2019.

⁷ *Anwar P.V vs P.K.Basheer & Ors*, Supreme Court of India (2014). Available at <https://indiankanoon.org/doc/187283766/>. Accessed 12 July, 2019.

⁸ *Tomaso Bruno & Anr vs State Of U.P.*, Supreme Court of India (2015). Available at <https://indiankanoon.org/doc/193239104/>. Accessed 12 July, 2019.

⁹ *P.V. Kapoor And Anr. vs Union Of India And Anr.*, Delhi High Court (1991). Available at <https://indiankanoon.org/doc/308171/>. Accessed 12 July, 2019.

July 30, 2019

New Delhi

As in the previous week, I have continued to read the *Times of India* for the keywords, 'video + evidence + courts'. I have prepared a detailed timeline for myself and have covered grounds from 1980–2001 till now. Will start with 2002 in the coming days. In this note, I am sending some highlights of the important findings from the newspaper. In the second part of the note, I have penned down a set of questions that I think are emerging when we sift through this newspaper material. I request you to please help me reflect more on them.

Part I

30 January, 1986 – Video equipment when brought from abroad would be liable to customs duty if the price is above rupees five hundred. This is interesting in understanding the infrastructural world around the video recording and playing machines during the 1980s.

24 November, 1988 – In a Meerut trial court, for the first time in history, a video film was presented in the trial court as a piece of evidence against the accused charged with the triple murder of his wife and two daughters. The video footage is supposed to contain the testimony of an eye witness. The name of the judge is Radheshyam Agarwal and name of the accused is Brijesh Sharma.

4 August, 1993 – A detailed article on how Prof. Chandra Shekharan, an independent forensic expert had recreated the entire crime scene of Rajiv Gandhi's assassination. The article states that he used the technique of video superimposition on the basis of photographs taken at that dreadful election rally. He was flying to Mexico to attend an internal conference on advanced forensics. Prof. Chandra Shekharan's papers might be useful. This reminds one of Eyal Weizman's discussion about the forensic expert Clyde Snow in *Mengele's Skull*. This was the first time such a task was done in India.

26 September, 1993 – *Kalachakra*, a video news magazine was asked by the Censor Board to delete a story where they show the involvement of top politicians and Central Bureau of Investigation (CBI) officials in a major Havala scandal. The videotape is circulated by a name *Harshad se bada ghotala – CBI ne daba dala* [A

scam larger than Harshad Mehta – Covered up by the CBI]. The editor of *Kalachakra* says this report brought to light the documentary evidence for the alleged involvement of CBI in this scandal. (Ishita Tiwary has a small piece on *Kalachara* as an early example of a video magazine in India.)¹⁰

20 August, 1996 – A speculative article by the name of “Justice Relayed”. There is contemplation going on in Britain where courtrooms are embracing technology. The idea of presenting video evidence is talked about as it would allow the judges to replay and repeat, and would be able to detect discrepancies in the statements. The trial of O.J. Simpson on global television is one of the key moments which has opened these conversations about justice and technology. This also indicates that courts across the world were dealing with the video challenge almost simultaneously.

26 September, 1997 – A small paragraph about the upcoming episode of television serial *Shaktiman*, a popular show at the time, where hoodlums try and snatch the video evidence from the female lead of the television serial. The public perception of video evidence is mirrored during this time in various televisual and cinematic sequences. Think of the actor Govinda’s courtroom drama in the film *Kyo Kii ... Main Jhuth Nahin Bolta [Because ... I do not lie]* (2001) where suddenly video evidence is produced at the last moment and the tables get turned in the story.

27 November, 1997 – A new technology called the event verification system which does not let you tamper videos. It came in the context where video-based evidence is being tampered with.

14 July, 1998 – For the first time a witness is examined via video conference in India. The case is about the death of a cancer patient, who had returned to India after she was found inoperable in the United States of America. The Indian doctors found her inoperable at the operation desk as well. Since the American surgeon could not travel to India, his statements were requested to be recorded via video. The article mentions that in recent times, the Supreme Court had allowed for evidence to be recorded via fingerprint, lie detector, tape recorded, and handwriting analysis. This acceptance of video media was a step in that direction. References *Leela Singhi* case

¹⁰ Tiwary, Ishita. “Video News Magazine as Documentary Evidence: The Case of Kalchakra.” Edited by Ravi Vasudevan. *Marg: Journal of Indian Art* 70, no. 1 (September 2018): 86–89.

(the case is still being decided in the Supreme Court. Mr. Singhi, the husband, had filed the case against the doctors).¹¹

9 August, 1998 – A speculative article talking about two cases: the Leela Singhi and a securities scam case and their use of video conferences to record evidence. A book is mentioned in the article, *The Future of Law* by Richard Susskind.¹² The year 1998 becomes one the key moments when video is introduced in the court of law.

17 February, 2000 – An advertisement in the paper mentions 'All-India Private Detective Association'. Might be a good place to start with. I did a google search for this and some information popped up. There is an insightful article in *Scroll.in* about the private detective's job and how it operates at the borderlines of legality and illegality. There is also a Bill pending in the Parliament about the regulation of the job. See this 2018 *Scroll.in* article, "Private detectives walk a thin legal line in India, even when not stealing phone records."¹³

30 May, 2000 – A news report about how a legal expert finds it difficult to prove the genuineness of video and audiotapes, as they are being used in the courts as pieces of evidence. The cases are coming from match fixing cases involving top members of the Board of Control for Cricket in India (BCCI) and the Indian cricket team.¹⁴

31 March, 2001 – An article on the widely available cheap spy cameras which are being used by housewives and even corporate houses. This article comes after match-fixing scandals, which saw the use of video spy cameras. The article states that these devices can be obtained at Manish Market or Musafirkhana and are available in a price range of 1200–6000 rupees.

16 April, 2001 – The Bombay High Court experiments with the idea of video conferencing with undertrial prisoners in Indian jails. This comes in the wake of a suggestion by a senior police inspector in Maharashtra who says that bringing undertrials to court was a cumbersome process and wondered if technology could

11 *P.B. Desai vs State Of Maharashtra & Anr.*, Supreme Court of India (2013). Available at <https://indiankanoon.org/doc/93436383/>. Accessed 25 July, 2019.

12 Susskind, Richard. *The Future of Law: Facing the Challenges of Information Technology*. Oxford: Oxford University Press, 1998.

13 Dore, Bhavya. "Private Detectives Walk a Thin Legal Line in India, Even When Not Stealing Phone Records." *Scroll.in*, April 11, 2018. <https://scroll.in/magazine/874376/private-detectives-are-walking-a-thin-legal-line-in-india-even-when-not-stealing-phone-records>. Accessed July 28 2019.

14 Frontline. "Betting, Match-Fixing Charges 'Unjustified'." *Frontline*, April 29, 2000. <https://frontline.thehindu.com/cover-story/article30253881.ece>. Accessed 28 July, 2019.

help. This is the time when various High Courts have started playing around with the idea of video conferencing. This must have also been the time when courtroom infrastructures would have been improved, as in the late 1990s when the judges had approved of examining witnesses via video conference, and the facility was set up at a nearby hotel.

Part II

Some questions that have emerged from the material are as follows:

1. How does the court understand technology? How does this debate play out in the context of video technology?
2. What epistemological challenges do new technologies bring for the courts?
3. What is the evidence value of various media forms?
4. What are the conditions that determine admissibility and authenticity?
5. How does acceptance of video technology as 'evidence', change the political, popular and media discourse?
6. How is the infrastructure of justice changing with the advent of new technology? Think of courtroom infrastructures, forensic labs, mushrooming of private detective agencies and scientific research done in this domain.
7. Private detective agencies are a good site for ethnography to study the precariousness of evidence law and the surrounding debates. Think of an ethnographic paper on these lines.

I am also preparing a list of cases in which video evidence plays a key role. I will start digging deeper after the *Times of India* (TOI) work gets over (hopefully soon). Reading TOI is giving me a sense of background, a set of questions which I will then take to the cases and other material I discover.

I look forward to a fruitful discussion tomorrow!

August 7, 2019

New Delhi

Dear all, please find my note below. Hoping to have a good discussion around this. Please overlook any syntax errors this is a hurriedly written note, as I stumbled upon this case only last night and found it good to begin my series of notes on video-based evidence cases.

R.K. Anand vs Registrar, Delhi High Court (2009), Supreme Court of India judgment.¹⁵

This case emanates from the famous Sanjeev Nanda BMW trial case. In 1999, Mr. Nanda had killed several people while driving in an inebriated condition at high speed. The long trial spread over the first decade of the twenty-first century that this case witnessed had become a farce, essentially. The primary witness, Mr. Kulkarni was constantly changing his statements, sometimes claiming the accident happened with a car, sometimes with a truck! There was an alleged understanding between the prosecution and the defence lawyers which resulted in this farce. This case seems to have inspired Subash Kapoor's film starring Arshad Warsi's *Jolly LLB* (2013). The present *R.K. Anand* case resulted from a sting operation that NDTV (New Delhi Television Limited; a media channel) conducted and telecast with the help of Mr. Kulkarni while this trial was ongoing in the court. NDTV was able to capture on spy button cameras recordings of several meetings between Mr. Kulkarni and defence and prosecution lawyers, which clearly indicated a nexus between them that was working in favour of the accused. NDTV telecast a show on the BMW trials, and the Delhi High Court took cognizance of the matter. The court asked NDTV to produce the raw footage of the sting videos, which it did, and on the basis of those video evidence obtained from NDTV, the court under the power of the contempt jurisdiction, found both the lawyers guilty and punished them. In invoking the contempt jurisdiction, the court argued that it was not obliged to follow the evidence act and would only broadly adhere to the principles of natural justice. The lawyers appealed the decision of the Delhi High Court in the Supreme Court and this is the judgment which came out of the appeal. While there are several aspects to this judgment which touch upon important points of law pertaining to advocate

¹⁵ *R.K. Anand vs Registrar, Delhi High Court*, Supreme Court of India (2009). Available at <https://indiankanoon.org/doc/58440/>. Accessed 6 August, 2019.

act, contempt of court etc, the parts that I found useful for our purposes were about the debate on the admissibility of the video evidence in this case and the discussion around the issue of media trial. On the issue of evidence, the lawyers of Mr. R.K. Anand, argued that the Delhi High Court overlooked the evidence law in this case and mentioned how their requests of sending the video footage on microchips and CDs produced by NDTV to the Central Forensic Science Laboratory was rejected by the court. The Supreme Court dismissed their grounds for appeal by agreeing with the use of the powers under contempt jurisdiction by the High Court. Nonetheless, the lawyer in his appeal cited Indian and foreign cases on evidence on tape records and videos, which are useful for our purposes and can be tracked in the coming weeks. References to cases around tape recording in India which were cited in this judgment:

- (i) N. Shri Rama Reddy vs. V. Giri (1970) 2 SCC 340.¹⁶
- (ii) R. M. Malkani vs. State of Maharashtra (1972) 1 SCC 471.¹⁷
- (iii) Mahabir Prasad Verma vs. Dr. Surinder Kaur (1982) 2 SCC 258.¹⁸
- (iv) Ram Singh vs. Col. Ram Singh (1985) Suppl SCC 611.¹⁹

Foreign cases around tape recording cited in this judgment

- (i) R vs. Stevenson, 1971 (1) All ER 678.
- (ii) The People of State of New York vs. Francis Bell. Cases about the admissibility of videotapes in the US.
- (iii) North Carolina vs. Michael Odell Sibley.²⁰
- (iv) State vs. Cannon. 92 N C App. 246.

¹⁶ *Shri N. Sri Rama Reddy Etc vs Shri V. V. Giri*, Supreme Court of India (1970). Available at <https://indiankanoon.org/doc/859989/>. Accessed 6 August, 2019.

¹⁷ *R. M. Malkani vs State Of Maharashtra*, Supreme Court of India (1972). Available at <https://indiankanoon.org/doc/1179783/>. Accessed 6 August, 2019.

¹⁸ *Mahabir Prasad Verma vs Dr. Surinder Kaur*, Supreme Court of India (1982). Available at <https://indiankanoon.org/doc/279176/>. Accessed 6 August, 2019.

¹⁹ *Ram Singh & Ors vs Col. Ram Singh*, Supreme Court of India (1985). 1986 AIR 3, 1985 SCR Supl. (2) 399. Available at <https://main.sci.gov.in/jonew/judis/9228.pdf>. Accessed 6 August, 2019.

²⁰ *State of North Carolina v. Michael Odell Sibley*, North Carolina Court of Appeals (2000). Available at <https://law.justia.com/cases/north-carolina/court-of-appeals/2000/99-1206-7.html>. Accessed 5 August, 2019.

Ram Singh vs. Col. Ram Singh (1985) Suppl. SCC 611.²¹

In *Ram Singh* (India), a case arising from an election trial, the Court examined the question of admissibility of tape-recorded conversations under the relevant provisions of the Indian Evidence Act, 1872. The Court laid down that a tape recorded statement would be admissible in evidence subject to the following conditions,

Thus, so far as this Court is concerned the conditions for admissibility of a tape recorded statement may be stated as follows: (1) The voice of the speaker must be duly identified by the maker of the record or by others who recognise his voice. In other words, it manifestly follows as a logical corollary that in the first condition for the admissibility of such a statement is to identify the voice of the speaker. Where the voice has been denied by the maker it will require very strict proof to determine whether or not it was really the voice of the speaker. (2) The accuracy of the tape-recorded statement has to be proved by the maker of the record by satisfactory evidence-direct or circumstantial. (3) Every possibility of tampering with or erasure of a part of a tape-recorded statement must be ruled out otherwise it may render the said statement out of context and, therefore, inadmissible (4) The statement must be relevant according to the rules of Evidence Act. (5) The recorded cassette must be carefully sealed and kept in a safe or official custody. (6) The voice of the speaker should be clearly audible and not lost or distorted by other sounds or disturbances. (*Ram Singh*, 11–12)

In *Silbey* (US), citing *State v. Cannon*, the Court observed,

The prerequisite that the offeror lay a proper foundation for the videotape can be met by: (1) testimony that the motion picture or videotape fairly and accurately illustrates the events filmed (illustrative purpose); (2) "proper testimony concerning the checking and operation of the video camera and the chain of evidence concerning the videotape..."; (3) testimony that "the photographs introduced at trial were the same as those [the witness] had inspected immediately after processing," (substantive purposes); or (4) "testimony that the videotape had not been edited, and that the picture fairly and accurately recorded the actual appearance of the area 'photographed.'" (*Silbey*, 4)

²¹ *Ram Singh & Ors vs Col. Ram Singh*, Supreme Court of India (1985). 1986 AIR 3, 1985 SCR Supl. (2) 399. Available at <https://main.sci.gov.in/jonew/judis/9228.pdf>. Accessed 6 August, 2019.

Their lawyer, Altaf Ahmed, also cited an article from *The Indian Police Journal*, July-September 2004 issue under the caption "Detection Technique of Video Tape Alteration on the Basis of Sound Track Analysis" (*R.K. Anand*, para. 76). From this article, the lawyer quoted the following,

"The acceptance of recorded evidence in the court of law depends solely on the establishment of its integrity. In other words, the recorded evidence should be free from intentional alteration. Generally, examination of recorded evidence for establishing the integrity/authenticity is performed to find out whether it is a one-time recording or an edited version or copy of the original."

"Alteration on an audio recording can be of Addition, Deletion, Obscuration, Transformation and Synthesis. In video recordings the alteration may be with the intention to change either on the audio track or on the video track. In both the ways there is always disturbance on both the track [sic]. Alterations in a video track are usually made by adding or removing some frames, by rearranging few frames, by distorting certain frames and lastly by introducing artificially generated frames. Alteration on a video recording" (*R.K. Anand*, para. 76).

The lawyer takes the liberty to cite cases which involve tape recording, this seems consistent with the understanding of video that one sees in the police journal, which sees it as an additive summation of 1) video track, and 2) audio track. In such a case, cases pertaining to just audio track seem to have precedential authority over the new technology. This judgment is also interesting for the way it has been written, where the judges have cited Hindi transcript of the sting videos, made observations over the content of the video, and analysed the gestures and demeanours of the characters, pointed out contradictions etc., as if they are film critics of sorts. For example, at one point in the judgment the court observes,

In the video recording there is no trace of any fear or apprehension on his face or in his gestures. He appears perfectly normal and natural sitting among his colleagues (and may be one or two clients) and at no point the situation appears to be out of his control. As a matter of fact, we feel constrained to say that the plea is not quite worthy of a lawyer of IU Khan's

standing and we should have much appreciated had he simply taken the plea of an error of discretion on his part. (*R.K. Anand*, para. 116)

On Media Trials

The lawyers of the appellants had tried to frame NDTV as part of the problem for telecasting these sting videos while the trial was on. Some of them argued that the news channel should have taken permission from the court before telecasting it. The Supreme Court however, ruled that such a practice would amount to pre-censorship and would not be in the spirit of the Article of freedom to speech and expression. The court at several occasions patted on the back of NDTV for exposing the problem with the judicial system, it also wrote in favour of the journalist who was involved with the preparations of these videos along with Mr. Kulkarni. The court found that this was not a case of a media trial, and what NDTV did was right in the spirit of larger public interest.

Back to evidence law

I was slightly surprised not to find any mention of Section 65-B of the Indian Evidence Act in the judgment. This Section essentially lays down the rules for secondary electronic records presented as evidence and if these rules are satisfied then the court would not demand the production of 'original' or a further proof of the content therein. The conditions for which this certificate is necessary includes for example, the computer from which the data is presented was only used by the person who could use it lawfully, there was no unusual activity on the computer during the period, the computer was working fine during the period, the data stored in electronic record was not affected by the functioning of the computer etc.

August 13, 2019

New Delhi

Dear all,

This week I take two very different cases in which video evidence plays a crucial role but in very different ways. The first case comes from Delhi High Court in the year 1991 and the second one comes from the Kerala High Court in 2013. In the first one, the court goes out of its way side-lining the procedures, appealing to extraordinary jurisdiction to use video evidence to arrive at its decision, and in this process, it also casts serious doubts about the role of traditional methods such as oral testimony to record evidence. In the second one, in complete contrast to the first case, the court finds the clinching video evidence obtained from the house of the accused as inadmissible in the court and places its judgment on the more traditional way of recording evidence of oral testimony of a single witness/victim.

These two cases in a way work as bookends of the time period I shall be working in.

I was fascinated by seeing the shift in the discourse on video-based evidence in the twenty years in India. The most fascinating part was the way the counsels and judges have developed nuanced arguments around the idea of using video evidence. What follows is a summary of the cases, with a special emphasis on the relevant parts for our purposes.

P.V. Kapoor and Anr. vs Union Of India And Anr. on 6 September, 1991.²²

(Delhi High Court)

Two deaths caused by police firing in INA market and Sarojini Nagar in clashes post the Mandal report.. Video films become the main evidence. The main question being debated was if the police used more than required force to control the crowd.

Three video cassettes were submitted to the court:

- 1) Living media Pvt. Ltd, the company which owned Newstrack.
- 2) Cassette by Press Trust of India (PTI).
- 3) An anonymous recording submitted by the police.

²² *P.V. Kapoor And Anr. vs Union Of India And Anr.*, Delhi High Court (1991). Available at <https://indiankanoon.org/doc/308171/>. Accessed 12 July, 2019.

The judgment mentions that apart from affidavits supplied by the parties, police log books and diaries etc., the court has the advantage of looking at the video evidence. It says "At the outset we would like to observe that none of the parties has alleged that any of the three video cassettes which have been placed on the record are 'doctored'. In fact, viewings of the three cassettes shows that they corroborate each other with regard to what has been recorded therein." (*P.V. Kapoor*, para. 8). Just because there was no objection to the authenticity of the video from the parties, the court itself did not feel the need to get the authenticity of the evidence examined.

In this case there was a dispute about the facts of the case: where on one hand the appellants had alleged that crowds were unarmed and police had resorted to violence without any provocation, the police as respondents, had argued that they were carrying weapons, *desi* revolvers, petrol bombs, sticks and stones etc., and had even pelted stones at the police, which made the exercise of firing to control the unlawful assembly legitimate and did not amount to the excessive use of the force. In this case, the court deliberated about the question of how to reach the facts of the case in such circumstances and in doing so, cites Prof. Upendra Baxi's writings on the Social Action Litigation (SAL) published in the *The Review* (International Commission of Jurists) in 1982, focused on the subject of the difficulty of reaching facts of the case where instances of state torture and repression were involved (*P.V. Kapoor*, para. 30). Prof. Baxi writes that the state always denied these allegations and trapped the rival parties in a web of legalities which made arriving at facts particularly difficult. He had thus suggested certain changes in the procedures which helped reach facts of the case quickly in the interest of justice, some suggestions included establishment of state sponsored enquiry commissions manned by researchers, social activists, investigators etc., and seeking opinion of experts such as medical experts to quickly arrive at the facts of the case (*P.V. Kapoor*, para. 30). In this case, the court citing this statement argued that in the case of Public Interest Litigation (PIL) it need not follow the normal procedures of recording evidence. It says, "the normal rules of recording evidence are not adhered to and an effective and speedy course is adopted with a view to ascertain the correct facts." (*P.V. Kapoor*, para. 31). The court further argued that in this case since there was video cassette available, it need not establish an enquiry commission to arrive at conclusions.

The Court says,

All the three cassettes are more or less similar and in modern age and times when audio visual reproduction of events with the help of electronic media is available, we see no reason as to why we should disregard the audio-visual evidence, which is available, in preference for a traditional recording of oral evidence in a court room, of witnesses trying to recreate the scene by testifying in court. Such witnesses may not tell the whole truth, intentionally or un-intentionally, especially in view of the fact that the testimony would be recorded long after the events have taken place. With the passage of time, the memory of the witness may become blurred. On the other hand, we have with us the contemporaneous record of the events which had taken place on the 25th September, 1990, at or about the INA Market in the form of video cassettes. It is not suggested by any of the parties that these cassettes have been doctored or edited. (*P.V. Kapoor*, para. 31)

Notice how overwhelmed by the availability of video evidence and considering it as an unbiased window to the truth of the event, the court begins to cast doubts even at traditional methods of recording evidence such as the oral testimony! Pointing out the slippages of memory and the incompleteness of the reconstruction by means of oral testimony, the court mobilizes its discretion under this extraordinary PIL jurisdiction to allow even anonymous videos shot by private parties in the court as truthful evidence. Another thing to be noted is the absence of any precedence in this case about following or not following certain protocols.

Upendra Baxi's statement is taken to command the authority to undertake such an exercise.

The court watches the three videos to come to a conclusion that the crowd only pelted stones at the police, which the police also threw back at the crowd. At the same time, the video evidence did not show any petrol bombs, lathis, desi revolvers etc., which the police had mentioned in its affidavit. Along with this, the court cites the medico-legal reports of the examination of the members of the police force which happened immediately after the incident, which shows no evidence of any injury caused by these deadly weapons, and only mentioned minor injuries caused by blunt objects, which most probably were stones. Similarly, the court looked at log books of the police, which too had no mention of the use of such weapons by the crowd. However, from the reading of the judgment, it seemed that medical

reports and logbooks were merely used as corroborative evidence. The primary evidence used in this case were the video cassettes submitted to the court.

The police had filed various photographs along with the affidavit which showed the crowd carrying those deadly weapons, but the court examined the photographs closely and says that,

There is no explanation on the record which would indicate as to from where did the police obtain the photograph showing a mob with lathis, spears etc. The perusal of the photograph itself does not show that it pertained to the area in question. There is no similarity, in the background of the photograph, to the other photographs which have been placed on the record. We are not satisfied that the said photograph was taken either at the in a market area or at the Sarojini Nagar area. In fact, there is nothing to indicate as to when and where, that photograph was taken. It appears to us that the said photograph has been filed with a view to support the reply affidavit in which it is alleged that the members of the crowd were carrying lathis, spears and even country made fire arms. (*P.V. Kapoor*, para. 41)

Interestingly, the court tries to discredit the photographs also because their origins are unknown to the court. They anonymously appear in the police records. But similar treatment is not given to the video evidence produced by the police, which too was anonymous. Is it the familiarity with the medium of the photograph, and the ability to read it closely that the court has acquired over the years that pushes the court to question it in terms of not only its content, but also its materiality? Why does video not receive a similar treatment? Another interesting part of the judgment is when the court ascribes intention or tries to understand why the police might have resorted to firing at the crowd and comes up with an answer as follows, "firing was resorted to either because of misjudgement or by way of a panic reaction but certainly not due to any mala fide intention on the part of the police." (*P.V. Kapoor*, para. 45) The idea of the State (here the police apparatus SG) responding in panic is such an interesting provocation to re-theorize political technology through an affective lens. Like humans, the State gets panic attacks and responds without reason.

Santhosh Madhavan @ Swami Amritha Chaitanya vs. State of Kerala (2013), CRL.A 1599 & 1630/2009.²³

The time period of the crime is 2006–2009.

This is a case about a religious figure, Amritha Chaithanya who ran Santhitheeram – a boarding school sort of institution for girls in Kerala, where raping and sexually exploiting several girls, including some below eighteen years of age, was prevalent.

The human witnesses in the case turned hostile, even victims themselves denied the charges of rape against them. However, when the police party raided the house of the religious figure, they found some video cassettes, USB drives and multi-media memory cards which had recordings of sexual activities between victims and the accused. In the event of witnesses themselves turning hostile, the court relied solely on the multi-media evidence in this case. The lower court found the person guilty and the matter was appealed in the High Court.

The lower court, after initially refusing to see the video cassettes, later agreed and themselves identified the person in the video to be the accused and thus found him guilty. The defence in this case makes some interesting arguments which are relevant for our purposes.

The defence says that even if the video cassette, USB drives and memory cards are admitted as evidence under the Indian Evidence Act:

1) the court cannot ascribe guilt without establishing the authenticity of the video cassettes and other multi-media evidence, 2) The judge can make use of the video evidence for the purpose of appreciation of evidence in the case, but cannot substitute himself as a witness in the case and enter a finding of guilt. The defence says,

It was quite improper and illegal on the part of the Judge to have based a conviction solely on the basis that he was able to identify the participants in the cassettes and by doing so he has assumed the role of a witness and if that be so, he could not have continued considering the case. If he was

²³ *Santhosh Madhavan @ Amrita Chythanaya vs State Of Kerala*, High Court of Kerala (2013). CRL.A 1599 & 1630/2009. Available at https://hckinfo.kerala.gov.in/digicourt/orders/2009/203300015992009_1.pdf. Accessed 10 August, 2019.

transformed to the status of a witness, he would be subjected to cross examination, which was not done in the case on hand. It was contended that in the light of the said fact, the formation of opinion by the learned Judge could not have support in law and is quite illegal. (*Madhavan*, 17)

The state counsel on the other hand argued that since the law is settled on the admissibility of video and multi-media cards as evidence in the court, and the evidence was acquired from the house of the accused, the cassettes were found in the locker of the accused who had the exclusive knowledge of their existence, the accused is liable to explain if there is any distortion in the cassettes, according to Section 106 of the Evidence Act.

The High Court of Kerala deliberates the following questions:

But a far more important question remains to be answered. One needs to consider the category of evidence under which the cassettes fall? Are they admissible in evidence? If so, what are the conditions for receiving them in evidence? Finally, is the learned Judge justified in importing his views regarding the participants in the cassettes and also that there was vaginal penetration solely based on what he had seen in the cassettes. There is no other evidence regarding the identification of the victim or the act committed by the accused. (*Madhavan*, 23)

The most interesting part of the judgment is the discussion that begins after these questions are raised. The court first cites a definition of what counts as documentary evidence and then lays out two categories.

'Documentary evidence' means and includes all documents including electronic records produced for the inspection of the court. 'Document' means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means intended to be used, or which may be used, for the purpose of recording that matter. A [piece of] writing is a document; as are words printed, lithographed or photographed; a map or a plan; an inscription on a metal plate or stone; and also, a caricature. (*Madhavan*, 25)

Two categories of documentary evidence

1) Those which fall within the *pictorial testimony* theory:

Pictorial testimony theory or communication theory is based on the notion that any witness with knowledge that a photograph is a fair and accurate representation may testify to the fundamental facts. There is no requirement that the person who took the photograph should testify in order to authenticate the photograph. It is enough that the individual testifying recognises the subject that is depicted in the photograph. Authenticity of the photograph is to be established like in the case of any other document. It must be noticed that documentary testimony theory only covers the admissibility of evidence and it does not refer to the evidence of the photographer as a fact finder. (*Madhavan, 26*)

2) Those which fall under the *silent witness* theory category (some extracts):

A method of authenticating and admitting evidence (such as a photograph), without the need for a witness to verify its authenticity, upon a sufficient showing of the reliability of the process of producing the evidence, including proof that the evidence has not been altered. (*Madhavan, 27*)

Under "silent witness" theory, testimony, establishing authenticity, integrity, and competency of video recording. The photograph expert's determination that video recording was not altered in any way, built-up or faked. Continuous chain of custody established. Video camera or camcorder was checked and properly operating. Video recording is same as what witness saw on playback immediately after recording. No material alteration, surreptitious editing, or fabrications have taken place. (*Madhavan, 27*)

Photographs properly verified on oath by a person able to speak to their accuracy are generally admissible to prove the identity of persons, or the configuration of land as it existed at a particular moment (scientific deductions from them being made by a witness both skilled and experienced in such a task, or radar echoes or the contents of a lost document. In the High Court, a photograph is receivable in evidence at the trial only when certain provisions have been complied with. (*Madhavan, 28*)

Given an adequate foundation assuring the accuracy of the process producing it, the photograph should then be received as a so-called silent witness or as a witness which "speaks for itself". (*Madhavan*, 31)

Until now, this court has not been called upon to state the theory upon which photographs are admitted into evidence. In doing so we recognize that photographs are useful for different purposes. When admitted merely to aid a witness in explaining his testimony they are, nothing more than the illustrated testimony of that witness. But they may also be used as probative evidence of what they depict. Used in this manner they take on the status of independent "silent" witnesses. (*Madhavan*, 31)

What quantum of authentication do courts require before a photograph may be admissible in evidence? It is simply this-that some witness (not necessarily the photographer) be able to give some indication as to when, where, and under what circumstances the photograph was taken, and that the photograph accurately portrays the subject or subjects illustrated. The photograph need only be sufficiently accurate to be helpful to the court and the jury. (*Madhavan*, 31)

In *Ram Singh*, citing a US court judgment *R. v. Maqsd*, the court mentioned the following,

We can see no difference in principle between a tape recording and a photograph. In saying this we must not be taken as saying that such recordings are admissible whatever the circumstances, but it does appear to this Court wrong to deny to the law of evidence advantages to be gained by new techniques and new devices, provided the accuracy of the recording can be proved and the voices recorded properly identified; provided also that the evidence is relevant and otherwise admissible, we are satisfied that a tape recording is admissible in evidence. Such evidence should always be regarded with some caution and assessed in the light of all the circumstances of each case. There can be no question of laying down any exhaustive set of rules by which the admissibility of such evidence should be judged. (*Ram Singh*, 12; emphasis mine).

Notice how the photograph has been set as a benchmark of sorts and all comparisons are to be made to the photographic document in order to arrive at a judgment in a case which essentially involves video recordings. This shows that

there is indeed a continuity from photographs to video in the Indian case law. There is more clarity on the precedents for the video evidence now. In the last research note, I had pointed to the use of audio-tape recording cases as citation for video-based evidence cases and now we see the missing ocular element, which is photographs. So, Video = Audio Tape + Photograph in Indian case law.

The basic gist that I got from the discussion on two categories was in the pictorial testimony theory, the photograph merely illustrates a point visually, however in the silent witness theory it acquires the status of a witness in itself and can be put to the test of 'cross-examination' hypothetically by engaging in multiple readings of the photographic text. This, however, needs to be probed further and one has to read on it more.

The court after this discussion wrote that "[g]oing by the literature on the subject and also the principle laid down in the various decisions, it is quite evident that even though the degree or probative value of such evidence may vary depending upon the facts. The method adopted may be the pictorial testimony theory or the silent theory. One fact is absolutely essential and that is, it should be established that they are authenticated copies and accurate copies." (*Madhavan*, 43) The court found that the objections raised by the lawyers of the accused were indeed relevant and in this case the procedures of admitting electronic evidence were not followed. There was nothing in the lower court judgment which marked the authenticity of the video cassettes, nor was there any proof presented by the police to show that the videos had been made by the camera they had found in the premises of the accused and finally none of the witnesses had identified the accused from the video. The court even objected to the act of the judge himself taking over the role of the witness by identifying the accused and found it not according to the law, as the judge could not be cross-examined. The court decided to undo the judgment of the lower court and acquit the accused based on these pieces of evidence.

However, the story did not end there, there was one victim who continued to stand by her oral testimony and the court used that testimony to find the accused guilty. It is interesting to note that despite the oral testimony having a lot of inconsistencies with respect to date and sequence of events, the court argued that it needed to take into account that the victim had experienced traumatic events and thus cannot be expected to recall instances very accurately, however, the substratum of her testimony was enough to reach to a conclusion that the accused had indeed violated the victim at several occasions and thus pronounced him guilty.

One of the most interesting parts when I see these two judgments together is how the discourse around the video evidence has changed in the twenty-year period in the early 1990s while it was being seen as this unbiased window into the truth of the event, by the time we reach 2010s there are serious doubts about its authenticity, custodianship and thus their truth values. I am pretty sure that if the judge had been able to identify the accused in the video cassettes, they indeed were clinching pieces of evidence but the rules and protocols on who can read the evidence and at which stage become so nuanced by this time that even this evidence is found not to be good enough in the court of law.

I look forward to your comments and suggestions.

September 3, 2019

New Delhi

Legal Pedagogy on YouTube

This week, I saw various legal help videos uploaded on YouTube by practicing lawyers for their potential clients, and law students about how to present audio/video recordings in the court. These lawyers appeared to be really aware of the latest trends of how audio/video recordings are being used in petty cases of divorce, cheque bounce etc., and were advising about the best practices of using audio/video evidence in the court. For some weeks, I have been looking at high profile cases which reach the top courts. I thought these YouTube videos were an excellent source for getting a sneak peek into the world of everyday lawyering around media evidence cases. One of the key parts was to ensure the admissibility of the certificate under 65-B.

In addition to this, these YouTube lawyers appear to be very interesting legal agents in themselves. Making small YouTube videos to become legal influencers while also advertising their practice to potential clients in an interesting instance of the phenomenon of mediatization of law that is taking place in India.

Some examples:

1) Top Hit On Adv. Avinash Nandan Sharma. "Is Video & Call Recording Admissible in Court. Evidence of Call Record in Court Case. Evidence Act." *YouTube*, April 14, 2019. <https://www.youtube.com/watch?v=mQmRMtULdJ4>. Accessed 28 August, 2019.

2) Cyber Pandit. "How to Prove Mobile Recording in the Court." *YouTube*, March 8, 2017. <https://www.youtube.com/watch?v=Mego2R0sDLc>. Accessed 28 August, 2019.

3) Cyber Pandit. "Drafting A Certificate U/s 65B Indian Evidence Act (IEA), 1872." *YouTube*, May 3, 2019. <https://www.youtube.com/watch?v=exFtNb1u8RI>. Accessed 28 August, 2019.

4) Hammurabi Tablet. "Admissibility of Electronic Evidence with Adv. Vicky Shah." *YouTube*, December 17, 2017. <https://www.youtube.com/watch?v=Q79zU6o8m2I>. Accessed 28 August, 2019.

Some key highlights

- 1) The kinds of electronic records for which a 65-B certificate is required include Call Data Record, electronic contracts, WhatsApp chats, bank transactions details, CCTV footage, audio and video recordings, Internet Service Provider logs.
- 2) Audio/ video recordings are admissible in the court under the Indian Evidence Act, 1872.
- 3) If one is submitting the original device from which the recording was done then it is considered as primary evidence under Section 62 of the Indian Evidence Act.
- 4) However, for practical purposes, these lawyers advised that it is better to submit these recordings in a CD with a certificate as prescribed in Section 65-B of the Indian Evidence Act and preserve the original audio/video file in the phone to prove the CD's authenticity when it is challenged by the other party. This is then treated as secondary evidence, once it is submitted as a CD.
- 5) In cases of audio recordings, one of the lawyers advised viewers that one must submit a written transcript along with a CD, Section 65-B certificate and a forensic expert's opinion on the same to prove that it is authentic.
- 6) One of the lawyers described how courts were particularly perplexed about the admissibility of audio/video recording in the family matters where husbands and wives were recording each other given its complex relationship with the right to privacy. He pointed out that if a recording contains the voice of one of the parties to the case, then it is admissible in the court. However, courts usually deny the admissibility of recording which involves third party conversations. So, if the husband submits a recording of him in conversation with his wife, then it is admitted. However, if the husband submits recordings of his wife in conversation with one of her friends, then courts are reluctant to admit such recordings.
- 7) Regarding the content of the certificate, they were advising its draft to be based on the requirements of law and on the basis of questions that are usually asked in the cross examinations. Here is the list of ingredients of the certificate. From several videos it came out that there is no standard format for this certificate, therefore content has to follow the law broadly and it was advised that the certificate should contain the following information:

For Admissibility (Mandatory requirements)

- Description of the content i.e., what does it really contain.
- Description of the computer i.e., how it was obtained, generated etc.
- Description of the condition of the computer 1) lawful ownership, 2) operating properly, 3) regularly used for storage etc., information derived from the information fed.
- Statement that the CD is the true reproduction of the original content.

For authenticity (To face cross-examination challenges)

- Computer contained anti-virus software.
- Computer was password protected.
- Nothing happened to the computer which affected the content of the recording.
- State the details of the person who has helped you for example photocopier etc.

Who can give the certificate?

- Person who was in charge of the device.
- Person who is concerned with the management of activities.

And it was advised that the certificate ended with a statement that contents were true to the best of knowledge etc. From what I understood, it seems that this certificate is more of an undertaking from the person submitting the audio video evidence, specifying a chain of custody, conditions under which a document came into being, and who all were involved in its production.

List of cases around Section 65-B Jurisprudence (To be used for future notes):

- Kundan Singh Vs. The State.²⁴
- Shafhi Mohammad and Anr. vs. The State of Himachal Pradesh.²⁵

²⁴ *Kundan Singh vs The State*, Delhi High Court (2015). Available at <https://indiankanoon.org/doc/10902800/>. Accessed 1 September, 2019.

²⁵ *Shafhi Mohammad and Anr. vs. The State of Himachal Pradesh*, High Court of Himachal Pradesh (2009). Available at https://highcourt.hp.gov.in/viewojpdf/view.php?path=2009&fname=230400004042009_2.pdf&smflag=N. Accessed 1 September, 2019.

- Shafhi Mohammad vs. The State of Himachal Pradesh.²⁶
- Unmesh Diwakar Raote v. The Municipal Corporation of Greater Mumbai, C.S.T. & Ors.²⁷
- Essaki vs Veerabhadra.²⁸
- Faim and Ors Vs State of Maharashtra.²⁹
- Balasaheb Gurling Todkari and Ors. vs. The State of Maharashtra.³⁰
- Motu @ Keshav & Ors. vs State Of Chattisgarh.³¹
- Bhupendra @ Prakash Bhargav v. State Of Chhattisgarh.³²
- Ark Shipping Co. Ltd. vs. GRT Ship Management Pvt. Ltd.³³

²⁶ *Shafhi Mohammad vs The State Of Himachal Pradesh*, Supreme Court of India (2018). Available at <https://indiankanoon.org/doc/71699420/>. Accessed 1 September, 2019.

²⁷ *Unmesh Diwakar Raote vs The Municipal Corporation Of Greater Mumbai, C.S.T. & Ors.*, Bombay High Court (2018). Available at <https://indiankanoon.org/doc/157625735/>. Accessed 1 September, 2019.

²⁸ *Essaki Ammal Chitra vs. Veerabhadra Kumar*, Madras High Court (2012). Available at <https://www.casemine.com/judgement/in/56e0f19f607dba38965f899e>. Accessed 1 September, 2019.

²⁹ *Faim @ Lala Ibrahim Khan vs The State Of Maharashtra*, Bombay High Court (2015). Available at <https://indiankanoon.org/doc/6752866/>. Accessed 1 September, 2019.

³⁰ *Balasaheb Gurling Todkari And Ors vs The State Of Maharashtra*, Bombay High Court (2015). Available at <https://indiankanoon.org/doc/132301538/>. Accessed 1 September, 2019.

³¹ *Motu @ Keshav And Ors vs State Of Chattisgarh*, Chattisgarh High Court (2018). Available at <https://indiankanoon.org/doc/104065399/>. Accessed 1 September, 2019.

³² *Bhupendra @ Prakash Bhargav vs State Of Chhattisgarh*, Chhattisgarh High Court (2018). Available at <https://indiankanoon.org/doc/187133047/>. Accessed 1 September, 2019.

³³ *Ark Shipping Co. Ltd. vs Grt Shipmanagement Pvt. Ltd.*, Bombay High Court (2007). Available at <https://indiankanoon.org/doc/617061/>. Accessed 1 September, 2019.

September 17, 2019

New Delhi

R.M. Malkani Vs State of Maharashtra (1972), Supreme Court of India.³⁴

This is an important case because it established case law on admissibility of 1) of tape-recorded evidence and 2) illegally obtained evidence. Basically, the police entrapped a person (Mr. Malkani) by installing a recording device on the telephone of another person (Dr. Motwani) in which he was recorded demanding a hefty bribe. The issue to be settled in the court was if such a recording violates the provisions of Article 21 of the Indian Constitution and Section 25 of the Indian Telegraph Act, which only permitted the state to record conversations and not private individuals. But before this, the court established that tape recording was indeed evidence to be admitted in the court by citing previous case law and said,

The tape itself becomes the primary and direct evidence of what has been said and recorded. Tape recorded conversation is admissible provided first the conversation is relevant to the matters in issue; secondly, there is identification of the voice; and thirdly, the accuracy of the tape-recorded conversation is proved by eliminating the possibility of erasing the tape record. A contemporaneous tape record of a relevant conversation is a relevant fact and is admissible under section 8 of the Evidence Act. It is also comparable to a photograph of a relevant incident. The tape-recorded conversation is therefore a relevant fact and is admissible under section 7 of the Evidence Act. (*Malkani, 7*)

Notice here how a tape recording is compared to a photograph. Two media technologies which deal with two different senses of the human body (aural and ocular) are brought in comparison with each other on the basis of their indexical qualities. I had read this judgment because it was often cited as an authority over video evidence cases. It is interesting to see how in this case references were made to a previous media technology of photography to admit a new media technology of audio-tape recording. This is a pattern which has emerged where to maintain continuity, courts read old media technologies into new ones by emphasizing their similarities. In another comparison to photographic medium, on the second question of illegally obtained evidence the court says,

³⁴ *R. M. Malkani vs State Of Maharashtra*, Supreme Court of India (1972), 1973 SCR (2) 417. Available at <https://main.sci.gov.in/jonew/judis/6708.pdf>. Accessed 15 September, 2019.

...as a photograph taken without the knowledge of the person photographed can become relevant and admissible so does a tape record of a conversation unnoticed by the talkers. The Court will take care in two directions in admitting such evidence.

First, the Court will find out that it is genuine and free from tampering or mutilation. Secondly, the Court may also secure scrupulous conduct and behaviour on behalf of the Police. (*Malkani*, 8)

Another interesting analogy that the court made to admit the recording of tape-recorded evidence was that of the eavesdropper.

That the method of the informer and of the eavesdropper is commonly used in the detection of crime. The only difference here was that a mechanical device was the eavesdropper". The Courts often say that detection by deception is a form of police procedure to be directed and used sparingly and with circumspection. (*Malkani*, 8-9)

Here a tape recorder was deemed to be a mechanical eavesdropper, therefore all the things which were recorded without the consent of a person were admitted as evidence in the court. Since one person had given consent to the police to record the conversation the contention based on the privacy clause of the Indian Telegraph Act was dismissed. As for the challenge based on Article 21 of the Indian Constitution the court said,

The appellant's conversation was voluntary. There was no compulsion. The attaching of the tape-recording instrument was unknown to the appellant. That fact does not render the evidence of conversation inadmissible. The appellant's conversation was not extracted under duress or compulsion. If the conversation was recorded on the tape, it was a mechanical contrivance to play the role of an eavesdropper. (*Malkani*, 9)

In the end, the appeal was dismissed by the court. The High Court's ruling was upheld and Mr. Malkani was found guilty based on one audio recording which was obtained without his consent. The Supreme Court in this case also ruled that how the evidence was obtained did not really matter and courts were given discretion to judge if they wanted to reject a piece of evidence based on the way it was obtained.

Amitabh Bagchi vs Ena Bagchi on 16 February, 2004 (Calcutta High Court).³⁵

This was a divorce suit which escalated to the High Court (HC). The husband was residing in the US and had requested his statements be recorded via video conference. The court relied on *Praful Desai*, where a US doctor was permitted to depose via video conference by the Supreme Court (SC). Calcutta HC in this case agreed with SC's observation that 'presence' did not mean physical presence and video conference allowed for a mediated presence in which a person could be seen and heard as if he was present in the court. The only limitation was he/she could not be touched. The Calcutta High Court added to this observation and asked a question which is important for our purposes and lies at the heart of law and media debate. It said,

In agreeing with the judgment of the Supreme Court I can say that if any incident is seen by an eyewitness through binocular or telescope and if it is brought to the notice of the Court by such person can it be said that he is not an eye-witness? More so, if we watch something through the same can it be said that we have not watched it? The essential requirement of advancement of technology and its application is to make things easier and flexible. The Court is meant for the people. So it is required for the Court to give reasonable and appropriate facility to the people. (*Amitabh Bagchi*, para. 8)

Notice here how media expands the understanding of what is an eye-witness. Mediated witnessing by extension of sense is recognized and accommodated in the law. Media, we see, is giving an enhanced vantage point which would be unavailable to a human ordinarily. The courts defining their facts on the basis of sensory foundations (as seen in the previous note), in a mediatized world operate with enhanced sensitivities, what this means for 'justice' is a question to be thought about.

Another point that I want to highlight from this judgment is about the mixture of judicial populism and media technology. For judicial populism, think of the arguments that Anuj Bhunia has made in his book about Public Interest Litigation (PIL), where a post-emergency SC allowed itself to overlook various procedural aspects of law in the name of doing justice to the poor people and in this process created a populist jurisprudence which relied on various

³⁵ *Amitabh Bagchi vs Ena Bagchi*, Calcutta High Court (2004). Available at <https://indiankanoon.org/doc/390051/>. Accessed 1 September, 2019.

consequentialist ways of reasoning.³⁶ The court while allowing for the video conference said, “[n]ow-a-days several steps are taken as a matter of policy to reach to the bottom level of the people. We are making various types of Courts and Benches and offering justice to facilitate the people. Video conferencing is one such facility.” (Amitabh Bagchi, para. 8) It is to be remembered that by virtue of an amendment and insertion of Sections 65-A and 65-B to the Evidence Act a special provision as to evidence relating to electronic record and admissibility of electronic records has been introduced with effect from 17th October, 2000.

Consequential amendments are also made therein. Therefore, there is no bar of examination of witness by way of Video Conferencing being essential part of electronic method. Hence, such prayer cannot be ignored as unnecessary. It is to be evaluated with the amount of delay, expenses or inconvenience. If it appears that electronic video conferencing is not only much cheaper but also facilitates the Court and avoids delay of justice, a practical outlook is to be taken by the Court. In such circumstances, Court may dispense with such attendance and issue a Commission for examination of the witness. However, in allowing such prayer Court will first of all consider whether linkage of such facility will be available between two places or not. (Amitabh Bagchi, para. 8)

Notice here how the amendments in the evidence law (2000), which allowed for new media-based evidence to be presented in the court, was yet another development in the same populist justice trajectory of post-Emergency courts. Use of technology for ease and convenience so that justice can be made accessible to the people. This is a new way to contextualize the IT amendments in the law. We had so far read it only as a response to the availability to new technology to the people and court’s responding to the changing times, but when we place this decision in this post-emergency genealogy then one begins to see it more critically and starts wondering about the repercussions of such a move. However, the post-emergency narrative is one of the many stories available, and there’s no need to believe it in its entirety.

³⁶ Bhuwania, Anuj. *Courting the People: Public Interest Litigation in Post-Emergency India*. Cambridge University Press, 2016.

February 5, 2022

Patiala Court House: Day 1

A terror trial diary

I visited Patiala House Court with Advocate Palash Raj (name changed) this Wednesday. I followed Palash's advice and dressed in black pants and a white shirt to avoid any unwanted questions and tried to look like an intern of a senior lawyer. I got in touch with Palash last week. Palash is mutual friends with a lot of my former teachers from Ambedkar University, Delhi. This helped us find a lot of common grounds to establish a conversation. He was kind and helpful throughout. I felt I was building a great rapport with him in the first meeting itself. Palash, originally from Lucknow, studied law from Gujarat National Law University (GNLU) and has been practicing for the past ten years in various Delhi courts. He described his practice as quasi-independent for the time being. He divides his time working for a law firm and handling some independent cases. He handles a wide variety of cases, including all sorts of civil and criminal disputes. I had told him briefly about my research interests in media-based evidence over our phone conversations, so he invited me to attend some hearings in the terror cases where he was defending the accused. This is the first time I visited Patiala House Court. The court's building still carries the memories of the palace it once was. The palatial milky white complex has huge rooms with high roofs, unused fireplaces, and arched doors like the ones you find in important buildings of a bygone era. Despite so many years of inhabiting the building, the court still seems to be plastered on a building that was designed to be used for other purposes.

Palash texted me to come to court number 5. I entered the room, where I found that the court was already in session, but a different dispute was up for hearing. I met Palash and his client's relative. Palash instructed me to stand behind him and fiddle with my notebook when we were called by the judge. In case the judge asked who I was, I was to tell him the truth that I am a researcher hanging out with Palash. Luckily, the judge did not. Though the court was open and accessible, but if one was sitting on the benches, one could not hear anything. The effective part of the court was confined to the area around the Judge's bench. The Judge is surrounded by his stenographers, peons, and other staff members populating a raised platform. The counsels stand below in front a table to argue their case. The argument goes on at a very conversational pitch. I did not find any melodramatic or high-pitched speeches on that day. Effectively, only the two parties and the Judge

(along with his staff) can hear the conversation. Court Number 5 was a special court, where unlike other courtrooms at Patiala House Court, a video conference facility was available. The accused were present in the court via video conference from their respective jails. The court seemed technologically well equipped. Turtle microphones were placed at the Judge's table so that the accused could hear the arguments. There was a huge plasma screen hanging near the Judge's table where one could see the accused. Simultaneously, there were cameras present in the courtroom to relay the visuals of the hearing to the accused.

I was not aware of any details of the case that Palash had invited me for. Palash later in the conversation, referred to it as Shahid's case, I shall be referring to it in a similar way for the purpose of this note. Whatever information I have of the case are from the arguments I heard in the court where Palash presented a summary of the arguments for the judge while putting forth his defence. The primary purpose of this hearing was to argue that the charges that National Investigation Agency (NIA) had framed on Palash's client in the chargesheet were excessive and not sustainable. This was a pre-trial stage of the hearing where Palash was arguing for the charges to be dropped.

The story of the case is as follows. The accused, referred to as A7, had allegedly received a sum of rupees 4.45 lakhs over a period of 4 years from Pakistan via a Western Union Money Transfer. A7's father is a well-known Kashmiri militant leader based in Pakistan, advocating armed struggle. The father had gone to Pakistan from the Indian part of Kashmir in 1993 and never returned. He left behind his wife and two sons in India, who had decided against supporting their father's terror acts. For several years there was no contact between father and family in India. However, in the late 2000s, when family members felt severely ill with life-threatening diseases, the father sent some money via a legal money transfer channel. Palash argued that there was no evidence to say that the family had asked him for any money. Palash had also categorically refused to accept that his client had received money from his father at that stage of the case. He said, for the sake of argument, let us assume that charges in the chargesheet are true. Indian authorities intercepted these transactions over the period of four years and framed the charges of terror funding and supporting terrorism under Unlawful Activities Prevention Act, 2008 (UAPA). Palash was arguing the case based on the arguments that there was not any proof that funds received were or were intended to be used for terrorist activities. He also argued that the son should not be punished for the sins of the father. He challenged the text of the law by essentially saying that we do not know where the buck should stop. He argued with a hypothetical question like, if a

terrorist eats at a restaurant before the attack, does the owner of the restaurant also become liable for the charges of terror funding, since he received money from a terrorist? The accused, he reminded the judge, had no previous cases against him. He was a government servant. He also cited case law which said mere passive membership of a banned organization is not a crime.

UAPA Sections being discussed in this case are 13, 17, 20, 21, 38, 40, 50, 120 B.

Media evidence in case

For our purposes, there were three forms of media-based evidence in this case. First was the Call Data Records (CDR) between accused number 6 (A6) and accused number 7 (A7). It was not very clear to me who was accused number 6, however, from what I could make out from the court hearings, he did seem like his brother. Three calls were made between them, where A7 had only received the calls. Duration of calls were between 20-50 seconds. Palash argued that the only conversation that can hypothetically happen in this time frame is that "money received, ok" type of conversation. I thought it was interesting to see how CDR evidence is argued in the court. Palash later informed me that it was very difficult to dispute CDR data, since it is computer generated. I think by imagining a conversation which could happen in that time frame he is trying to shake the foundation of evidence so that it is difficult to use against his client.

The second type of media evidence was a diary that the accused maintained. I found it interesting how this diary was used by both defence and prosecution. While defence cited passages where the accused is writing against terrorism etc, the prosecution highlighted passages where it said "went to Dubai", "Spoke to Dad."

The third type of evidence was the money transfer receipts. These receipts had been sent for a Forensic Science test where the signatures of these receipts were tested by handwriting analysis experts to match it with the accused's writing in his diary. There are forensic lab reports of this analysis. I could not access them given the ongoing nature of the trial.

Few observations about Palash's Defence

Palash since the very beginning argued in the first person. He said "I was arrested in 2017...". It was interesting to see how a lawyer was speaking for the accused in the first person, with the accused also present in the courtroom via video conference. I asked Palash later that why did he do that? Or was it the norm? He said it was normal to speak in this way when you are representing someone. He said that he had often used "my client", or "as a counsel" to put forth their case so it was not the case that he was arguing in the first person for the entire duration of the hearing.

I was closely observing how the judge was reacting when Palash was arguing the case. I often saw the judge rubbing his eyes, adjusting his spectacles, and yawning while the argument was going on. There were a few minor disturbances, with other lawyers involved in different cases approaching the judge for some work. The Judge kept asking for some clarificatory questions in between from Palash. However, when Palash argued for dropping the charges, because his client was in the jail for the past two years, and also cited the family's condition with a child suffering from Down syndrome and wife suffering from a live threatening disease, the judge suddenly seemed more present and interested. This was one moment where I felt Palash's theatrical performance and his attempt to persuade on an affective ground was about to yield some results.

I was also seeing the accused sitting in the jail via the videoconference (VC) link. There were two people sitting on a bench. I could see turtle microphones hanging behind a wall against which their bench was placed. The two men sat cross legged the entire time, with their hands placed on their mouth. They did not speak while the hearing was on, nor did they move much. The case ended with the judge giving the next date on which order would be given.

After this, I followed Palash to a different court. Since all the courtrooms in Patiala House are not equipped with video conference facilities, they have made a special room where judges and parties can come when their case requires a videoconference (VC) facility to be used. Here, Palash was dealing with a case of a Muslim person who had been accused of being an ISIS (Islamic State of Iraq and Syria) sympathizer. Since the case was at an advanced stage, I could not hear the details of the case. I shall be tracking this in the coming months with Palash.

However, something very interesting happened in the courtroom. The VC facility of the court can only connect a certain number of lines at a time. Since, this case had

multiple accused people, one of whom was being represented by Palash, they had been locked up in several jails. So, a VC enabled hearing in this case essentially requires a conference call. Since the number of screens exceeded the number of lines that can be connected at a time, one of the accused raised his hand, while the hearing was going on, and said he needed to say something. The judge became slightly irritated. He said he will come back to him. A few seconds later, when one of the lawyers had finished speaking in the courtroom, he turned towards the screen and asked him to say what he wanted to say. That accused person highlighted this problem, of one screen not being simultaneously present. At the same time, others are present on the screen, which happens every time, and suggested that all of them should be put in the same jail to avoid this technical glitch. The judge got slightly irritated and asked the accused, how is it his problem? Isn't it the Judge's problem that he has to wait for the screens to connect. At this point, everyone smiled in the courtroom. The person from the screen said, in that case whatever the judge thinks is okay. After this, the judge turned around, frustrated and looked at his staff and asked them to bring him under control; otherwise, he will be made to stand in the next hearing.

Another incident that I find worth mentioning is the way attendance was conducted via video conference. The accused in different jails were asked to raise their hands and shout their names before the hearing could begin.

February 29, 2021

Tis Hazari Court: Day 5



Figure 1.1: Tis Hazari Court Complex (Scribes Credit: Shikhar Goel)

These notes are from a visit to Tiz Hazari court, where I gathered information on the evidentiary process from a range of lawyers, and court workers. Like Patiala House, this court is one of the busiest and oldest district courts of Delhi. I first waited for my contacts at the tea shop and relished the extra buttery omelette with ginger chai. Behind the tea shop, I noticed there was a lane of shops which specialized in translating legal documents from one language to another. Their banners advertised their specialized services of translating documents from Urdu to Hindi, Punjabi to English, Hindi to English and vice versa. These scribes and translators might be a good resource to understand the ecology of paper documents as the project digs deeper into the mediascapes of the Indian courts. (Figure 1.1)

My contact at the court who preferred to stay anonymous, brought two fat case files of ongoing matters and an empty paper. He explained to me the entire process of how a case comes, the stages through which evidence passes and how it is treated in the courtroom by a flow chart of sorts (Figure 1.2). What follows is a composite summary of the things my contact told me in that conversation, as well as other minor corresponding encounters in Tis Hazari court.

When an incident happens, for example when a murder is committed, the information is relayed to the police. Then the police files the FIR (First Information Report) and begins the investigation. In the investigation, the police talk to human witnesses, take down their statements and gather evidence. Evidence included things like empty bullets, CCTV footage, wine glasses, Call Data Record, documents etc. I asked my contacts, how does the police gather CCTV footage?

I was told that the police in most cases take out the hard drive of the system in which CCTV footage is stored. The hard disk is taken out by a computer professional, who might be a locally hired professional. Hard disk is then wrapped in a white cloth called *pulinda* and sealed by wax carrying a *moher* (Seal) of the initials of the name of the policeman who seizes the media object. In doing so, the police also prepare a seizure memo in which the person whose system was used, the professional who took out the hard disk, the policeman, location of the place from which hard disk was taken, number and make of the hard-disk are all written down and signed. I have obtained an image of a seizure memo which I have added to our research repository. When this *pulinda* reaches the police station, the police prepare three–four copies of the video files. Apparently, these copies are prepared by some constable, who is slightly trained in technology and no special person is

designated for the job. These copies are meant for the court, defence counsel, police records, etc.

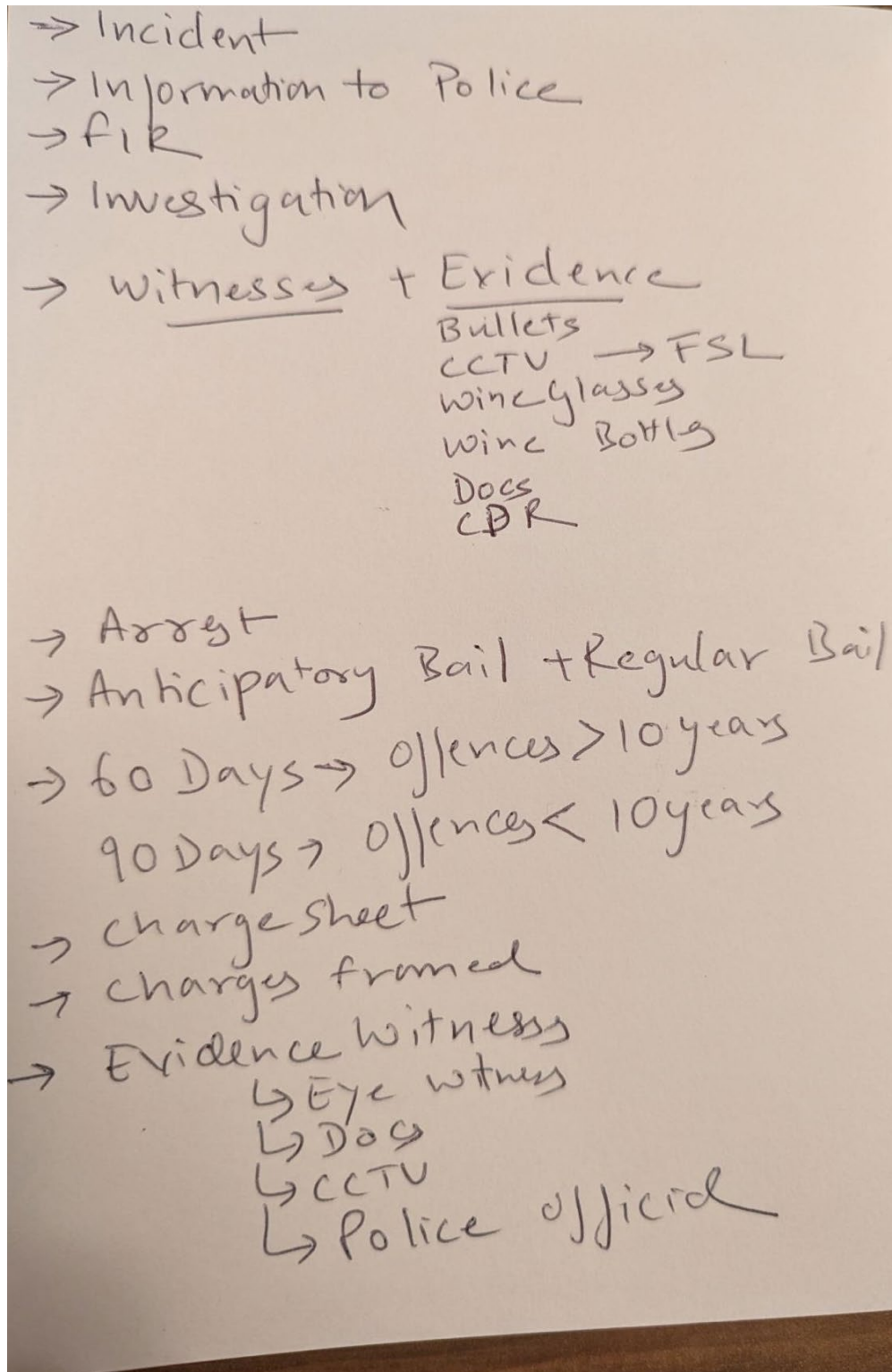


Figure 1.2: Flow Chart made in my Tis Hazari meeting.

After this, the original hard-disk is sent to the forensic science lab. (This may be doubtful because that would mean police tampering with the evidence, one has to check with other sources as well. I feel copies should be made at a later stage. SG) The CDs prepared by police are stored in a record-keeping room, called *Maalkhana*. Each station has its own *Maalkhana*. When a chargesheet is filed by the court, which is within the period of sixty days for offenses less than ten years of imprisonment as punishment, and ninety days for offenses more than ten years of imprisonment, the copies of these CDs are given to the court and defence attorney. I asked my first contact how the were CDs stored in the court? He showed me a case file in which a CD was kept below the chargesheet, without any covering or anything. He said, even in the court, CDs are kept in the files only. I asked him, are they not damaged that way? He said, it only has to be played once or twice in a year so nothing happens. Whenever the court wants to see the footage, some constable from the *Maalkhana* brings it for the court, where it is played on a laptop for the judge and parties to see. I asked him if there are any special computer systems on which it is played. He said, no. The judge could use your laptop and see it then. He then told me about an incident in one of his cases where a CD was played on a laptop on which audio could not be heard, so the defence counsel objected, and the same CD was played on a different private laptop then.

After collection of the evidence, analysis begins. Police send the original hard-disk along with photographs of the accused to the forensic science lab and ask them to tell if it is the same person or not. In this process enlarged screenshots from the footage are used. This analysis is done by Forensic Science Lab scientists. I was told that during the trial, a lot of people are called upon as witnesses. Including the Forensic Science Lab experts, eyewitnesses, and police officials among many others. To counter forensic science experts, a lawyer may challenge their degrees and thus their credibility. Then the content of the footage is also challenged. CCTV footage is usually very blurred. One has to identify the person using an enlarged screenshot from a footage, which is usually a very blurry image. Thus, it is easy to say that the person in the image is not the person who has been accused of the crime. And since the court cannot punish you unless one is hundred percent sure, it can be challenged in the court. I inquired if they send the copy of the CD to private forensic experts as well, to counter the version of the state forensic labs. I was told no. The forensic analysis is done by state labs in criminal cases, as private labs might tamper with the original document (I find this doubtful and I would have to check this again from other sources). I had read some cases in which private analysis is also done and forensic experts can be cross-examined by both the parties.

I asked my contacts if they had been seeing more cases of CCTV and mobile phone video/audio as evidence lately. I was informed that the trend had picked up more in the last three to four years. I asked if there was a difference in the credibility of the two types of videos, the one coming from CCTV and the one being shot via mobile phone since the subjective human agent was involved in the latter. He said there was no difference between the credibility of the two.

I then asked him about the 65-B certificate (Figure 1.3). I was told that it was a certificate to authenticate evidence. My contact explained to me that if you see a crime and also record it on your phone, the police seizes your mobile phone for evidence. I asked if the 65-B certificate was needed only for secondary evidence (recording of clipping on a pen drive) or with primary evidence (recording on the recording device itself) as well. He said it was needed for both. However, as I know, the text of the law clearly said that it was needed only in the case of a secondary electronic record. He might be describing a more realistic approach in which police or parties might be submitting the certificate in both cases. I was informed that now judgments have come which say that if circumstantial evidence were enough and if the footage were clear, then 65-B is no longer needed.

I was interested in how these electronic records stand when human witnesses turn hostile. It was suggested to me that with CCTV footage, the problem is that the image is very blurry. It is difficult to say things credibly. So, one can spin it by interpreting it in different ways. Like in the Delhi riot videos, most of the footage was not clear to identify the accused person, barring a few.

CERTIFICATE

(u/s 65B(4)(c) of the Evidence Act 1872)

Certified that this CDR of Mobile Number: [REDACTED] has been produced from computer system using printer and its contents are true reproduction of the original to the best of my knowledge and belief. I also do hereby certify on behalf of the Company that:

1. The print out supplied by me in respect of the aforesaid Mobile Number are the records lawfully maintained by us in our system during our ordinary course of providing the Cellular Mobile Telephony Service i.e. during the period mentioned in the CDR.
2. This print outs are the retrieval of the record from the information registered in our system in our ordinary course of providing the Cellular Mobile Telephony Services, which was operational at the relevant period.
3. The print outs of the calls made (incoming and outgoing) through the said Cellular Number are supplied by means of Auto System Generated Electronic equipment.
4. The print out are true reproduction of the original, retrieved from the electronic System, which is in lawful control of the Company and password protected.

Signature-



Designation – Nodal Officer

Figure 1.3: A sample 65-B certificate.

Comedians on Trial: Media Evidence and Transgressive Speech

Shruti Kaushik

This chapter emerged from my project at Sarai as a TM7 ICAS:MP researcher from January 2021 to March 2022. I have extracted some samples of the weekly research diary entries that I maintained during this project. These entries contain a collection of material ranging from police documents, defendant testimonies, manual scraping of social media interactions of parties involved in a case, bystander videos of speech events and other adjudication documents which are reported throughout the life of a case filed under chapter VI of the Indian Penal Code (IPC) – Crimes against the State. I also conducted case studies of eighty cases filed, under various allied sections of the IPC.

These diary entries look at the investigative process. I am interested in the media elements of evidence, and how the media ecology of the legal event transforms the application of speech law in crimes against the state. I am therefore particularly interested in the seizure of smartphones and laptops being the first line of investigation, both as primary evidence (cases filed on the basis of a social media post and bystander videos shot from a device) and corroborating evidence (defendant being part of chat groups and calls and SMS made amongst persons). There were cases filed around public speech offences allegedly emerging from creative forms such as jokes, satire and comedy skits, sometimes in public space. I also looked at cases generated as part of an internet chain, where complaints were filed against comedians, actors and online content creators. Here, cases were filed about a joke in a live standup show, a meme shared by a comedian or even a comedy performance in a television show. Online creators have now begun using lengthy content disclaimers to bypass attacks on them. Also interesting are the techniques used by comedians to combat attacks, notably the response video and clickbait strategies to tweak search engine results, in extremely hostile environments.

The cases of stand up comedians highlight important issues in recent debates on law and media. Crimes against the state have been traditionally framed around issues of sedition and conspiracy. Media evidence is increasingly an important component of

those cases. The recent inclusion of comedy in this landscape opens up questions of transgressive speech and offences of religious sentiment. What is significant about these cases is that the entire landscape is initially driven by recorded and repurposed media of political bystanders and hostile internet actors with prompt action by local authorities. At the same time, in the case of Munawar Faruqi, initial arrests saw innovative pushbacks. After the long delayed bail order, comics like Munawar used innovative strategies of careful disclaimers before videos, counter clickbait and satire techniques, and ways to reengineer search engine results and evade hostile attacks. Munawar also participated in a reality show where he performatively worked around the theme of his arrest for his comedy act. Munawar Faruqi's case offers us useful pointers to the difficult legal landscape occupied by talented minority performers - who at the same time, deploy performative media techniques to work the terrain, to open diverse pathways.

March 10, 2021

New Delhi

Munawar Faruqui is a stand-up comedian and an online content creator. On 1 January 2021, during one of his stand-up comedy performances, Indore police in Madhya Pradesh barged into the venue and arrested Faruqui and others, in anticipation of an alleged offensive joke that ‘hurt’ Hindu sentiments.¹ The case against Munawar became the first instance of now-routine closures of comedy shows across India. This is particularly so when the comedian does political, religious, or social commentary. Faruqui eventually got bail in this case, and as soon as he was released, he uploaded a video called “Munawar Faruqui Leaving comedy” in which he goes into detail on his treatment in jail in the form of a skit comedy.² This was the first time we witnessed an artist-made ‘Post Bail video’, a skit wherein the events of arrest are narrated from the defendant’s perspective.

Since performers charged under India’s sedition law and related speech crimes are faced with media ridicule and become recipients of online hate speech. In response, performers have started to upload a unique internet format, a “My side of the story” video response. In this format, the defendant often records a statement of sorts presenting a public ‘defence’ of the case. This can be a written post or a video wherein the accused displays the facts of the case from their point of view.³

¹ The Hindu. “Artists, Comics Call for Withdrawal of Charges against Munawar Faruqui.” The Hindu, February 12, 2021. Accessed on February 25, 2021.

<https://www.thehindu.com/news/national/artists-comics-call-for-withdrawal-of-charges-against-munawar-faruqui/article33822263.ece>.

² See Munawar Faruqui “Munawar Faruqui Leaving Comedy.” YouTube. Munawar Faruqui. 10:32. February 14, 2021. Accessed on February 14, 2021. <https://www.youtube.com/watch?v=l6ShaTlyzZQ>.

³ Disha Ravi, an environmental activist in India and member of Fridays for Future, Indian chapter, was arrested by Delhi police for an alleged “Farmer’s protest toolkit”. She was charged with sedition (124A of IPC) and related set of charges for authoring and sharing this toolkit document. After receiving bail, she shared a twitter post wherein she gives her side of this story, a statement to tell the truth. Swamy, Rohini. “Truth Always Reveals Itself — Climate Activist Disha Ravi Issues Statement about Her Arrest.” ThePrint. March 13, 2021. Accessed on March 13, 2021.

<https://theprint.in/india/truth-always-reveals-itself-climate-activist-disha-ravi-issues-statement-about-her-arrest/621460/>

The following diary postings analyse what went down in this case and how the crackdown of political comedy increased in 2021 with multiple show cancellations. The measures included the use of draconian epidemic laws and Sections of the Indian Penal Code to bar comedians, ultimately leaving their art without any legal protection. In the event, these artists have found ways to keep their work alive, with tactile strategies, that include displaying lengthy viewer discretion notices before their videos. Comedians now prefix every performance by saying “these are just jokes” in order to safeguard themselves from political and legal scrutiny.⁴

Background

Munawar Faruqi was sent to judicial custody along with four other persons for allegedly passing “indecent remarks”⁵ about Hindu deities and Union Home Minister Amit Shah during a New Year show at a cafe in Indore.⁶ On the evening of 1 January, 2021, when Munawar was performing his standup comedy, a man in the audience forced his way onto the stage and accused the comedian of hurting religious sentiments of Hindus.⁷ The intruder’s accusation was not in reference to a joke

⁴ Refer to Figure 2.4 of the text. Faruqi, Munawar. “Politics in India - Part 2 | Stand-Up Comedy by Munawar Faruqi” YouTube. Munawar Faruqi. 00:02. July 1, 2021. Accessed on December 1, 2021. <https://www.youtube.com/watch?v=ycbhV5MRJQc>

⁵ See Hemender Sharma. “No Video Proof of Comedian Munawar Faruqi Insulting Hindu Deities, Say Police Days after Arrest.” India Today. India Today, January 4, 2021. Accessed on March 4, 2021. <https://www.indiatoday.in/india/story/comedian-munawar-faruqi-arrest-update-video-proof-comedian-police-1755704-2021-01-04>

⁶ See Saket S Gokhale. Letter Petition. With reference to Miscellaneous Criminal Case (MCRC) 2206 of 2021. Indore Bench of the High Court of Madhya Pradesh. *Munawar Faruqi vs State of MP*. p. 2. January 28, 2021. Accessed on March 8, 2021. https://www.livelaw.in/pdf_upload/mp-high-courtletter-petitionsaket-gokhale-munawar-faruqi-388164.pdf.

⁷ The event was recorded by multiple bystanders, one of whom uploaded a video of what went down that day. I have referred to these videos for this posting. See Ladegaam, Sreshta. “What Happened at Munawar Faruqi's Show? Check Eyewitness Account, Videos.” The Siasat Daily, Updated on September 9, 2021. Accessed on March 1, 2021. <https://www.siasat.com/what-happened-at-munawar-faruqi-show-check-eyewitness-account-videos-2059513/>.

Faruqui had made at the Indore show, but to a video that was uploaded on YouTube in April 2020.⁸ In that video, Faruqui begins by saying a phrase from a popular Bollywood song that a woman sings when her lover returns home, referencing the Hindu deities Ram and Sita. The phrase translates to 'O Lord, my beloved, has come home'. It was after this that Faruqui delivered the punchline "Ram-ji don't give a f—k about your beloved" and after the audience erupts laughing, he continues with "He [Ram] says, 'I myself haven't returned home for fourteen years.'"³

In the eyewitness account video from Indore, Faruqui addressed the intruder as "sir."⁹ Faruqui stated that he had told more jokes about his own community than about Hindus, and that he was sorry for the joke, which had been removed from YouTube. However, he also mentioned that he had received death threats and that two police complaints had been filed against him as a result of the joke. After some discussion, the person who had interrupted the show seemed to accept Faruqui's apology and left the stage. A woman in the audience called out to him and said, "Sir, listen to me, Hindus and Muslims are brothers." The crowd applauded and clapped at this response. Someone shouted, "Munawar we are with you!" The comedian raised his arm in a gesture of appreciation. These narratives of the event have come from various audience members who were part of that show, many of them have uploaded this narrative on their social media pages and have also given interviews to various news outlets.¹⁰ It was later discovered that the intruder was Aklavya Laxman Singh Gaur, the son of a long-time member of the ruling party Bharatiya Janata Party (BJP) who held office as the city's mayor. Gaur is a member of Hind

⁸ This video has now been deleted by the channel. Munawar Faruqui. YouTube, YouTube channel, Joined on November 27, 2010. Accessed on March 10, 2021.

<https://www.youtube.com/channel/UC4aTcVTewbHtLeV8eK3enwA> .

⁹ Suchitra Vijayan's tweet has a video attached where Faruqui is seen addressing the intruder as 'sir' (@suchitrav, 1:50 AM, January 3, 2021). Accessed on March 9, 2021.

<https://twitter.com/suchitrav/status/1345465129668898817?t=4YezJoeguPh1tPDe4AkevA&s=19>

¹⁰ HasNain. "Standup Comedian Munawar Faruqui Ki Pitai Ka Full | कॉमेडियन मुनव्वर फारूकी की पिटाई". YouTube. 14:16. January 3, 2021. Accessed on March 5, 2021.

<https://www.youtube.com/watch?v=5bFqJdXyqR4>.

Rakshak, one of the innumerable Hindu organisations affiliated with the ruling party. After Gaur left, within minutes, the local police arrived, to arrest Faruqui.¹¹

A report by Time magazine stated, “It soon seemed clear that the sequence of events—the onstage grandstanding followed by an orchestrated arrest—had been arranged in advance.”¹² The comedian was accused of making “indecent” and “vulgar” remarks about Hindu deities and charged under several Sections of the Indian Penal Code, including 295-A: “Deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs.”¹³

Munawar faced the possibility of a four-year prison sentence and four of his associates were also arrested on the same evening. The arrest was based on the testimony of Gaur, who claimed to have overheard Faruqui rehearsing jokes that he planned to use in his act.¹⁴ The accused were arrested under Sections — 295A (deliberate and malicious acts, intended to outrage religious feelings), 269 (negligent act likely to spread infection of disease), 298 (uttering words with deliberate intent to wound religious feelings), 188 (disobedience to order duly promulgated by public servant), and 34 (acts done by several persons in furtherance of common intention) of the Indian Penal Code, 1870 for the alleged offence committed at the event.

On 11 January, 2021 Additional District and Sessions Court Judge, Yatindra Kumar Guru, had denied Faruqui’s bail on grounds that it could cause a “law and order

¹¹ See Sonia Faleiro. “Munawar Iqbal Faruqui Was Arrested for a Joke He Didn't Tell.” Time. February 10, 2021. Accessed on March 4, 2021. <https://time.com/5938047/munawar-iqbal-faruqui-comedian-india/>.

¹² Ibid.

¹³ Ibid.

¹⁴ See Gursharan Bhalla. “Stand-up Comic Munawar Faruqui Bids Goodbye to Comedy: Here's a Timeline of the Controversy.” IndiaTimes, November 30, 2021. Accessed on March 2, 2021. <https://www.indiatimes.com/news/india/comedian-munawar-faruqui-arrest-update-timeline-532092.html>.

situation”.¹⁵ On 25 January of 2021, the High Court concluded that “regard being had to the material seized and the statements of the witnesses and that the investigation is in progress, no case is made out for grant of bail.”¹⁶ Faruqi's lawyer, Saurabh Kirpal, told the Supreme Court that the court’s directions in the case *Arnesh Kumar vs State of Bihar & Another* (which put in place guidelines and restrictions for the police while making arrests) were not followed while arresting the comedian.¹⁷ The court agreed that the 2014 judgement was not followed in this case as per Section 41 of The Code of Criminal Procedure (CrPC) which details the conditions for police to arrest without warrant.

At the time of the hearings, there were intervenors¹⁸ who objected to the granting of bail.¹⁹ One of the lawyers for the intervenors submitted that, “the accused Munawar Faruqi has posted several previous videos (on YouTube) which were circulated on social media. These remarks were made 18 months ago. He repeated the same remarks on three different occasions i.e., comedy shows. This has led to other

¹⁵ See Kunal Purohit. “Muslim Comic Did Not Joke about Hindus, but 'It Doesn't Matter': Police Chief.” *Article 14*, January 14, 2021. Accessed on March 1, 2021. <https://www.article-14.com/post/muslim-comic-did-not-joke-about-hindus-but-it-doesn-t-matter-police-chief>.

¹⁶ Scroll. “Munawar Faruqi's Bail Plea Rejected, Madhya Pradesh HC Says Duty of All Citizens to Promote Harmony.” *Scroll.in*. Scroll.in, January 28, 2021. Accessed on March 4, 2021. <https://scroll.in/latest/985314/munawar-faruquis-bail-plea-rejected-madhya-pradesh-hc-says-duty-of-all-citizens-to-promote-harmony>.

¹⁷ Criminal Appeal No. 1277 OF 2014. (@Special Leave Petition (Crl.) No.9127 of 2013). *Arnesh Kumar vs State of Bihar & Anr.* July 2, 2014. Accessed on March 8, 2021. <https://indiankanoon.org/doc/2982624/>.

¹⁸ Intervenors are third parties that may file an intervention application to ‘interrupt’ the proceedings of a case and claim a right to hearing in the interest of justice. The Code of Civil Procedure, 1908 (CPC) provides an extensive mechanism for addition of third parties to a suit under Order 1 Rule 10 CPC. Bar and Bench. “Why the Supreme Court Registry's rejection of Aruna Roy's intervention application in Prashant Bhushan's contempt case is legally flawed”. *BarandBench.com*, August 14, 2020. Accessed on March 20, 2021

¹⁹ Saket S Gokhale. Letter Petition. With reference to Miscellaneous Criminal Case (MCRC) 2206 of 2021. Indore Bench of the High Court of Madhya Pradesh. *Munawar Faruqi vs State of MP*. p. 3. January 28, 2021. Accessed on March 8, 2021. https://www.livelaw.in/pdf_upload/mp-high-courtletter-petitionsaket-gokhale-munawar-faruqi-388164.pdf.

comedians making such remarks about Hindu Gods. This is happening with 70% of the comedians.”²⁰

The court in this case placed significant importance on the statements of witnesses recorded under Section 161 of the CrPC, which deals with the examination of witnesses by the police. It is worth noting, however, that these statements are not considered substantive evidence according to the law of evidence because they are not made under oath and are not subject to cross-examination. The court's decision was based on the statements of Eklavya Singh Gaur (the complainant), Kunal, Shubehndra, and Palash (the witnesses).²¹

It is noteworthy that the statements of these individuals are almost identical to one another, with the exception of the first line of Eklavya's statement. This suggests that the statements describe the same event and naturally, there would be similarities in their descriptions. However, the fact that the statements are word-for-word copies of each other calls into question their credibility. The online news blog, Article 14 spoke to certain members of the audience who claimed that Faruqui had made no reference to religion in his act.²² The Indore Sessions Court and the local police relied heavily on many now deleted YouTube videos of Munawar's stand-up shows, which contained some suggestive religious jokes but none were direct or fell within the ambit of hurting religious sentiments. Further, the court relied on the case diary and video footage of the show. Except, nowhere in the order did the court mention what this evidence contains. To rely on such evidence, without discussing any aspect of its content, appears remarkable.

Popular comedians like Vir Das, Rohan Joshi and comic-writer Varun Grover criticised Faruqui's arrest and former Union Minister and Congress Member of Parliament

²⁰ Ibid.

²¹ See note

²² See Kunal Purohit. "Muslim Comic Did Not Joke about Hindus, but 'It Doesn't Matter': Police Chief." Accessed on March 1, 2021.

Shashi Tharoor has tweeted that the arrest “shames us all.”²³ These kinds of discussions further created pressure on the court to prove the charges claimed. On 5 February, the Supreme Court agreed with his lawyer that procedure was not followed and that the allegations in the First Information Report (FIR) were vague, leading to the grant interim bail to Munawar, while the rest of the organisers were granted bail on the 26th of February after spending nearly two months in jail.²⁴

Town Inspector of Tukaganj Police Station Kamlesh Sharma was quoted by the Indian Express newspaper saying they have no evidence against Faruqui directly and that he has been booked as an organiser.²⁵ “There’s no evidence against him for insulting Hindu deities or Union Minister Amit Shah,” he said adding that the two videos submitted by the complainant are of another comedian with him allegedly cracking jokes on Lord Ganesh.

A woman who said she was present at the show in question denied that Faruqui made any derogatory remarks during the performance. Jenosha Agnes, wrote on Instagram:

²³ Free Press Journal Web. “Munawar Faruqui Arrested: Vir Das, Kubbra Sait, Varun Grover and Others Rally behind Comedian.” Free Press Journal, January 3, 2021. Accessed on March 5, 2021. <https://www.freepressjournal.in/viral/munawar-faruqui-arrested-vir-das-kubbra-sait-varun-grover-and-others-rally-behind-comedian>.

²⁴ See Debayan Roy. “[Breaking] Supreme Court Grants Ad-Interim Bail to Comedian Munawar Faruqui [Read Order].” Bar and Bench - Indian Legal news, February 5, 2021. Accessed on February 5, 2021. <https://www.barandbench.com/news/litigation/supreme-court-bail-comedian-munawar-faruqui>. See also Upadhyay, Sparsh. “Munawar Faruqui Case: Madhya Pradesh High Court Grants Ad-Interim Bail to Nalin Yadav and Sadakat Khan.” Live Law. Live Law, February 26, 2021. Accessed on March 1, 2021. <https://www.livelaw.in/news-updates/munawar-faruqui-case-madhya-pradesh-high-court-grants-ad-interim-bail-to-nalin-yadav-and-sadakat-khan-170450>.

²⁵ See Iram Siddique. “Comedian Munawar Faruqui Stays in Jail, Co-Accused Include Brother, Friend, Organiser.” The Indian Express, January 16, 2021. Accessed on March 1, 2021. <https://indianexpress.com/article/india/munawar-faruqui-bail-hearing-comedian-in-jail-mp-hc7148227/#:~:text=Town%20Inspector%20of%20Tukaganj%20Police,Amit%20Shah%2C%20he%20said>

"[A]s Munawar arrived on the stage, few people with political connections rushed to the stage, snatched the mic and began saying *"hamare religious sentiments hurt hue hai ... Godhra kand per joke kiya ... Hamare devi devta ka mazak udaya ... Islam pe joke q nahi karta hai* [Our religious sentiments have been hurt ... A joke was made about the Godhra incident ... Our gods and goddesses were mocked ... Why don't you make jokes about Islam?]."26

After the bail order was issued, Faruqui used his social media network to present his narrative in an indirect way that was distinct from the cases of other individuals arrested for speech-related crimes. He began sending out messages of love and then uploaded a carefully planned, attention-grabbing video on his YouTube channel.²⁷ After getting released on bail, Munawar's first response was to head on to his social media (9 February, 2021), and post a smiling photo on Instagram saying,

"Mere ander ke andheron ko karne do shikayat, Hasa kar lakhon chehron ko Roshan kiya hai maine. [Let the darkness that dwells in me quibble and grieve, I have lightened up millions of faces with laughter.]

- Munawar



Since his arrest, Munawar's reputation and popularity have continued to rise, leading to an increase in his YouTube subscriber count to over 652,000 (and now over 3.2 million at the time of this posting). This is the same platform that brought him into

²⁶ The translation is mine. Original: Outlook. "Comedians Rally behind Munawar Faruqui; Audience Member Denies Any ..." Outlook India, January 4, 2021. Accessed on March 5, 2021.

<https://www.outlookindia.com/website/story/india-news-comedians-rally-behind-munawar-faruqui-audience-member-denies-any-derogatory-remarks-made/369379>.

²⁷ See Munawar Faruqui. "Munawar Faruqui Leaving Comedy." YouTube. Munawar Faruqui. 10:32. February 14, 2021. <https://www.youtube.com/watch?v=l6ShaTlyzZQ>.

²⁸ The translation is mine. Original- Munawar Faruqui (@munawar.faruqui). "*Mere ander ke andheron ko karne do shikayat*". Instagram post, February 9, 2021. Accessed on February 9, 2021. https://www.instagram.com/p/CLC0c2QlAmT/?utm_source=ig_embed&utm_campaign=loading

the public eye and caused various bail rejections.²⁹ Since the Munawar episode, comedians such as Vir Das have been inspired to produce more material regarding religion and freedom of speech, citing Delhi High Court orders before their videos to curb unnecessary complaints. Vir Das now has a YouTube series called '#TenOnTen' where he discusses major political and religious issues, and starts every video citing the High Court judgement *Ashutosh Dubey vs Netflix, Inc & Ors.*³⁰

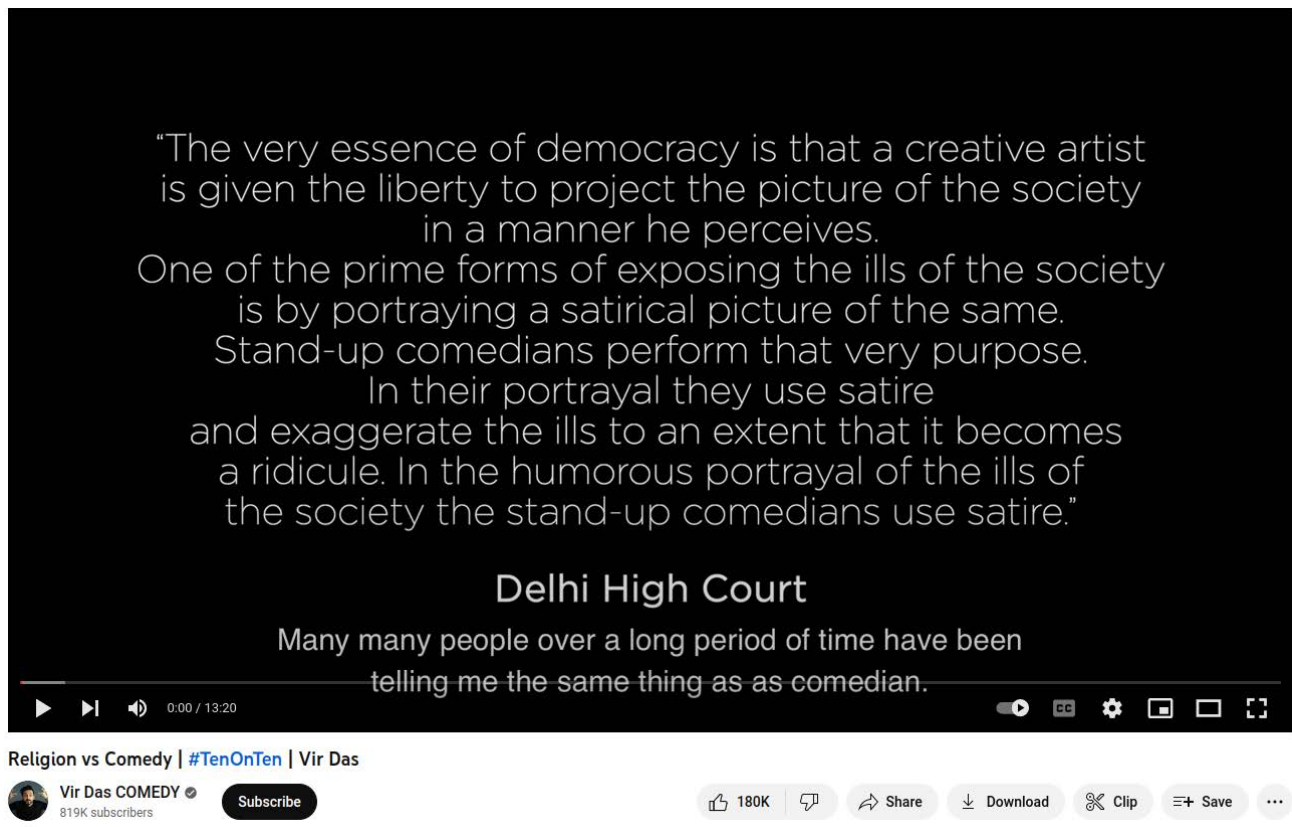


Figure 2.1: (Vir Das. "Religion vs Comedy | #TenOnTen | Vir Das". Screenshot, YouTube; Accessed on March 10, 2021)

²⁹ See Munawar Faruqui, YouTube, YouTube channel. Joined on November 27, 2010. Accessed on March 10, 2021. <https://www.youtube.com/channel/UC4aTcVTewbHtLeV8eK3enwA>.

³⁰ I.A.-3754/2020. *Ashutosh Dubey vs Netflix, Inc & Ors.* May 5 2020. Accessed on March 9, 2021. <https://indiankanon.org/doc/170570619/>; see also Vir Das. "Religion vs Comedy | #TenOnTen | Vir Das". Youtube. Vir Das COMEDY. YouTube Channel playlist. 13:20. January 11, 2021. Accessed on March 9, 2021.

<https://www.youtube.com/watch?v=u5hS8vzmQXI&list=PLNmbMEuFvyZ2lpI8y4X6NQZmv4WrrkEVO>

Dissent through Clickbait titled videos

When you search “Munawar” on YouTube the suggested text shows ‘*ram sita*’ as an autofill (Figure 2.2), which the autofill software picks up from multiple searches of the same text, and yet nothing comes up when you click it as no such video exists, yet this search memory highlights how people believed the allegations and were invested in finding the evidence only to end up disappointed on propaganda-themed click baits with no evidence of any actual footage. Even today (as of December 2022), the autofill still uses this phrase.

After receiving his interim bail from the Supreme Court, Munawar uploaded a ‘clickbait’ titled video titled “Munawar Faruqui Leaving Comedy” which has over 1.8 million views and was premiered on 13 February, 2021, gaining 299,000 likes and 33,000 dislikes, with over 51,000 comments.³¹ The video is a satirical take on Munawar's current situation, blending elements of comedy with thought-provoking social commentary on trolling culture, the YouTube community, and the distinction between intent and consequence. In the video, Munawar demonstrates awareness of the popularity that the charges against him have brought him and uses analogies to highlight the rise of trolling culture and its negative consequences. He also addresses the government and its self-serving politics, stating that everyone is a target unless they remain compliant. He highlights how entertainment has become intertwined with violence and animosity, which is a result of the narrative promoted by the ruling party and its extremist followers.

³¹ Due to the ephemeral nature of YouTube video engagements, it is to be clarified that the said data was recorded on the date of access . Faruqui, Munawar. “Munawar Faruqui Leaving Comedy.” YouTube. Munawar Faruqui. 10:32. February 14, 2021. 10:32. <https://www.youtube.com/watch?v=l6ShaTlyzZQ>. (Accessed on March 5, 2021)

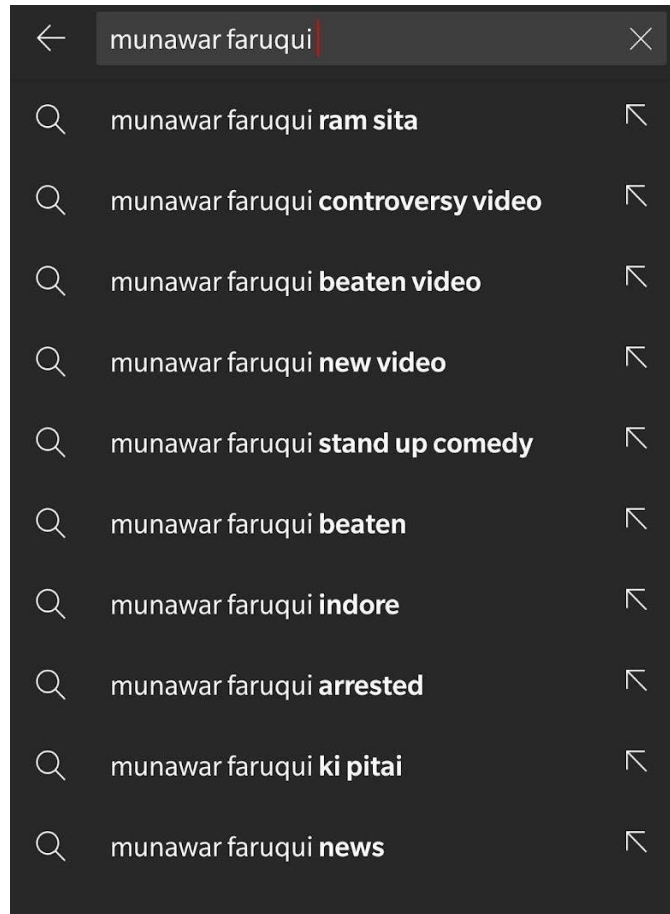


Figure 2.2: Autofill suggested texts on YouTube for 'Munawar Faruqui' (Screenshot, YouTube; Accessed on March 10, 2021)

In conclusion, the video was a clickbait title to attract all audiences from this discussion and let them know that the comedians will not back down. The use of media to counter the larger narrative that the state has constructed for these “anti-religious/anti-national” people is quite effective here. And as a YouTuber, having known the nuances of a content creator, Munawar takes his after charge/release video to an unprecedented level unlike the ‘speaking the real truth’ videos that people share after being wrongly charged for sedition, letting the public know of this facade.³² It is here where he succeeds in reaching the masses in a way which conveys to them the irrationality of the present system in an approachable and satirical way.

³² See Rohini Swami, “Truth Always Reveals Itself — Climate Activist Disha Ravi Issues Statement about Her Arrest.” Accessed on March 13, 2021.

December 02, 2021

New Delhi

In this week's note, I will try to understand the larger media ecology around the case against Munawar Faruqui and five others filed on 1 January of this year. All the persons were filed under the same Section of 295A.³³ Faruqui, Vyas and Anthony along with two others – Nalin Yadav and Prakhar Vyas, were arrested for allegedly hurting religious sentiments.³⁴ Prakhar Vyas is a minor.³⁵ On 5 February, the Supreme Court granted him interim bail, observing that allegations mentioned against him in the FIR were vague.³⁶ The court also stayed the production warrant issued by the Uttar Pradesh police against Faruqui. But before this arrest and its continual consequences (cancellation of live shows), I discovered that multiple complaints were filed against the comedian back in 2020 too. One of the instances I found was of a right-wing activist that filed a complaint in Kishangarh police station against the comedian last year.

Shivam Rawat, the founder of Pen of Dharma (a Youtube channel), had filed a complaint at Kishangarh police station in Delhi.³⁷ In his complaint, Rawat emphasised how the comments made by Faruqui hurt the sentiments of millions of Hindus

³³ "Section 295A in the Indian Penal Code - Indian Kanoon." Indian Kanoon. Accessed on December 1, 2021. <https://indiankanoon.org/doc/1803184/>.

³⁴ Scroll. "Munawar Faruqui Case: MP High Court Grants Interim Bail to Co-Accused Prakhar Vyas, Edwin Anthony." Scroll.in. Scroll.in, February 12, 2021. Accessed on November 29, 2021. <https://scroll.in/latest/986714/munawar-faruqui-case-mp-high-court-grants-interim-bail-to-co-accused-prakhar-vyas-edwin-anthony>.

³⁵ *ibid*

³⁶ See Debayan Roy, "[Breaking] Supreme Court Grants Ad-Interim Bail to Comedian Munawar Faruqui [Read Order]." Accessed on February 5, 2021.

³⁷ See Shivam Rawat, "Police Complaint filed against Munawar Faruqui". Youtube. Pen of Dharma. 07:34. August 17, 2020. Accessed on December 1, 2021. <https://www.youtube.com/watch?v=0sRpM9x72og&t=32s>

including him. Rawat has also stated how Faruqui had used Bollywood songs to make “crass, disrespectful remarks on Hindu gods and belief systems”.³⁸

Apart from filing the complaint, Shivam Rawat also uploaded a YouTube video titled “Police Complaint filed against Munawar Faruqui” posted on 17 August, 2020, i.e., well before the incident gained popularity. The video actually contains the clips that are in question to the case. Even though the comedian is on bail due to lack of evidence (because the video no longer exists anywhere on the web) and the complaint filed by Gaur was on the basis of jokes heard in rehearsal. But in this video, one can see the comedian actually making the jokes on the basis of which the complaint was filed. It is in this seven minute and thirty second clip that I finally saw Faruqui performing the joke that I have been reading about since the beginning of the year. From an evidentiary point of view, this is essential, the video is low-resolution, which can be because the complainant downloaded it in a lower format, but the clipping is still present.

In the previous section, I paid attention to the social media interactions of the defendants in these cases (their public defence, treatment by the police, explaining the content/evidence in question, putting up disclaimers). But here we witness a complainant’s social media interaction and reasons behind filing a complaint against the comedian. This is part of the chain or imitation and response that defines social media network politics. Right after filing a complaint on the 16th of August of last year, Shivam Rawat posted this video on the 17th, where he goes into detail on why he filed the complaint and probes the online community to put pressure on the execution to put Munawar behind prison. The video has about 6000 views and he has 412 subscribers, which in comparison to Munawar’s 1.5 million subscribers is quite less. But what is important here is how both are addressing their communities through the same platform. In February of this year, Munawar uploaded a video, a well-produced defence video, where he discusses his treatment in jail and the

³⁸ Information on Shivam Rawat was gathered through his personal social media profiles and media outlet OPIndia. See OpIndia. “Police Complaint Filed against 'Comedian' Munawar Faruqui for Making Crass Remarks against Hindu Gods.” OpIndia, August 18, 2020. Accessed on December 1 2021. <https://www.opindia.com/2020/08/police-complaint-comedian-munawar-faruqui-insulting-hindu-gods-godhra-massacre-ram-sita-delhi/>.

content in question. In this sense, both arguments by petitioner and respondent (a critical aspect of any legal proceeding) while happening in court, are also taking place on YouTube (video platform). This is much more than a mere witness testimony, the complainant goes further than sharing what he saw, he makes several comments on the comedian, his approach towards threats received and how his jokes hurt the Hindu sentiment.

00081710662000525



Page 1 of 3

To, Date: 16th Aug 2020

The Station House Officer

PS Kishan Garh

South west district

New Delhi

Respected Sir/ Madam

Subject: Request regarding filing FIR in context of insensitive and derogatory remarks made by Mr. Munawar Faruqi

I, Shivam Rawat S/o of Sh. Mohan Singh Rawat a law-abiding citizen would like to take your attention to the viral video of comedian Mr Munawar Faruqi.

In his comedy show hosted by The Habitat - Comedy and Music Cafe, Mumbai, Mr Faruqi made insensitive remarks against the tragic incident of Godhra riots and used derogatory words against Lord Rama and Goddess Sita. Since these are not the matters of fun, it has hurt the sentiments of millions of people including me.

Faruqi uses lyrics of popular Bollywood scores to mock Lord Rama over his 14 years of exile and portrayed Sita as an insecure wife suspicious of her husband Lord Rama's loyalty towards her. "The song- 'Mera piya ghar aaya, ohh Ram ji', Ram ji doesn't give a f*ck about your piya.

Ram ji is like I'm myself not been to home in the last 14 years." Faruqi quotes another popular Bollywood song- "Ek do teen...tera" starring Madhuri Dixit from the blockbuster movie-Tezaab to allege that Sita is suspicious of Madhuri having a soft corner for Lord Rama.

Faruqi's comment On Godhra riots

And "I was watching The Burning Train on TV. My father came and told me not to watch such nonsense and turned off the channel. I was like, 'why so?' He was like this is the video of Godhra kaand. I asked what is this Godhra kaand? He was like "Isme Hindu ko zinda jala diya tha" I was like that's bad "Marney ke baad jalatey hai na?"

When done on these sensitive issues might result in the undesirable outcomes of frustration in millions, whose sentiments are hurt.

Such misconducts are not questioned many others are also getting encouraged and many such misconducts are being carried out and the victim party is feeling repeatedly humiliated. It's not only hurting but is a humiliation for those including myself who considers these deities as their life and soul

Figure 2.3.1: Copy of the police complaint (page 1) filed by Shivam Rawat (Source, OPIIndia; Accessed on December 1, 2021).

Page 2 of 3

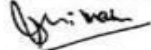
The Habitat - Comedy and Music Cafe, Mumbai is the platform where such insensitive remarks were made which was later uploaded on YouTube and various social media platforms. Sadly, the videos have gone viral over the social media.

This deliberate and malicious act intends to outrage religious feelings of Hindu community and is promoting enmity between religious groups.

Herby I request you to consider this appeal of mine and lodge a FIR against Mr Faruqi and The Habitat - Comedy and Music Cafe, Mumbai so that a legal and logical conclusion to the present commotion be sought.

'Anticipating for a speedy justice'.

Yours Faithfully



(Signature)

Name of complaint: -Shivam Rawat

[Redacted]

Copy to

1. DCP

Sh. Devender Arya

(Vasant Vihar Police Station)

Nelson Mandela Marg, Basant Lok, Vasant Vihar,
New Delhi, Delhi 110045)

2. CP

Sh. SN Shrivastava

(DP HQ, MSO Building, Indraprashta Marg,

IP Estate, New Delhi,

Delhi 110095)

Figure 2.3.2: Copy of the police complaint (page 2) filed by Shivam Rawat (Source, OPIIndia; Accessed on December 1, 2021).

Summarising the video

The video is seven minutes and thirty four seconds long. In the video, Shivam addresses Munawar and “so-called liberals and leftists”, that he (and his community) will not react the way animals do by burning public property and affecting the city (making a reference to the anti-CAA protests).³⁹ Further saying that, “we know how to take these people down, we have a judiciary system, a legal route and we are using it.”⁴⁰ He then goes on to share his personal experience regarding this legal route, where he says that he lives in Delhi and went to the police station to file a FIR against Munawar, and the Laughter Club Mumbai, saying “[it was] not an easy journey, we have to run from different police station to police station, some said to go to cyber crime, some said you go to cyber cell, so basically at the beginning stage no one was ready to file the FIR but with consistent pressure from our side, we did not give up and finally after several hours, five to six hours, of waiting at the station the complaint got lodged and we have the complaint number, so will be following up with the local police station so this guy is behind the bars.”⁴¹ He shows his complaint on screen while speaking and then the video switches back to him saying that, “this was a totally insensitive remark against our gods which is unbearable.”⁴² Complaints like these and their unique forms of live publicity feed into the social media frenzy around arrests like Munawar. Vigilante complaints by right-wing activists are carefully staged online, forming part of a video response chain.

³⁹ Rawat. “Police Complaint filed against Munawar Faruqui”, 7:34. Accessed on December 1, 2021.

⁴⁰ Rawat. “Police Complaint filed against Munawar Faruqui”, 2:55–3:03. Accessed on December 1, 2021.

⁴¹ Rawat. “Police Complaint filed against Munawar Faruqui”, 3:15–3:42. Accessed on December 1, 2021.

⁴² Rawat. “Police Complaint filed against Munawar Faruqui”, 3:47–3:51. Accessed on December 1, 2021.

The aftermath

Since Munawar's release in February 2021, multiple steps have been taken by the comedian to avoid going through another lawsuit, or at least anticipate another.⁴³ Munawar's YouTube channel has only twenty-seven videos now (significantly low for someone who has 1.5 million subscribers). This means he has deleted a large amount of his original content, apart from editing out clips, which is a feature that YouTube Studio offers.⁴⁴

Also prominent are disclaimers that frame his video clips (Figure 2.4 and 2.5). One of his stand-up skits that I reviewed for this note is called, "Politics in India (Part- 2)" uploaded in July of this year.⁴⁵ There are two text clips that show up before the video begins, one of them a disclaimer and the other stating that covid policies have been followed. This is because the other section on which the comedian and his associates were arrested for were Section 269 (negligent act likely to cause spread of disease) and Section 188 (disobedience to order duly promulgated by public servant) of IPC. This is because Section 295A (deliberate and malicious acts, intended to outrage religious feelings) is not enough in incarcerating comedians, so the police have started to use Sections related to epidemic and spread of disease to shut down these shows.

⁴³ Roy, Debayan. "[Breaking] Supreme Court Grants Ad-Interim Bail to Comedian Munawar Faruqui [Read Order]." Accessed on February 5, 2021.

⁴⁴ As of December 2022, the number of videos on his channel have increased to 35. However, the data specified in this note was recorded on 2 December, 2021. *cf.* Munawar Faruqui, YouTube, Accessed on December 2, 2021. <https://www.youtube.com/@munawar0018/videos>; for details on the Youtube Studio feature please see YouTube Help. "Trim Your Videos -YouTube Help." Google. Accessed December 2, 2021. <https://support.google.com/youtube/answer/9057455?hl=en>.

⁴⁵ Faruqui, Munawar. "Politics in India - Part 2 | Stand-Up Comedy by Munawar Faruqui" YouTube. July 1, 2021. 15:41. Accessed on December 1, 2021. <https://www.youtube.com/watch?v=ycbhV5MRJQc>

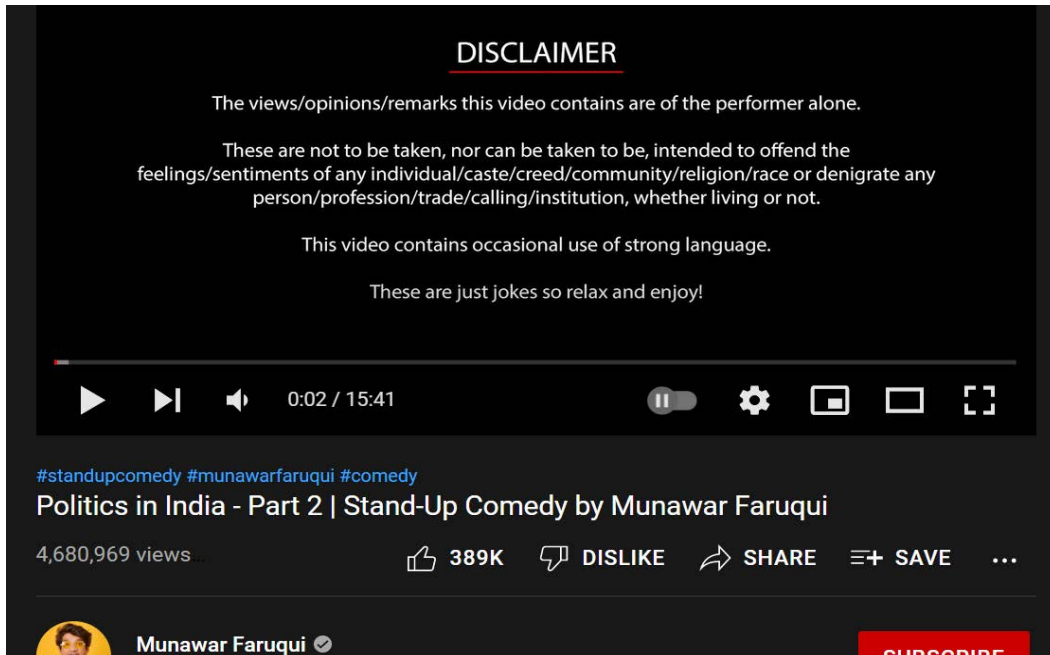


Figure 2.4: Disclaimer 1 in YouTube clip titled, 'Politics in India - Part 2 | Stand-Up Comedy by Munawar Faruqui' (Source, YouTube; Accessed on December 1, 2021).



Figure 2.5: Disclaimer stating the that COVID-19 policies were upheld in YouTube clip titled, 'Politics in India - Part 2 | Stand-Up Comedy by Munawar Faruqui' (Source, YouTube; Accessed on December 1, 2021).

No.G1PS/467/CC/2021

Ashokanagar Police Station
Bangalore City dt: 27.11.2021

To

Vishesh Dhuria
Curtain Call Events
C7, Keeshav Puram, Delhi-
&
Sidhrath Das
Representing Curtain Call Events
Ph. No. 9891675167/9999464935/8073472099

Sub:- Regarding Comedy show 'Dongri to Nowhere' organized
on 28/11/2021

Ref:- Your information letter Dated 15.11.2021

With respect to the above subject and reference It is informing you that at Good Shepherd on 28.11.2021 at 5.00 pm Mr. Munawar Faruqui stand-up - Comedy show Tital 'Dongri to Nowhre' the information letter is given to the police station on 15.11.2021 regarding above show by you. It is learned that Munawar Faruqui is a controversial figure as he was been in controversial statements and on other religion Gods. Many states have been banned his comedy shows. It is learned that a case has been registered against him in the Tukoganj Police station, Indore of Madyapradesh State Cr.no. 02/2021 U/s 295(A), 298,269, & 188 R/w 34 IPC and A similar cases is been registered against him in many states. There is credible information that several organizations opposing this stand-up -Comedy show performed by Munawar Faruqui, this could create chaos and could disturb the public peace and harmony which may further lead to Low & order problems. Therefore it is suggested that you should cancel the Mr. Munawar Faruqui stand-up - Comedy show, At Good Shepherd Auditorium on 28.11.2021 at 5.00 pm.

Thanking You



Police Inspector
Ashoka Nagar Police Station
Bangalore City - 560 025

Figure 2. 6: Notice received to Munawar Faruqui for his show in Bengaluru scheduled for November 28, 2021 (Source, *The Wire*; Accessed on November 19, 2021).⁴⁶

⁴⁶ The Wire. "Bengaluru Police Make Organisers Cancel Comedian Munawar Faruqui's Show." *The Wire*, November 28, 2021. Accessed on November 29, 2021. <https://thewire.in/rights/bengaluru-police-make-organisers-cancel-comedian-munawar-faruqui-show>.

Just today, comedian Kunal Kamra also posted on his social media pages on how his show in Bengaluru was cancelled due to the fact that they did not take a “special permission” to seat less people in a larger auditorium.⁴⁷ So selling more or less seats, both become an issue here.



Figure 2.7: A screenshot of Kunal Kamra's tweet on 'Cancelling comedy shows 101' (Source, Twitter; Accessed on December 1, 2021).

The comedian also shares this image in which he states that he will give up on stand-up if these steps don't confirm cancellation of a show (Figure 2.8).

⁴⁷ Kunal Kamra's tweet contains a slide of images of texts: "Cancelling comedy shows 101." (@kunalkamra88, December 1, 2021) Accessed on December 1, 2021. <https://twitter.com/kunalkamra88/status/1465951844224536577?lang=en>

Putting up the steps on how to cancel a show so that it's easier for other carders to follow. If they use this method & a show is not cancelled I'll give up being a stand up comedian.

Step no 1 - Inform police that there could be violence.

Step no 2 - Inform venue owner there could be violence.

Step no 3 - Inform artist that if he/she/they will be coming there will surely be violence.

Step no 4 - Remind the venue of what could happen if the artist manages to do a show despite the threats.

Step no 5 - Be ready with celebration memes that show your victory and togetherness in missing the point.

Figure 2.8: Slide 3 of Kunal Kamra's tweet on 'Cancelling comedy shows 101' (Source, Twitter; Accessed on December 1, 2021).

Last year I read an article titled, "Plague of 1896 redefined sedition" wherein Abhinav Chandrachud points out how the Epidemic Diseases Act 1897, gave unprecedented power to the British administration to incarcerate anyone who violated disease protocols or spread any form of information that is not verified by the state at that time.⁴⁸ In this article, he discusses how this law affected Tilak's trial (because his publications contained commentary on British's mismanagement and lack of support during the plague). The writer explains how he is fearful that similar tactics can be employed in the current setup and one sees those fears become reality in the comedy show cases I have discussed. Even though the police and the venue are evidently more concerned about the violence that can lead to serious amounts of destruction of the places, those concerns are being overshadowed by the epidemics section(s) and Covid-19 protocols in official notices. These innocuous stand-up comedy performances only have between forty to fifty audience members (which in terms of Covid-19 protocol are much less than the two hundred limit weddings we have this season).

⁴⁸ Abhinav Chandrachud, "Plague of 1896 Redefined Sedition. Coronavirus Mustn't Bring in Laws That Outlive Crisis." The Print, March 24, 2020. Accessed on November 29, 2021. <https://theprint.in/opinion/plague-1896-sedition-covid-19-mustnt-set-laws-outlive-crisis/386552/>.

Note, 11th March 2022

New Delhi

After many live show cancellations, comedian Munawar Faruqui stated that a production team reached out to him to become a part of a reality show that will be aired '24x7' on an OTT app Mx Player and Alt Balaji.⁴⁹

In the last few months, Faruqui has had 16 shows cancelled in various locations, including Bengaluru, Gurugram, Raipur, Surat, Ahmedabad, Vadodara, Goa, and Mumbai. These cancellations were due to pressure from Hindutva groups and BJP leaders who targeted Faruqui after he was arrested in Indore, Madhya Pradesh in January on questionable grounds (the anticipation that he would tell a hurtful joke).⁵⁰ The only show Munawar was able to perform was in Mumbai which was facilitated by All India Professional's Congress of Maharashtra (AIPC) (Figure 2.9).

In a detailed letter present in the tweet, AIPC explains why they organised this event, while also stating inhibitions felt by the artist for being perceived as politically aligned (Figure 2.11). They say that Munawar is just an example and that they believe in the artist's freedom of expression and performance. The letter also thanks police personnel who were an integral part of the show's success. Through this letter and otherwise explained below, police become a very important character in ensuring a comedian's performance.

⁴⁹ Masala! "Lock Upp: Munawar Faruqui Confirmed as the next Participant of Kangana Ranaut's Reality Show." Masala!, February 22, 2022. Accessed on March 5, 2022.

<https://www.masala.com/entertainment/tv-news/lock-upp-munawar-faruqui>.

⁵⁰ Menon, Vandana. "Pani Puri, Comedy & Intolerance - Two Days with Munawar Faruqui, the Comedian Denied a Stage." ThePrint, December 11, 2021. Accessed on March 4, 2022.

<https://theprint.in/features/pani-puri-comedy-intolerance-two-days-with-munawar-faruqui-the-comedian-denied-a-stage/780085/>.



AIPC - Maharashtra
@AIPCMaha

...

We facilitated #MunawarFaruqui's performance in Mumbai yesterday.

Artists should have creative freedom as long as they abide by the constitution & respect all faiths.

We may disagree with someone's content but using force to impose our opinion on others is unconstitutional.

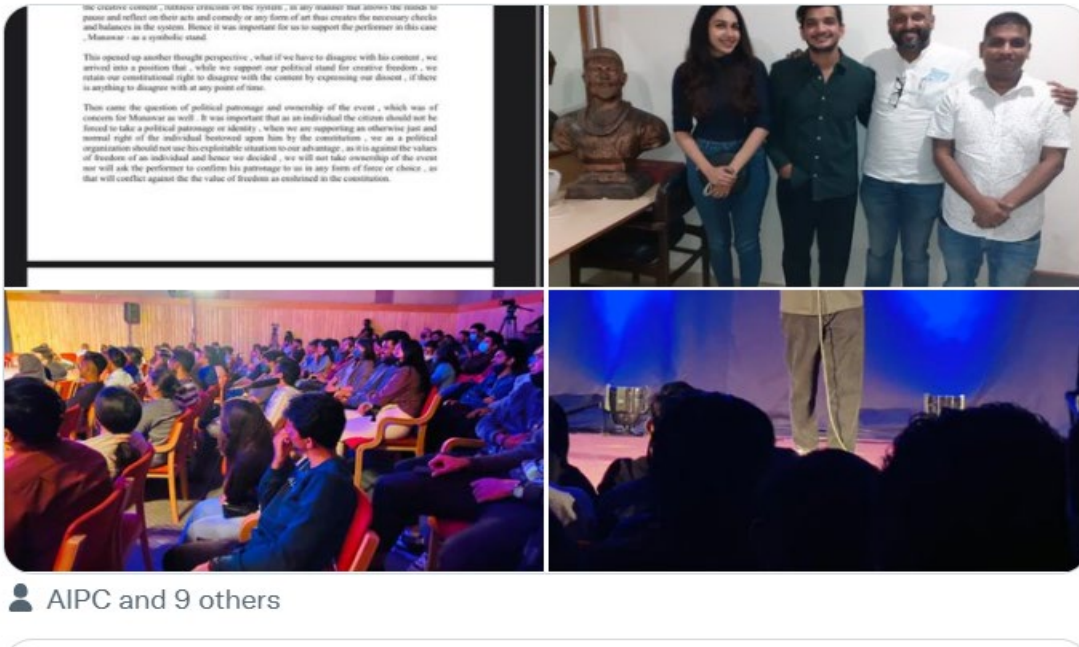


Figure 2.9: AIPC - Maharashtra's tweet on the event organised by them. (Source, Twitter; Accessed on March 3, 2022).⁵¹

⁵¹ APIC - Maharashtra's tweet on Munawar Faruqui's comedy show event they facilitated: "We facilitated #MunawarFaruqui's performance in Mumbai yesterday". (@AIPCMaha, December 19, 2021) Accessed on March 3, 2022. <https://twitter.com/AIPCMaha/status/1472444272326578177>



All India Professionals' Congress

Long Live Democracy | Thank you to all the Torchbearers.

We promised and We delivered

On the 27th of November 2021 , We made a promise to ensure that comedian Munawar Faruqui will be facilitated to perform in Mumbai , after 12 consecutive cancellations , which has progressed to 16 by yesterday the **18th December 2021 , where we delivered** our promise and he performed in front of a full house -audience at Y.B.Chavan Hall , Churchgate , Mumbai.

It went like any normal event , where there wasn't any element of disturbance and we sincerely thank all the Torchbearer's who believed in living the values of the constitution , the Freedom of Expression for an Individual and the Freedom of Choice for the individual to choose the form of entertainment they would like to consume. **The DCP Zone 1 of Mumbai/Maharashtra Police Shri.Hari Balaji IPS and the entire police team of Cuffe Parade Police Station , Mr.Ravi Kulkarni from Hon.Cabinet Minister Aaditya Thackeray's office , Shri.Dilip Walse Patil , Honorable Home Minister's office , the entire Pawar family and the Y.B.Chavan venue managers and team , the Maharashtra Congress State Leadership and the entire AIPC State leadership VP Mr.Sumedh Gaikwad , Secretary MsZara Parwal ,the State Executive team, National COO Mr.Aalim Javeri , Shri Rajiv Arora, Dr.Salman Soz and our Hon.Chairman Dr.Shashi Tharoor , MP.**

We had few beautiful debates while we decided to support Munawar Faruqui , we wanted to support Munawar , as a political stand not for Munawar but for any artist or individual , who should have the creative freedom of their mind to be applied without fear , so that it can have the creative content , ruthless criticism of the system , in any manner that allows the minds to pause and reflect on their acts and comedy or any form of art thus creates the necessary checks and balances in the system. Hence it was important for us to support the performer in this case , Munawar - as a symbolic stand.

This opened up another thought perspective , what if we have to disagree with his content , we arrived into a position that , while we support our political stand for creative freedom , we retain our constitutional right to disagree with the content by expressing our dissent , if there is anything to disagree with at any point of time.

Then came the question of political patronage and ownership of the event , which was of concern for Munawar as well . It was important that as an individual the citizen should not be forced to take a political patronage or identity , when we are supporting an otherwise just and normal right of the individual bestowed upon him by the constitution , we as a political organization should not use his exploitable situation to our advantage , as it is against the values of freedom of an individual and hence we decided , we will not take ownership of the event nor will ask the performer to confirm his patronage to us in any form of force or choice , as that will conflict against the the value of freedom as enshrined in the constitution.

We were then left with the difficult choice of how to handle the threat or the people behind the threat , we arrived into a decision that , those who disagree and dissent with the content of the performer ,should have equal respect and freedom as that of others , but should be discouraged from using any form of threat or force to impose their thinking as someone else's thinking or force someone to obey their orders ,as it is against the values of the constitution.

To conclude , it is important for each one of us to live the values of the constitution that will take us through various phases of , agreement , dissent , protest , criticism , sarcastic forms of criticism as these are quint essential elements that will keep the checks and balances on " Democracy".It will have its passage through moments of fear,failure, accountability ,courage , belligerence , conflicts , negotiated and articulated settlements and conclusions , without slipping into oppression ,threat or violence.

This is what All India Professionals Congress , a department of the Indian National Congress , firmly believes in and at any point of time , this will be our political stand , where we will raise our voice , take a political stand in an unconditional manner , to protect the values of our constitution and to keep " Democracy" in tact.

Long live our Constitution and Long Live our Democracy

Thanking you, I remain
Yours truly

**On behalf of the entire AIPC team who participated on this,
as their President for Maharashtra**

Adv. Mathew Antony

Issued on : 19th December 2021 , from Mumbai.

Figure 2.10: AIPC's letter detailed in their tweet (Source, Twitter; Accessed on March 3, 2022)

I am particularly interested in the ways comedians have sought to work around formal and informal prohibitions on their stage performances. Munawar has a massive internet following; ever since his shows have been getting cancelled, the comic has started to post his performances on his Instagram and Twitter pages. Every time a show is cancelled, Munawar goes on Instagram live and spends some time there interacting with people who bought tickets.⁵² Right before the AIPC show, he posted a statement on his social media about leaving stand up. Faruqui posted on social media to express his anguish, writing that the Bengaluru show was going to be used to generate funds for Puneeth Rajkumar’s charity organisation.⁵³ Faruqui added that the show has a censor certificate and that the only reason his shows have been cancelled is the threats to the venue and audience.⁵⁴

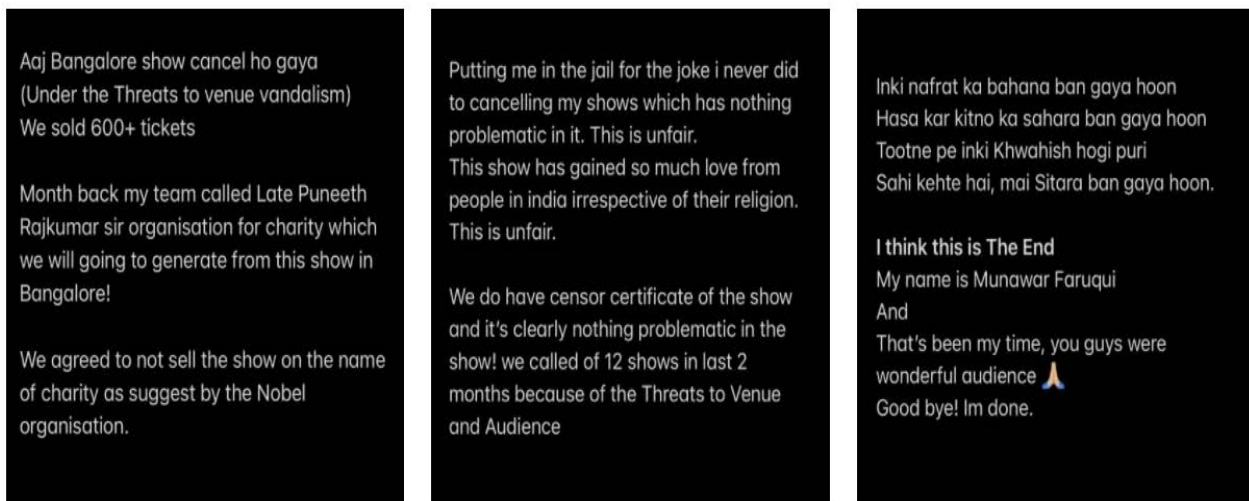


Figure 2.11: Munawar Faruqui’s tweet on his decision to leave stand-up. (Screenshot) (Source, Twitter; Accessed on March 1, 2022).⁵⁵

⁵² Munawar Faruqui (@munawar.faruqui), “Live before lockup 2022.” Instagram live, March 2, 2022. Accessed on March 3, 2022. <https://www.instagram.com/tv/CaaNAfDqSu8/?igshid=YmMyMTA2M2Y=>

⁵³ India Today. “Comedian Munawar Faruqui’s Cancelled Show Was a Charity Special for Puneeth Rajkumar’s Foundation.” India Today. India Today, November 28, 2021. Accessed on March 6, 2022. <https://www.indiatoday.in/movies/regional-cinema/story/comedian-munawar-faruqui-s-cancelled-show-was-a-charity-special-for-puneeth-rajkumar-s-foundation-1881765-2021-11-28>.

⁵⁴ Munawar Faruqui’s tweet on his decision to leave stand-up: “Nafrat jeet hai, Artist haar gaya. I'm done! Goodbye! INJUSTICE” (@munawar0018, November 28, 2021) Accessed on March 1, 2022. <https://twitter.com/munawar0018/status/1464834752234471431>

⁵⁵ Ibid.

Apart from Munawar, other comedians that were involved in the January 2021 case are also facing similar issues, in fact they have not been able to perform anywhere and allege constant harassment by right-wing members and police. In one instance, Nalin Yadav (a respondent in the case) was stopped at a grocery store by the police and forced to show his two-wheeler's documentation.⁵⁶

After the incidents that were leading to a crisis of Munawar's stand-up career, he decided to take part in a show called "Lock Upp", a new reality television show hosted by Kangana Ranaut. Modelled on Bigg Boss, the show will put celebrities in prison-like conditions and subject them to humiliation from Ranaut. At the trailer launch of Lock Upp, Ekta Kapoor (creator of the show) had shared hints about the first three contestants. She shared that one contestant would be a comedian who hasn't performed for a long time. The other contestant would be a female celebrity who accused her husband of domestic violence and the third contestant would be an actor who runs her own app.⁵⁷

In the teaser announcing Munawar's participation, the stand-up comedian is seen setting his mike to perform, when he is picked up by people and put inside a jail.⁵⁸ The voice-over states that Munawar is now in the lock up, and he will have to play the '*atyachari khel*' [torturous game] to survive. He is then seen dressed in an orange jumpsuit that prisoners often wear in the US. The caption of the video reads, "*Shows huye hain inke cancel, kya challenge Lock Upp mein inke plans?* [His shows have been cancelled, will his plans work out in Lock Upp?] #LockUpp streaming from 27th Feb, LIVE free." The teaser attempts to recreate what happened to Munawar on 1 January

⁵⁶ DeadAnt. "Comedian Nalin Yadav Alleges Harassment by Indore Police." DeadAnt, November 28, 2021. Accessed on November 28, 2021. <https://deadant.co/comedian-nalin-yadav-alleges-harassment-by-indore-police/>

⁵⁷ "LOCK UPP Trailer Launch Event In Delhi | FULL VIDEO | Kangana Ranaut, Ekta Kapoor | ALTBalaji" YouTube. Mayapuri Cut. 40:16. February 16, 2022. Accessed on March 2, 2022. <https://www.youtube.com/watch?v=0oMceLqzxVE>

⁵⁸ Alt Balaji (@altbalaji) "Contestant No - 2 Arrested". Instagram video, February 18, 2022. Accessed on February 27, 2022. https://www.instagram.com/p/CaG6rEeJA_E/?utm_source=ig_embed&ig_rid=34fe6aec-72fc-481b-8503-aa0f8cecd056

2021, Munawar is performing in front of a small (five to seven people on set) group, which is disrupted by two actors in police uniform.

The image is a screenshot of the Alt Balaji website's page for the show 'Lock Upp'. The page features a dark background with a video player showing a woman in a red sari. A pop-up bio for Munawar Faruqui is overlaid on the video, highlighted with a pink border. The bio includes a small portrait of him and text describing his arrest and sentencing. Below the bio, a row of small circular portraits shows other contestants. The website's navigation menu and search bar are visible at the top.

Figure 2.12: Munawar Faruqui's description bio for Lock Upp in Alt Balaji's website (Source, Alt Balaji)⁵⁹

The description says - "Munawar is an Indian Stand Up Comic who was Jailed because of his Stand Up set. *Unpar aarop yeh hai ki - Unhone logo ki dharmik aastha ka mazak udakar unhe thes pahuchayi hai.* Munawar sentenced for 10 weeks on Lock Upp." [Munawar is an Indian stand-up comedian who was jailed because of his stand-up set. The accusation against him is that he has made fun of people's religious beliefs and hurt their feelings. Munawar has been sentenced to 10 weeks in lock-up.]

⁵⁹ "Lock Upp." AltBalaji, 2022. Accessed on February 27, 2022. <https://www.altbalaji.com/show/lock-upp/371>.

Even though there are twelve other contestants in the show, Munawar is at the centre of this reality show. Both Alt Balaji and Mx player's socials hyper focus on him in all their promotional content. What took Munawar's fans by shock was that he was participating in a show that is hosted by actor and right wing spokesperson Kangana Ranaut.⁶⁰ In the coming days after this teaser, Munawar received a lot of backlash from his fans across his social media pages.⁶¹

Deadantco, a media company focused on comedy coverage conducted an interview with Munawar on his participation in the show and why he took this decision.⁶² This interview took place before the show began, since the show has started, Munawar did not have any interaction with the outside world. Upon asking why he decided to become a contestant on this show, he says, "In the initial stage I didn't know who was going to host the show and all but slowly you learn more about the show and it gets interesting. I mean, even now there's a lot of details about the show that I found out in the promo. We don't know what will happen later on in the show... so it definitely is exciting. And it's different. Sometimes you're in a zone where you feel like you want to do something different for a little while. We don't even know what happens in the show. We know as much as you know about it."⁶³

The reality show began on the 27th of February and airs on the OTT platform all twenty-four hours of the day. In a final live stream on Instagram, Munawar addresses

⁶⁰ Tribune News. "Stand-up Comedian Munawar Faruqui to Join Kangana Ranaut's 'Lock Upp' as Contestant; Twitterati Can't Decide 'Whether to Watch the Show or Boycott It.'" Tribuneindia News Service, February 22, 2022. Accessed on March 9, 2022. <https://www.tribuneindia.com/news/entertainment/stand-up-comedian-munawar-faruqui-to-join-kangana-ranauts-lock-upp-as-contestant-twitter-cant-decide-whether-to-watch-the-show-or-boycott-it-372095>.

⁶¹ DNA. "Munawar Faruqui Reacts to Backlash for Participating in Kangana Ranaut's Show 'Lock Upp'." DNA India. Accessed March 8, 2022. <https://www.dnaindia.com/television/report-munawar-faruqui-reacts-to-backlash-for-participating-in-kangana-ranaut-s-show-lock-upp-2936151>.

⁶² "Home." DeadAnt, January 13, 2021. <https://deadant.co/>. Accessed on March 11, 2022.

⁶³ DeadAnt. "Munawar Faruqui on Being in 'Lock Upp' with Kangana Ranaut." DeadAnt, n.d. Accessed on March 10, 2022. <https://deadant.co/munawar-faruqui-on-being-in-lock-upp-with-kangana-ranaut/>.

his audience for half an hour and says that he is glad he got this opportunity.⁶⁴ A rough summary of this final live stream is that Munawar thanks his fans for the support, he says that in the last few months many of his shows got cancelled due to threats given to organisers. He said that he used to receive plenty of messages from fans who bought his tickets months back just to end up getting a refund. These messages left him heartbroken because he wanted to perform but was refused a stage to do so. He is taking this reality show as a seventy-two-day long performance stage where his audience can see him perform every day. He said he will use every camera to do his *shayari* (he writes poetry apart from comedy) and show the other side (right wing critics) that he is a true performer and will use every chance he gets to address the audience. He informs his audience that he will no longer be controlling his social media and that he will not have a phone throughout. Munawar expresses his fear regarding this and says that after last year's debacle he is scared of leaving his phone, he has to be on social media all day because it is the place that informs him about the allegations against him, but more than that it is a place where he receives support everyday through loving messages and posts. He says he will miss looking at memes that his fans create but says that he is excited to see all the memes that come out of the show.

As orchestrated by the producers and in living up to audience's expectations, Munawar became the most popular personality of this show. Most clips shared by the production team on social media suggests that he is actually receiving the most amount of screen time on the show.⁶⁵ There are several clips of him reciting his *shayari* [poetry] in jail and a few instances wherein he has conversations with

⁶⁴ Munawar Faruqui (@munawar.faruqui), "Live before lockup 2022." Instagram live, March 2, 2022. Accessed on March 3, 2022. <https://www.instagram.com/tv/CaaNAfDqSu8/?igshid=YmMyMTA2M2Y=>

⁶⁵ Alt Balaji's posts from February 22, 2022 to March 5, 2022 reveals that Munawar features in at least 8 of the promotional content, visibly on the preview photo in the feed. See Alt Balaji (@altbalaji), "Shows huye hain inke cancel, kya chalenge Lock Upp mein inke plans?" Instagram post, February 22, 2022. Accessed on March 8, 2022.

<https://www.instagram.com/p/CaRQ97JliGP/?igshid=YmMyMTA2M2Y%3D>

Alt Balaji (@altbalaji), "aj Kangana ki court mein, @munawar.faruqui ne serve kiye roasted contestants" Instagram post, March 5, 2022. Accessed on March 8, 2022.

<https://www.instagram.com/p/CauOXAhtv37/?igshid=YmMyMTA2M2Y%3D>

Kangana. I haven't watched the show personally, but the media coverage clearly shows that he is the main character of this show. The show has many comedy related segments such as Roasts, in which Munawar is publicised through the episode promos. Ultimately, Munawar won this reality show and received the winning trophy from Kangana Ranaut, giving his fans and viewers another viral moment on the Internet.

Munawar's story is a glaring testimony on how a defendant of crimes against the state can utilise the publicity that comes with this charge in furthering their own career goal. He is among the biggest names in the entertainment industry now, and apart from his regular comedy shows, he releases new music and poetry occasionally on his YouTube channel. His latest YouTube Series "BAN MAN" is another comedy skit venture that delves with the current issue of boycott that Bollywood and comedians are facing across the country.⁶⁶

⁶⁶ Munawar Faruqui. "BAN MAN - Part 1 | Munawar Faruqui". Youtube, Munawar Faruqui, October 7, 2022. Accessed on December 18, 2022.
<https://www.youtube.com/watch?v=gWwxXfgFddl>

Notes on Mediated Witnessing

Susan Sreemala

My project over the past year has attempted to detail how truth telling is transformed after widespread media proliferation, with a focus on public commissions of inquiry into the Northeast Delhi Riots in 2020. The project seeks to understand the nature of political, humanitarian, and legal claims made in the presentation of witness speech and evidence; how to assess the temporality of the report in negotiating these often-competing claims; and what the handling of media evidence discloses about the politics of caution, care, and self-care. In detailing how investigations assemble evidence and articulate the evidentiary value of media, special attention is given to practices associated with open-source investigations, online publication and archiving, and the management of risk associated with such human rights media work.

This note is taken from May 2022 as I attempt to put together a few moments from the various human rights investigations I had been tracking to think of the interaction between media objects (in this case mostly in the form of user generated content from the violence) and the traditional figure of the survivor-witness, the victim. These moments I believe articulate a form of injury that mends the fracture between the suffering victim and the distant witness from most canonical accounts of mediated witnessing. The present and impacted witness is also a vicarious witness as user-generated content from the events change what it means to be an impacted witness “on the ground”.

11 May 2022

New Delhi

Hello everyone,

Today I want to think through the question of mediated witnessing in the materials I have been working with. I do this by examining inquiries into the communal violence in North-East Delhi in February 2020. I hope to set up the stakes and elaborate on some operative concepts through a literature review and describe to you a few moments from the events of February 2020 that I believe provide insight into a certain field of witnessing and its conditions of veracity.

Outline

Literatures on media witnessing work with the ethics and politics of mediating experience for the distant other (Ong, 2014). The scholarship references the figures of the humanitarian actor, the journalist, and the digital witness. While it remains true that the most striking instance of mediated witnessing is in the moment of suffering being made accessible to the distant other (Sontag 2003) as a feature of living in the modern world, conversations on this encounter might not be an adequate account of the conditions of mediated witnessing. While some scholarly accounts (Azoulay 2008; Nikkunen 2019;) think of the emancipatory potentials of such projects of visibility, there is scant attention provided in this literature to how this modern condition of widespread mediated, distant witnessing might fundamentally reconstitute the relations of the humanitarian and impacted survivor witnesses. This note is an attempt to open this field of witnessing. I am also interested in opening up a conversation on what the conditions of widespread mediated witnessing do to the constitution and adjudication of injury and the experience of the event. I am keen to follow the uncertainties mediated witness generates in framing an event.

Literature Review

Witnessing has a rich conceptual history and the position of the witness is one of having been present to the event. Literature, however, suggest that infrastructures of intimacy and presence are transformed by media (Cefai and Couldry 2019; Silverstone 1994; Turkle 2017). Paul Frosh and Amit Pinchevski offer that “Media witnessing’ is the witnessing performed in, by, and through the media”. (Pinchevski and Frosh 2008, 1) While witnessing in media is concerned

with the journalistic form, it is in the second and third form of witnessing by media and witnessing through media that this paper works with; denoting two ways of thinking about media and the witnessing position. It is the latter modality that gives rise to the 'distant suffering question' and the digital witness involving the mediation of experiences of suffering through various modes of witness for distant audiences through discourses of compassion while the question of witnessing by media, is concerned with making media evidential through aesthetic and rational practice of judgement.

In the *Aesthetics of Human Rights*, Sharon Sliwinsky marks the 1755 Lisbon Earthquake as an alternative origin point for modern human rights discourses. Describing the earthquake to be the first modern mass media event, she argues that the images of the earthquake created spectators towards a distant catastrophe, which ultimately consolidated a secular notion of human suffering. Sliwinsky's enduring claim is that in encountering images of suffering, "such painful aesthetic encounters can be thought of as the pre-legal or perhaps the pre-political affective climate that galvanises human rights discourse" (Sliwinsky 2009, 24). In *Appeal of Experience; the Dismay of Images: Cultural Appropriations of Suffering in Our Times*, Joan and Arthur Kleinman, provide a definitive articulation of the "dismay" of the distant suffering debate, locating the unease in such mediated humanitarianism within professional appropriations of suffering. Speaking specifically of photojournalism and public health, they argue that even though "cultural process of professional and political transformation is crucial to the way we come to appreciate human problems and to prepare policy responses" (Kleinman and Kleinman 1996, 2) in the globalisation of suffering, the stakes these professions take for granted become iatrogenic. Through their discussions on five instances of appropriations of experiences of suffering they demonstrate the erasure of local voices and acts in visualising social suffering to create politically relevant rhetorical tools to mobilise support for social action.

Jonathan Ong identifies that in such studies of 'distant suffering' the default audience is assumed to be the Western middle-class audience, witnessing through media the suffering of distant others, estranged from suffering themselves and located in a zone of safety (Ong 2014, 189). Ong, argues for ethnographic practice to follow the lives media that bear witness to truly grapple with the ethical and political stakes for various actors including victims, mediators, and audience for media that bear witness to suffering.

In *The Civil Contract of Photography* (2008), Ariella Azoulay invents the "civil political space" of photographic citizenry that makes demands of citizenship upon the photographer, the photographed subject, and the spectator. Azoulay does this through encounters with images from occupied Palestine, and an analysis of

gendered violence under conditions of widespread use of cameras. She invokes the civic skill of watching, as opposed to viewing (the legacy of Sontag's idea of *viewing ethics* articulated in her book *On Photography*) where the civic space of photography engages citizenship as a practice as opposed to a status." (Azoulay 2008, 22). Azoulay's project distances itself from organising the photographic gaze directed toward the suffering other through terms such as "empathy", "shame", "pity" or "compassion, instead emphasising that this photographic gaze be conceived of through a "contract". This creates a space of photographic citizenry that is not mediated by the state or national logic. While Azoulay is preoccupied with making a claim about the utopian possibilities of this civic political space of photographic citizenry operating outside the disciplinarian gaze of the state, Christopher Pinney responds with a consideration of how media practice of photography in India is incarnated as both utopia and dystopia, reconciling "this very *difference* with what is in part a media logic and not simply cultural or historical inscription." (Pinney 2017, 2)

Pinney also observes that while colonial authority was able to marshal the indexical authority of its own ends, the indexicality of images meant that it occupied a special and privileged register of visual evidence in bitter political contests. He shows how its evidential potential in support of nationalist politics is equally explicitly foregrounded in the Indian National Congress report of the Peshawar Enquiry Committee of 1930 showing images from the gathering at Jallianwala Bagh as being unarmed and peaceful, with the photographs even being used by eyewitnesses to corroborate their own accounts. This provides valuable context to a large part of the material I have been looking at – inquiries of fact into the violence in North East Delhi.

The inquiry has been a valuable category of thinking of how witnessing is mediated and authorised for me. The inquiry of fact is not a simple process of discovery divorced from means by which to adjudicate claims of injury, and I am indebted to Maksymilian Del Mar's model of inquiry of how the courts (in the context of Del Mar's work but applicable to other forums too in my understanding) in the sheer difficulty of the task of doing justice conduct activities of inquiry that

"are social, i.e. both interactive and collective, processes that: are not reducible to, but overlap with, the contexts of discovery and justification; occur in real time and over time; are experimental in their cognitive and expressive character; and the object of which is the making of insight into what values, vulnerabilities and interests might be at stake in a case and in cases potentially like it in the future."(Del Mar 2020, 1).

The inquiry is conducted by various “mediators” of witness speech from humanitarian actors and journalists to distant human rights investigators. The idea of the mediator comes from Ashuri and Pinchevski’s idea of thinking of witnessing as a field as opposed to the singular position of the witness. In doing so they outline some of the relations by which witnessing is authorised through modalities of copresence (being present at the event in time and space), liveness (present in time but separated by space), historicity (being present in space but not time), or numerous relationships of vicarious witnessing by which they may close the veracity gap experienced by the recipient of witness speech. Eyal Weizman and Thomas Keenan argue in the introduction to their book *Forensis* that “the field is not an isolated, distinct, stand-alone object, nor is it the neutral background on or against which human action takes place. Rather, it is a thick fabric of lateral relations, associations, and chains of actions between material things, large environments, individuals, and collective action.” (Weizman and Keenan 2014, 27) In the practice of forensic architecture, investigators are able to create forums around non-human witnesses in these lateral relations responding to what they signal to be an object-oriented juridical culture. The digital witness (Dubberly, Koenig, and Murray 2020) can be thought of as one such category of vicarious witnessing that defines the practices of groups such as Amnesty’s Citizen Evidence Lab¹, the bellingcat² project, and WITNESS³. It focuses on the practices of non-official human rights investigators in verifying and documenting human rights abuses through processes of open-source investigation to make credible human rights claims through publicly available media objects documenting human rights violations.

Fact finding reports have been a mainstay in human rights speech in India by mediating witness speech and providing a form of humanitarian documentation through proximity and access to the events. Over a dozen fact finding inquiries into the communal violence in North-East Delhi provide a rich account of the event through various practices of ordering testimony and creating evidential artefacts. Other forms of “modern” human rights fact findings and journalistic investigations attempt to order and stabilise the massive amount of publicly available media evidence documenting the violence. But a close reading of the testimonial encounters in these investigations betrays an unruly uncertainty about what it means to bear witness to an event. We need to reflect on the instability of the witness position, and what it means to live with violence. This is

¹ <https://citizenevidence.org/> (Accessed on 10th May, 2022)

² <https://www.bellingcat.com/> (Accessed on 10th May, 2022)

³ <https://www.witness.org/> (Accessed on 10th May, 2022)

not to call back to the question of the historical and philosophical crisis of witnessing but how injury itself might be constituted by the conditions of widespread mediation of witnessing in these events – creating surprising uncertainties in how injury is registered in the courts and in public truth. I describe a few crucial moments in these inquiries that illuminate in one way or another, a moment where the event of witnessing becomes the subject of the testimony and constitutive of the injury itself. And in focusing some of these lateral relations, I hope to reflect on what it means for an event such as the violence in North-East Delhi to be witnessed from "a distance".

Moments from Investigations

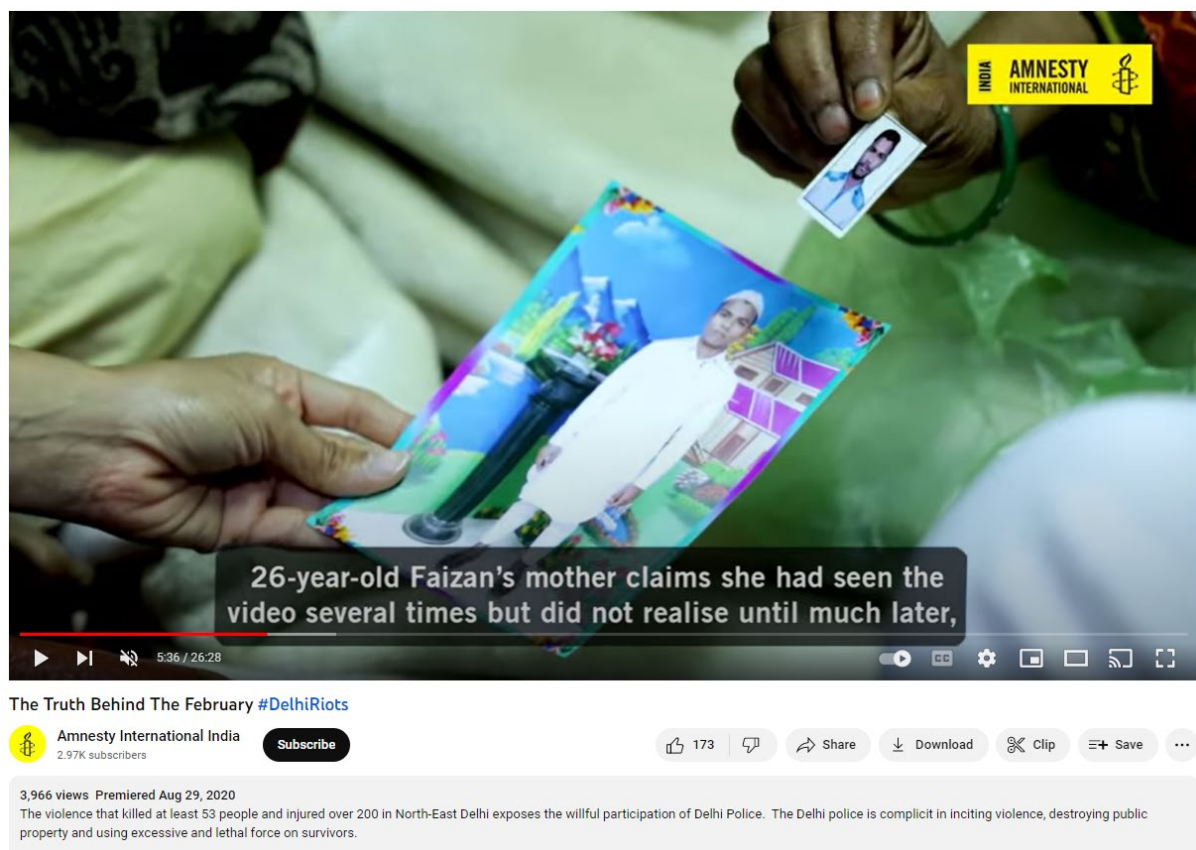


Figure 3.1: Faizan's mother showing the interviewers images of her son. Source: Screenshot of Amnesty International India's documentary on YouTube.

One of the most forceful instances of this is in Amnesty India's investigative brief (Amnesty India, 2020) and documentary⁴ in which the first viral video presented

⁴ <https://www.youtube.com/watch?v=Lk3UPYGs7pj> (Accessed on 10th May, 2022)

by the documentary is that of the police beating up a young man named Faizan along with other Muslim men, forcing them to sing *Vande Mataram*. The choice of using viral videos is characteristic of the Citizen Evidence Lab's practice of open-source investigations. While the report says that the video was "analysed", it is unclear how it differs from a video being "verified" but either way it suggests that this media object is put through a process by which the video is made evidential and conferred testimonial authority and credibility. It is in the following moment that an incredibly forceful articulation of the horror of these events is made in an interview with Faizan's mother (Amnesty India). She is asked about the video, and she mentions that she had seen the video several times but had not recognized her son in it till much later (Figure 3.1). The audience is drawn into feeling like they watched the video with her and the horror of the misrecognition under the widespread conditions of the video's circulation dawns on the audience as Faizan's mother is shown weeping. At first glance it would seem that Faizan's mother's testimony of how she looked for her son, asking the police if her son was in their custody and how she rushed him to a hospital and how he was eventually pronounced dead is a separate series of events, separated by space, to which she can bear witness. But when the narration of her initial unrecognition in the documentary is visually juxtaposed by photos of Faizan provided to the interviewer by his mother, that the temporality of her testimony becomes clearer. She is not simply occupying the position of the witness inscribed for families to bear witness to their grief and their pursuit of truth but also a digital witness able to provide veracity and testimonial authority to the video by recognising the victim and his eventual death.

The second moment is in the articulation of the widespread availability of Kapil Mishra's speech when in the Delhi Minorities Commission observes that they cite the following video URL in the footnotes as a source for the Kapil Mishra speech: <https://www.youtube.com/watch?v=M1RcLjP9068> with an accompanying explanation, "has four videos including Kapil Mishra's which Delhi High Court Justice Murlidhar made the Delhi Police watch"(DMC 2020, 11). The video is a compilation by MOJO Story, with the following description:

Delhi High Court made the Delhi Police watch 4 videos in court establishing hate speeches that had been made by politicians but not acted on by the police. Kapil Mishra was one of the four videos. Justice Murlidhar who came down on the police sharply for inaction has since been transferred to the Punjab and Haryana High Court (MOJO Story, 2020)

The widespread availability of this video recording of the speech, made very

much to the cameras directly as the Deputy Commissioner of the Delhi Police watches on in the background is not simply explained by the availability of evidence but inaction despite this accessibility to this speech. The emphasis placed on the fact of the Delhi High Court instructing the police to watch the videos provides an interesting moment of tension in thinking about state complicity. It is not new for an inquiry of fact to draw attention to publicly available evidence of hate or incitement to violence but what is transformed in the moment is that the court, through a judge, becomes drawn into the field of mediated witnessing which, however, remains invisible to the police investigation.

A third instance is from the report by Youth for Human Rights Documentation, a platform of young human rights professionals and lawyers based in Delhi. During the course of their fact-finding inquiry in the violence-affected areas the group reported that many of the victims were keen on speaking with them as they did not see their narrative being represented in the mainstream media or their social media. Much of the report seems to place itself in conversation with social media narratives. One such moment is in their recounting of an encounter with of an affected individual testifying to the injury of being a witness to online hate, in the middle of one of the deadliest events of rioting in the city in recent years. They narrate the encounter as follows,

Many testimonies of the affected individuals point towards the complicit role of their neighbours in the perpetration of violence, while others have expressed their dismay at not receiving any help from others during their time of utmost need. "I have many Hindu clients from Shiv Vihar, after the violence I looked at their social media accounts that are filled with hate speech against my community," stated a young Muslim man. He went on to call one such client in front of the fact-finding team who in turn accused men from Deoband (a Muslim organization) for causing violence. (Youth for Human Rights Documentation 2020, 42)

A fourth instance comes with the recording of the events at Maujpur-Babarpur Metro station by a citizen journalist, Farhan Yahiya. While documenting one of the earliest clashes in this spate of violence, he is able to record the actions of one Ragini Tiwari who had livestreamed herself on Facebook making provocative speeches. While both address the camera directly, they come together in providing an account of the events in the moments when they show the audience what they see. Ragini Tiwari, in her livestream seldom breaks from using the front camera of her phone to record herself as she moves about, Yahiya focuses on filming his surroundings and captures Ragini Tiwari by virtue

of that, locating her in space and time while Tiwari can be seen filming herself in the background of his livestream. While Tiwari's livestream itself shows her being hateful and saying provocative things in an almost pro-confessional mode, it is only in Yahiya's video that her provocations are located and her actions recognised as not just being inflammatory online.

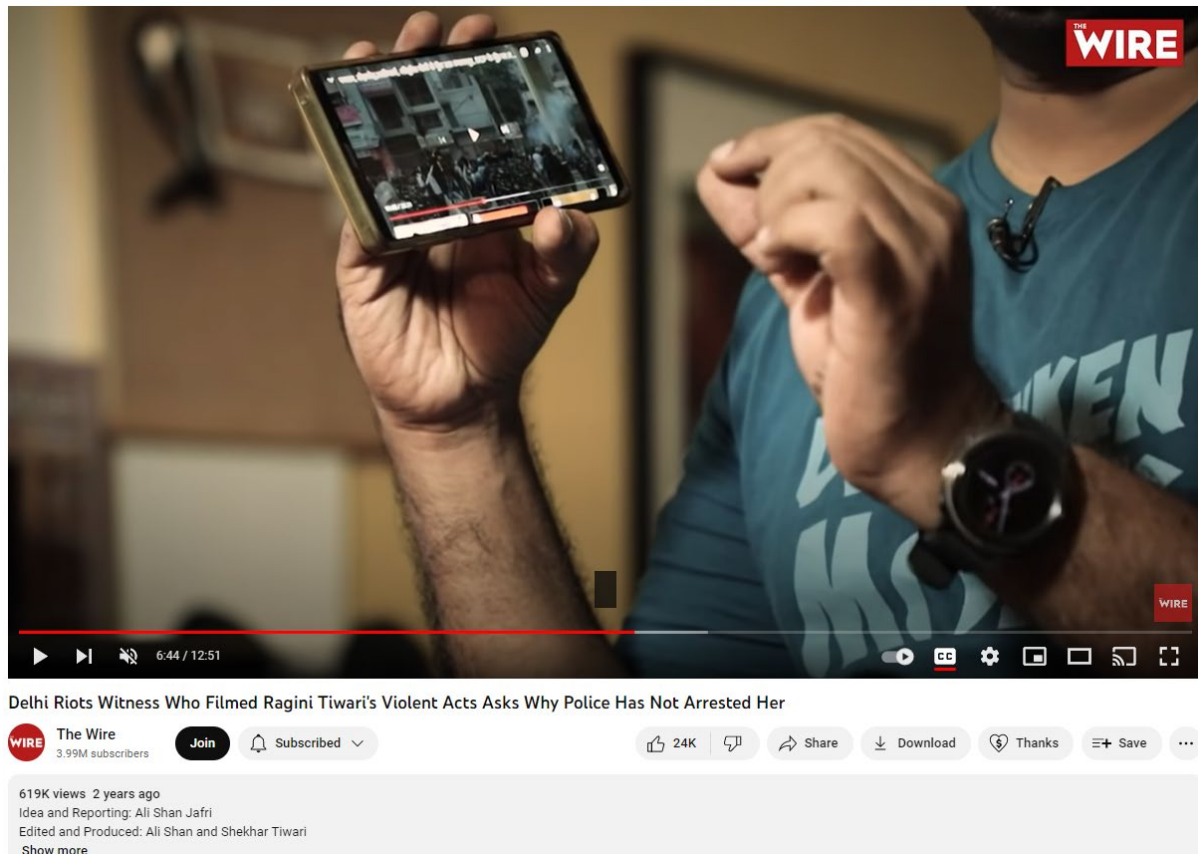


Figure 3.2: Journalist Farhan Yahiya showing the YouTube video of his coverage to The Wire. Source: Screenshot from The Wire's video on YouTube

He is cited in numerous other investigations into her actions (Figure 3.2)⁵. Here, he becomes a journalistic “witness”— impacted but reliable. In a sense, it is this doubling of recorded perspective that forms a fundamental claim of truth in open-source investigations. *Testis unis, testis nullus*.

I look forward to the discussion!

Warmly,
Susan

⁵ <https://www.youtube.com/watch?v=NMcBY-Rh1C8> (Accessed on 10th May, 2022) The Wire brings on Yahiya as a “witness” to Tiwari's actions.

Revisiting a Disturbing Public Event: The Guwahati Molestation Case, 2012

Sagorika Singha

In May 2020 I looked at the 'Guwahati Molestation Case' (hereafter GMC) of 2012. This incident came to attention in 2012 as a graphic video document of sexual assault on a young woman by a crowd of men. The incident finally resulted in a criminal trial. In this note, I present my analysis of the judgement delivered on December 7, 2012, five months after the incident. 2012 was a horrific year in terms of violence against women in India. Also in December 2012, the violent sexual assault and murder of a young woman paramedic (Nirbhaya) in Delhi resulted in nationwide public protests in India.¹ The GMC preceded the Delhi case by almost five months. At the same time, it was intriguing to see a continuation in sexual assault cases and media spectacles centred around violence against women in the country. Formally, the GMC was different since it was recorded and aired on a local television channel which became the centre of the public controversy around the incident.

My research at ICAS:MP (2020-2021) focused on the circulation of violent videos on social media platforms in Assam. The Northeast region in India where Assam is located has seen online media referencing crowds and violent spectacles.² While the Guwahati incident itself drew a lot of attention, what remained significant was how the infrastructures of new media and specifically news making in the local region were being impacted as a result.

When I started working on my *Viral Geographies* collection at ICAS:MP, I felt it pertinent to revisit this incident as a precursor to the viral phenomena as we understand them today. To know more about the case, apart from collecting media materials across platforms including Facebook, YouTube, and Vimeo, I interviewed both local and national journalists who reported on this incident. I

¹ Arya, D. 2022. 'Nirbhaya 10 years on: The lives the Delhi gang rape changed'. BBC. Available at <https://www.bbc.com/news/world-63817388> (accessed on 7 December 2022).

² One such event is the Dimapur mob lynching which took place in the said capital city of Nagaland in 2015. A local mob lynched a young man to death in broad daylight in the town square. The incident happened during a period which witnessed a steady growth in mobile telephony, access to mobile internet and rising popularity of social media in the region. See TNN. March 2015. "Reveal truth on lynching, Assam CM tells Nagaland". Times of India. Available at <https://timesofindia.indiatimes.com/city/guwahati/Reveal-truth-on-lynching-Assam-CM-tells-Nagaland/articleshow/46488282.cms?fbclid=IwAR3DucYmBlyEfojHX7s1lz9gHhQW2iGZWj53--GNsOIfpHst8Sx9GAq99k&from=mdr>. (accessed on 12 December 2022)

also tracked judgements, academic articles, media reports, and crime reports in addition to excavating the newspaper archives.

In my reading of the incident, videos such as the GMC ones signal the rise of specific mobs—on one hand, there is the mob as the perpetrator and on the other, is the protesting mob. The ones vehemently against uploads of such kinds and those encouraging such uploads, both represent these mobs. The moment within which the Guwahati incident took place was around the time a shift took place from television to social media.

29 May 2020

New Delhi

A brief account of the Guwahati Molestation Case

The incident in question took place on July 9, 2012, on G.S Road, in central Guwahati.³ A young teenage girl who was returning from a birthday party at Club Mint Bar along with her friends was molested by a mob of around 20-25 men in the middle of the road near the bar. Gaurav Jyoti Neog, a journalist with a private news channel, *News Live*, recorded the entire episode.⁴ Neog was subsequently charged in the case under section (U/S) 143/341/323/294/ 354/379 and 366/511 of the Indian Penal Code (IPC). Following the Laxmi Orang case of 2007, where an Adivasi student activist was beaten and stripped publicly by a mob, pictures of which circulated extensively through news media, this case also led to outrage among the public.⁵ It opened discussions around the crime rate against women in Assam and the media ethics in the reportage of such incidents. This case attracted attention both globally and nationally.⁶ The video of the molestation of

³ Choudhury, R. Online. 2012. 'Manufactured Shame'. Tehelka. Available at https://web.archive.org/web/20120722191536/http://www.tehelka.com/story_main53.asp?file_name=Ne280712MANUFACTURED.asp (accessed on May 4, 2020)

⁴ While the original video was uploaded by the news channel, News Live was taken down soon. A copy of the violent video was uploaded by other YouTube channels. See chandraker624. 2012. 'Guwahati girl molested by mob Un Cut Version'. YouTube. Available at <https://www.youtube.com/watch?v=kWV1IsS8yEk> (accessed on 6 December 2022)

⁵ Laxmi Orang is an Adivasi woman who participated in the protests organised by the All Adivasi Students' Association of Assam (AASAA) demanding Schedule Tribe (ST) status for the tea communities of Assam. The demonstrations were taking place on November 24, 2007, in Beltola, in the heart of Guwahati city. During the rally, clashes broke out between the locals and the protestors, during which Orang was disrobed and mercilessly beaten by the local mob along with others. Many elements in Orang's ordeal reverberate in the contemporary—some of those are the continuing fascination with the imagery of violence and the body of the minority, gendered violence and the violence of the state. See Chetia, M & Hussain, B. 2013. 'Remembering Laxmi Orang: The Predicament of the Gender Question in Assam'. Newsclick. Available at <https://www.newsclick.in/remembering-laxmi-orang-predicament-gender-question-assam> (accessed on 6 December 2022)

⁶ Sahni, D & Rana, P. 2012. 'Guwahati Molestation: "What Has Happened to Our Society?"'. Wall Street Journal. Available at <https://www.wsj.com/articles/BL-IRTB-16005> (accessed on 6 December 2022); Deka, K. 2012. 'Assam police slam media for "hype" over molestation'. Daily Mail. Available at <https://web.archive.org/web/20120717035716/https://www.dailymail.co.uk/indiahome/indianews/article-2173265/Assam-police-slam-media-hype-molestation.html> (accessed on December 6, 2020); Pidd, H. 2012. 'Why is India so bad for women?'. The Guardian. Available at <https://www.theguardian.com/world/2012/jul/23/why-india-bad-for-women> (accessed on 6 December 2022)

the young girl, which had circulated through the Assamese local channel, *News Live* and its YouTube channel, propelled prime-time coverage for the incident all over India. After the news channel posted its news story on YouTube, the video went viral (they took it off the site when they received bad press owing to its broadcast).⁷

Why is this case important for my research?

This incident reflects the texture of the mobile and news television infrastructure of the time in Northeast India. It marks the emergence of regional/local spaces as significant sites of video-driven news spectacles. Exploring this case can help us better understand the media landscape in Assam at the time. Why was such kind of news material suddenly proliferating? How active were the social media networks in Assam?

The Guwahati Molestation Case Judgement

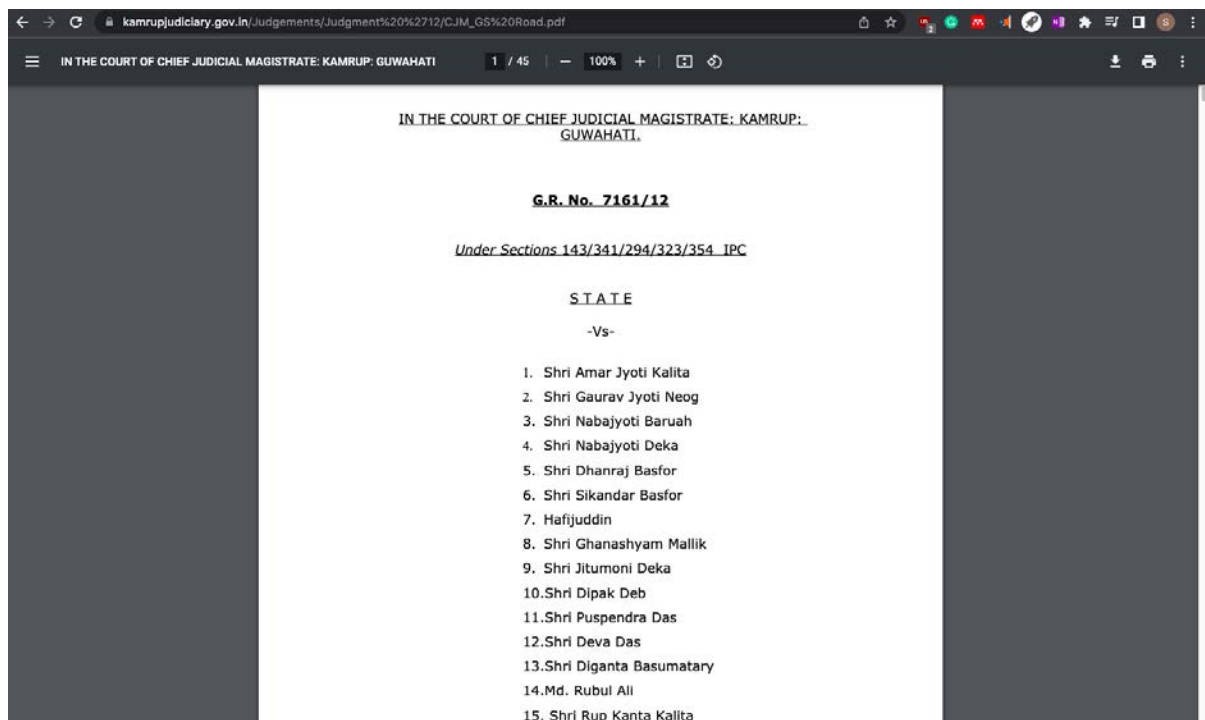


Figure: 4.1: Screenshot of the first page of the judgement from the website of the Kamrup Judiciary. See Chief Judicial Magistrate. 2012. "Judgement." PDF, Guwahati, Assam. Available at https://kamrupjudiciary.gov.in/Judgements/Judgment%20%2712/CJM_GS%20Road.pdf (accessed on May 1, 2020)

⁷ See Mukherjee, A. 2012. 'Guwahati molestation case: Court convicts 11, acquits journalist who filmed assault'. NDTV. Available at <https://www.ndtv.com/guwahati-news/guwahati-molestation-case-court-convicts-11-acquits-journalist-who-filmed-assault-506820> (accessed on 6 December 2022).

The impact of digital media in both circulation and generating public attention to this incident is unequivocal. Digital media networks mobilised the public at large and subsequently shaped a collective shift in the public mood. The impassioned discussion of the issue on Twitter popularised the hashtag #justiceforwomen, accompanied by extensive sharing of the screengrab of the incident.⁸ In short, there was an active online mobilisation which brought together NGOs, citizens of Guwahati, and activist groups both online and offline (Chhetry & Joshi 2017). The massive online mobilisation pressured the local police, as was seen by the speedy arrests and the expedited trial of the case. The virality of the GMC video signalled a vigilante justice culture connected to social media. Once the event grew in prominence, the National Commission of Women (NCW) sent an enquiry team to Guwahati led by NCW Member Wansuk Syiem. The team submitted an enquiry report to the then Assam Chief Minister, Tarun Gogoi.⁹ The television channel *News Live* was also questioned for its reportage. Within weeks of the event, both TV journalist Neog and *News Live's* Editor-in-Chief Atanu Bhuyan had resigned.¹⁰ Meanwhile, the state government also transferred Guwahati Senior Superintendent of Police Apurba Jiban Barua following the incident.¹¹ The CM had blamed Gaurav for not informing the police when the girl was molested. Besides, civil activists including Akhil Gogoi, alleged that reporter Neog had instigated the mob to strip the girl.¹² A Special Investigation Team formed immediately following the incident sent the raw footage of the video for a forensic test.¹³ The mini DV

⁸ People targeted the primary accused, Amar Jyoti Kalita's Facebook profile and revealed his personal details, including his employment and academic credentials (One such aspect was his reference to himself as James Bond in his Facebook profile, a tidbit which punctuated many a news story). Some other ways in which social media organised the public around the issue was through various Facebook justice pages (as was the norm those days). In her article, Chhetry mentions the Punish Amar Jyoti Kalita page created on July 13, 2012, days after the reportage of the incident. Petition-signing campaigns were demanding the same.

⁹ The recommendations include providing a government job, compensation and financial aid to the victim; setting up CCTVs and special police pickets with women police in front of all the 128 pubs in Guwahati up to 10-30 pm; a 24-hour women helpline and women cell in every police station; and establishing a fast-track court to take up the case of assault and molestation.

¹⁰ Talukdar, S. 2012. 'Base instincts'. Frontline. Available at <https://frontline.thehindu.com/cover-story/article30166787.ece> (accessed on 7 December 2022)

¹¹ Kalita, K. 2012. 'Editor of channel that aired Guwahati molestation video quits'. The Times of India. Available at <https://timesofindia.indiatimes.com/India/Editor-of-channel-that-aired-Guwahati-molestation-video-quits/articleshow/15024511.cms> (accessed on 7 December 2022)

¹² DNA. 2012. 'Guwahati molestation: Electronic media forum demands high-level enquiry'. DNA. Available at <https://www.dnaindia.com/India/report-guwahati-molestation-electronic-media-forum-demands-high-level-enquiry-1715329> (accessed on 7 December 2022)

¹³ Agencies. 2012. 'Molestation case: Scribe who shot video arrested'. The Indian Express. Available at <http://archive.indianexpress.com/news/molestation-case-scribe-who-shot-video-arrested/977129/> (accessed on 7 December 2022)

and DVD were sent to the Central Forensic Science Lab (CFSL) in Chandigarh for verification. The investigation spread across the country with the main accused, Amar Jyoti Kalita fleeing and resisting arrest. News reports were filled with wild speculations of his route when then CM Tarun Gogoi suspected him of hiding in Orissa. He was also believed to be in Mumbai, which the judgement also recounts. Video evidence collected included CCTV footage from Chatrapati Shivaji Station obtained through the Crime Branch, Mumbai to verify Kalita's presence in Mumbai. However, he was finally arrested in Varanasi.

The 45-page long judgement of this case follows a strict format that lays out the evidence of the actual incident and the identification of the accused¹⁴. The incident was sparked off when an onlooker, the accused in the case, started taking pictures of the victim's friend on his cell phone when they came out of the bar. When the girl confronted Nabajyoti Baruah, one of the accused, and requested him to delete the photograph, she was ignored. They went their separate ways as they boarded two different auto rickshaws for their respective homes. The victim, who remains unnamed by law throughout the judgement, gets stuck and is dragged out of the auto by the prime accused and that is when Gaurav Jyoti Neog, the *News Live* journalist and one of the crowd members, start filming. The entire incident offers insights into consumer video technologies and bystander video capture of events. Following the recording of the incident, the event moves to a live broadcast, subsequent circulation, and intense social media discussions on Facebook.

The defence counsel raised questions regarding the Test Identification Parade (TIP) conducted for identifying the fifteen accused.¹⁵ The defence argued that the TIP was problematic because the accused already had sufficient exposure in the media owing to the circulation of the news story. Hence, the witnesses would easily identify them from those videos on air. The judge, however, made it clear that only because some of the news channels aired the video clips of the incident which had the accused, the truthfulness of the witnesses cannot be denied. He also acknowledged that in a media-rich environment, it is impossible to keep such news media away from such investigations.

¹⁴ Chief Judicial Magistrate. 2012. "Judgement." PDF, Guwahati, Assam. Available at https://kamrupjudiciary.gov.in/Judgements/Judgment%20%2712/CJM_GS%20Road.pdf (accessed on May 1, 2020)

¹⁵ One of the methods of establishing the identity is the 'Test Identification Parade' required Under Section 9 of the Indian Evidence Act. The idea of the parade is to test the veracity of the witness on the question of his capability to identify among several persons, an unknown person whom the witness had seen in the context of an offence. See Kumari, L D R. N/A. 'Test Identification Parade'. E-court Mission Mode Project. Available at <https://districts.ecourts.gov.in/sites/default/files/mct.pdf> (accessed on 6 December 2022)

The section on electronic evidence brought out an unusual approach: the acceptance of video evidence which is without a certificate of authenticity.¹⁶ The defence counsel used this argument to contest the electronic evidence in the case. However, the video evidence was the crucial evidence used for confirming the identity of the accused. The judge recognised the absence of the Certificate of Authenticity of the evidence as prescribed by Section 65-B (4) of the Indian Evidence Act. At the same time, the judge admitted that this gap was probably due to the seizing officer being unaware of the requirement of this provision.

The judge makes an extensive case for the authenticity of the video regardless by delineating how these video clips were obtained. The video clips in question were collected on a CD and in a DVD from two private news channels that had aired the molestation case. The channels are *News Live* and *DY 365*.¹⁷ From the former, CEO Caushiq Bezbaruah was present as PW 18 who ensured the authenticity of the news footage in the CD and also verified it with his signature. The Executive Editor of *DY365*, Pranoy Bordoloi also authenticated the tape. As I mentioned earlier, Gaurav Jyoti Neog, among the accused in this case, worked as a reporter with *News Live* during the incident and he was the one who was recording the incident that day.

The judgement made it clear that these authentications were sufficient to establish the authenticity of the video. According to the judgement, since Section 65(A) of the IPC used the word “may” and not “shall”, the requirement of the 65 B certificate was not mandatory. Further, other witnesses' accounts which established the presence of the reporter from the channel also added to the veracity of the video evidence. The final judgement gave the benefit of doubt to three of the accused because they were not visible in the news clips presented as evidence. One of the accused who was identified during the Test Investigation Parade was let off for the same reason. Remarkably, this judgement was the opposite of what transpired during the Laxmi Orang case. The Guwahati

¹⁶ Section 65b of the Indian Evidence Act of 1872 of the Indian Penal Code deals with secondary evidence. It refers to “cases in which secondary evidence relating to documents may be given. Secondary evidence may be given of the existence, condition, or contents of a document in the following cases: (b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest.” See Legislative Department. N/A. ‘Indian Evidence Act of 1872’. Available at <https://legislative.gov.in/sites/default/files/A1872-01.pdf> (accessed on 7 December 2022)

¹⁷ In the capital city of Guwahati, Assam, television channel News Live started operations in January 2008 while DY365 started in October 2008 and the two remained the two key players in the satellite television space of Assam. See Kaushik, Alankar. 2018. ‘The Media City “Guwahati”’: Ethics and the emerging Regional Television Network in Assam’. *Communicator: The Journal of Indian Institute of Mass Communication* LIII (4): 32-42.

Molestation case practically rests solely on video evidence rather than physical identification. Perhaps it is the sensationalism and the media focus which framed legal expression in this case. The video in question was not the raw footage but rather the edited news footage which was telecast on both news channels. Identification of the source of the digital evidence is a crucial criterion for the validity of the evidence. As a result, both raw footage and the source of the footage—the original recording device (usually tracked through a chain of custody) are mandatory for footage to be legally considered.

Interestingly, accused individuals were given the benefit of doubt despite the judgement mentioning that the camera cannot show the incident in its entirety due to the limitation of the viewfinder and there are incidents taking place outside the purview of the camera. Regarding the question of the video being morphed, the judgement extrapolates in great detail the impossibility of morphing a video such as this and the telecast of the same subsequently. The mini DV and DVD assessments from the CFSL were also the same. The morphing of such video, the judgement read, requires tremendous skills, precision, time, and planned shooting, thus requiring at least 2-3 days. Since the news of the event was televised on the same evening, the morphing theory was not tenable according to the judgement. However, the judge reasons that though the video footage in both the mini DV and the DVD is not an original recording and a post-production edited version of a recording, a considerable portion of them is identical. These portions, the judge remarks, “seem to be genuine and original”. This was sufficient for the court to identify the accused and those who witnessed the occurrence that day.¹⁸

Gaurav Jyoti Neog, the reporter in the middle of this, experienced a strange turn of events. The media was critical of his reporting and questioned his ethics. On top of this, the well-known activist Akhil Gogoi, founder and Secretary of Krishak Mukti Sangram Samiti (KMSS), had accused Neog of inciting the mob in carrying out the attack.¹⁹ While it was not mentioned in the judgement per se, in multiple media reports, Gogoi says that Neog and Kalita knew each other before the incident and hence the role of the former was not just that of a bystander who happened to witness the event but, in many ways, he was responsible for it.²⁰ The

¹⁸ See Chief Judicial Magistrate. 2012. “Judgement.” PDF, Guwahati, Assam. Available at https://kamrupjudiciary.gov.in/Judgements/Judgment%20%2712/CJM_GS%20Road.pdf (accessed on 1 May 2020)

¹⁹ See PTI. 2012. ‘Journalist claims molestation allegations ‘malicious and wild’. India Today. Available at <https://www.indiatoday.in/india/story/journalist-accused-of-inciting-guwahati-molestors-resigns-109560-2012-07-14> (accessed on 6 December 2022)

²⁰ Talukdar, S. 2012. ‘Molestation: Editor-in-Chief of television channel resigns’. The Hindu. Available at <https://www.thehindu.com/news/national/other-states/molestation-editorinchief-of-television-channel-resigns/article3649056.ece> (accessed on 7 December 2022)

judgement mentions the mini DV, camera and DVD that Gogoi provided to establish his role in the incident. The police had also provided a voice sample of Neog who was accused of uttering some obscene words against the victim. The judgement mentions that Neog was seen in the video evidence and was also identified in the TIP; however, it could not be established that he was part of the “unlawful assembly”. The judgement argued that his primary intention was to record the incident about which he also informed his colleagues from the channel and videographed the incident. The judgement clearly mentions that there was no evidence present which could contribute to the fact that he was involved in outraging the victim. Strangely, the CFSL could not give a conclusive result on the voice evidence. According to the judgement, this was owing to the sub-inspector (S/I) failing to collect the voice sample in his haste. There was no clarity as to why the sample recording was carried out by a studio photographer and not the Criminal Investigation Department’s (CID’s) own experts. The judgement accepts this as a non-professional approach which lets go of valuable evidence. In the end, eleven of the accused were found guilty and were awarded ‘rigorous’ imprisonment ranging from six months to two years.

News Reports from Major Newspapers

I read some of the news reports which came out following the incident. An editorial in The Hindu includes the case among recent news reports on sexual harassment which had aggravated media coverage.²¹ Pamela Philipose (2012) writes how a visit to YouTube was enough to establish the ubiquitous presence of such stories from all over the country. These stories revolve around women being “slapped, assaulted, violated, on the streets in police stations, inside homes”. According to Philipose, in the garb of a faux higher morality, these stories were meant to titillate and “not to sensitise”. In many ways, these incidents help normalise the cruel treatment of women who transgress by authorising vigilante mobs. Her reading follows the predictable reaction to the circulation of such stories, particularly the subsequent recurrence of similar incidents which also supports her claims. In the context of the location of Assam, where three events of a similar nature had happened within roughly the same timeframe, it is also about the general crime rate in the state which started getting attention along with the reportage of such incidents. In many ways, this narrative is in complete opposition to the general idea of the Northeast states providing equal treatment to its women.

²¹ See Philipose, P. 2012. ‘No Peg to Hang a News Story on’. The Hindu. Available at <https://www.thehindu.com/opinion/op-ed/no-peg-to-hang-a-news-story-on/article3683353.ece> (accessed on 1 May 2020).

Numerous editorials and articles such as those appearing in *The Telegraph*, *Deccan Herald*, and *Indian Express* engage with the incident from the point of media ethics. *The Telegraph* editorial pits the age-old question of whether a reporter must act or report.²² Advocate Rebecca John in *Deccan Herald* considers the person with the camera to be both a participant and an instigator²³. Samudra Gupta Kashyap, a veteran Assamese correspondent for *The Indian Express*, brings out the irony in the ambition of the new satellite news channels in Assam that vowed to bring an honest objective truth and the social degradation that was otherwise witnessed²⁴. John makes an interesting observation of how the presence of the camera prolongs the act of humiliation, especially in the case of the Guwahati incident. There is a superiority levied on the visual. As she remarks, “we love to see rather than read”. Hence, according to her, a video on YouTube guarantees a million hits. The camera is the media.

Meanwhile, this being the early Twitter era, such microblogging sites attracted celebrities to express their outrage over the incident. As a DNA report mentions, #justiceforwomen and #guwahati was the top trend on Twitter during that period²⁵. A Times of India update covered the news that Atanu Bhuyan, the Editor-in-Chief of News Live, which telecast the incident, had resigned from his post. He mentioned that he took this step before the State Government could pressurise him to step down²⁶. He remained as one of the four directors of the channel, however. As is revealed in the news report, the owner of the channel was Riniki Bhuyan Sarma, wife of then Health and Education Minister Himanta Biswa Sarma who was with the Congress party then. CM Tarun Gogoi, as expected, denied Bhuyan’s claim of any impending pressure on the channel.

²²The Telegraph Online. “TO ACT OR TO REPORT”. July 15, 2012. Telgraph Online <https://www.telegraphindia.com/opinion/to-act-or-to-report/cid/404783> (Accessed on 26-12-2022)

²³ Rebecca John. 2012. “The 'cameraman' as participant, instigator”. Aug 12, 2012. Deccan Herald Read more at: <https://www.deccanherald.com/content/270960/cameraman-participant-instigator.html> (Accessed on 26-12-2022)

²⁴ Samudra Gupta Kashyap. “Molestation and more: Under fire for way they treat news live”. Wed Jul 18 2012. Indian Express, Guwahati. Available on <http://archive.indianexpress.com/news/molestation-and-more-under-fire-for-way-they-treat-news-live/975762/0> (Accessed on 26-12-2022)

²⁵ DNA Web Team. “Guwahati molestation: Twitter overflows with outrage”. Jul 13, 2012 <https://www.dnaindia.com/india/report-guwahati-molestation-twitter-overflows-with-outrage-1714648> (Accessed on 26-12-2022)

²⁶Times News Network. “Editor of channel that aired Guwahati molestation video quits” Jul 18, 2012 Times of India. Available at: <https://timesofindia.indiatimes.com/india/Editor-of-channel-that-aired-Guwahati-molestation-video-quits/articleshowprint/15024511.cms> (Accessed on 26-12-2022)

The Voyeur as the Journo

All of these news commentaries display a fascination with visuals as afforded by cheaper technology, mobile phones, and then social media. In the case of Assam, the media industry rapidly expanded with the appearance of such spectacular reports. The dubious reporting of *News Live* remained a constant feature for the news channel as evidenced by the ban it received in the future for unethical reportage. This reveals that keeping the viewer satiated is a significant end goal.²⁷ And it still remains so, if not exacerbated by the current onslaught of pervasive mobile media and personal recording devices. However, the other aspect is also the rise of the imagination of the local in particular ways. Assam, forever “underrepresented” or featured in mainstream news for all the violent reasons, continues to sustain this trend of reporting, except this time this reportage proliferates with more visual rendering where the body of the people in the form of the mob, the violated woman and the abhorrent visual supersedes.

²⁷ See Express News Service. 2016. ‘Assam news channel told to go off air on November 9’. The Indian Express. Available at <https://indianexpress.com/article/india/india-news-india/assam-news-channel-told-to-go-off-air-on-november-9-3739518/> (accessed on 6 December 2022)

Media Trials and Scandal

Sonali Chugh

This collection is a representative sample of the work I did at The Sarai Programme of the Centre for the Study of Developing Societies, Delhi (CSDS) as a researcher from October 2021 to December 2021 funded by the M.S. Merian – R. Tagore International Centre of Advanced Studies 'Metamorphoses of the Political' (ICAS:MP). My project sought to look at the phenomenon of the Media Trial through four important cases Tarakeshwar Case¹, Bawla Murder case², Nanavati murder case³, and the Gandhi murder trial⁴. My reading of the first three cases explore the theme of scandal and the media trial. In my notes I have attempted to provide a sense of the media ecology around these trials and their afterlife. I have looked at popular magazines, newspapers, official documents, and novels. This note is taken from October, 2021 and details one of these trials, mapping the various discussions of the case across media forms.

¹ Queen vs Nobin Chandra Banerjee, High Court Judicature at Fort William, Bengal (1873). Cited in the Bengalee, 22 November, 1873.

² Emperor v. Shafi Ahmed Nabi Ahmed, Bombay High Court (1925). 1929 31 BOMLR 515.

³ K. M. Nanavati vs. State of Maharashtra, Supreme Court of India (1961). 1962 AIR 605, 1962 SCR Supl. (1) 567.

⁴ Nathu Ram V. Godse vs The Crown on 24 March, (1949). 1949 CriLJ 834

October 07, 2021

New Delhi

Hello All,

This week I worked on the Abdul Kadir Bawla Murder (also referred to as the Malabar Hill Murder Case) this week. This case occupied media attention in the year 1925 and was also a case that was revisited numerous times in the following decades. Like the 19th century Tarakeswar trial, this case is also marked by the themes of love, lust, and envy.

Bawla was a textile mill owner and a Corporator in the BMC (Brihanmumbai Municipal Corporation), who was killed on January 12, 1925, while he was out on a drive with Mumtaz Begum, his alleged 'mistress'. Like Elokeshi in the Tarakeswar case, Mumtaz was a central figure in this narrative. However, unlike Elokeshi's death, Mumtaz had survived and incidentally became the cause of Bawla's death. As a result, Mumtaz garnered a lot of attention in international and Indian print media. Also known as Kamala Bai, Mumtaz belonged to a Punjabi Muslim family and served as mistress for Maharaja of Indore Tukoji Rao for over ten years. After the death of her new-born child, she made desperate attempts to seek protection for her family and evade Maharaja's capture. To free herself from the Maharaja, she first escaped to Amritsar, then to Nagpur and finally to Bombay, where she met Bawla. (Pillai 2019)



Figure 5.1: Tukoji Rao Holkar III, Maharaja of Indore from 1903-26. Source: Wikimedia Commons⁵

⁵ https://commons.wikimedia.org/wiki/File:Tukojirao_III_Maharaja_Holkar_of_Indore.jpg

I started with KL Gauba's chapter on the Bawla murder case from his book "Famous Trials for Love and Murder" (Gauba 1945, 92). It narrates the events leading up to Bawla's death. The chapter begins with reference to Wazir Begum's (Mumtaz Begum's mother) application to the Chief Commissioner of Police, Bombay, against Tukoji Rao, Maharaja of Indore. It further details the trial and court interactions.

Here I am quoting a passage from Gauba's book which resembles a true-crime episode:

"After firing, one of them dragged her out and struck her on the forehead with a knife--she was being carried away to the other side of the road. In the meantime, a car containing the British officers arrived. She shouted to them for help. They stopped the car and got down.

The man who struck her made her sit in the other car but she got out. Thereupon she was again struck in the face with a knife. After this, one of the officers rescued her, she had seen Mr Bawla lying unconscious. She saw the British capture the man who stuck her with a knife, was the first accused, Shafi Ahmad.

With tears in her eyes, she identified the blood-stained clothes which Bawla wore at the time of the murder". (Gauba 1944,95).

Additionally, I am reading Dhaval Kulkarni's book, 'The Bawla Murder Case', which is even more explicit. Kulkarni's book focuses less on media coverage and more on the characters, sketching out close details about all those involved in the trial. Kulkarni's book also cites another Marathi publication, 'The Bawla Murder case' by Rohitdas Narayan Dugar. For the interest of this research group on law and media, Gauba referred to the mediatization of the trial, first presented by Jinnah. Interestingly, Jinnah, counsel for one of the accused, petitioned against the Times of India, which carried heavy coverage on the case, alleging contempt of court. Gauba includes an interaction within the Court between Justice Crump and Jinnah on 'sensational journalism' by the Times of India.

Other than these texts, I went through the Times of India archives and a few Bombay Chronicle archives that had coverage of the event, trial and subjects of the trial. I have found this material on archive.org. As an example, I cite a page from Bombay Chronicle's coverage on 'Mumtaz's cross-examination', dated April 29, 1925. This news feature describes the content of the chargesheet, the names of all the accused and Mumtaz's evidence. It also features the interaction between the Judge and Advocate-General.

MAHATMA IN BOMBAY

LEAVING FOR BENGAL TO-DAY.

WORKING COMMITTEE MEETING IN CALCUTTA.

BOMBAY, April 28. An agitation in the present agitation... Mahatma Gandhi will be leaving for Bengal to-day.

SYSTEMS FINANCING

The meeting being driven in the afternoon... The meeting will be held in the afternoon.

THE BROWNS' HITS

As a result of the thought of the Browning... The Browns' hits are being discussed.

'FIT TO GO TO BENGAL'

Mahatma Gandhi arrived in Bombay... He is fit to go to Bengal.

RECEPTION TO MAHATMAJI.

Arrangements are complete for the reception... The reception will be held in the afternoon.

MAHATMA'S PRELIMINARY VISIT TO CALCUTTA.

Mr. C. B. Joshi has been announced... The visit will be held in the afternoon.

MAHATMA'S PRELIMINARY VISIT TO CALCUTTA.

Mr. C. B. Joshi has been announced... The visit will be held in the afternoon.

PARISHAD PROVINCIAL HINDU CONFERENCE.

Mr. C. B. Joshi has been announced... The conference will be held in the afternoon.

ADVENT OF HINDENBURG.

SERIOUS EVENT.

BRITISH PRESS COMMENTS.

As an atmosphere of excitement... The Hindenburg is a serious event.

THE 'DAILY CHRONICLE'

The 'Daily Chronicle' writes... The Hindenburg is a serious event.

THE 'DAILY NEWS'

The 'Daily News' writes... The Hindenburg is a serious event.

THE 'DAILY MAIL'

The 'Daily Mail' writes... The Hindenburg is a serious event.

THE 'DAILY TELEGRAPH'

The 'Daily Telegraph' writes... The Hindenburg is a serious event.

THE 'DAILY EXPRESS'

The 'Daily Express' writes... The Hindenburg is a serious event.

THE 'DAILY NEWS'

The 'Daily News' writes... The Hindenburg is a serious event.

THE 'DAILY MAIL'

The 'Daily Mail' writes... The Hindenburg is a serious event.

MUMTAZ UNDER CROSS-EXAMINATION.

QUESTIONS ABOUT HER AGE.

HER LIFE AT INDORE.

ACCOUNT OF HER ESCAPE.

BAWLA MURDER CASE PROCEEDINGS.

The High Court was on Tuesday... The proceedings are continuing.

THE BAWLA CASE PROCEEDINGS.

The High Court was on Tuesday... The proceedings are continuing.

PROMPT NEWS SERVICE.

Full report of the day's proceedings... The news service is prompt.

COACH BEHAR DIVORCE CASE.

English and Indian laws... The divorce case is being heard.

ENGLISH AND INDIAN LAWS.

English and Indian laws... The divorce case is being heard.

SHIMAZA'S EVIDENCE CONTRADICTED.

The examination of Mumtaz Begum... The evidence is being contradicted.

HEARING CONCLUDED.

The hearing of the case... The hearing is concluded.

SENSATION IN MADRAS.

ARMED MEN IN HIGH COURT.

HAD TO BE REMOVED BY POLICE.

MADRAS, April 27. This morning before the High Court... The armed men were removed.

INDIAN STORES DEPT. COMPLAINT OF FINANCIAL STRIKING.

The administration manager... The complaint is being investigated.

INDIAN STORES DEPT. COMPLAINT OF FINANCIAL STRIKING.

The administration manager... The complaint is being investigated.

INDIAN STORES DEPT. COMPLAINT OF FINANCIAL STRIKING.

The administration manager... The complaint is being investigated.

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INDIAN STORES DEPT. COMPLAINT OF FINANCIAL STRIKING.

The administration manager... The complaint is being investigated.

INDIAN STORES DEPT. COMPLAINT OF FINANCIAL STRIKING.

The administration manager... The complaint is being investigated.

BANKING IN INDIA

HARKISHENLAL'S INAUGURAL ADDRESS.

PEOPLE'S BANK OPENED.

On the 23rd April when H. H. Harkishenlal... The bank is now open.

PEOPLE'S BANK OPENED.

On the 23rd April when H. H. Harkishenlal... The bank is now open.

PEOPLE'S BANK OPENED.

On the 23rd April when H. H. Harkishenlal... The bank is now open.

PEOPLE'S BANK OPENED.

On the 23rd April when H. H. Harkishenlal... The bank is now open.

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On the 23rd April when H. H. Harkishenlal... The bank is now open.

PEOPLE'S BANK OPENED.

On the 23rd April when H. H. Harkishenlal... The bank is now open.

PEOPLE'S BANK OPENED.

On the 23rd April when H. H. Harkishenlal... The bank is now open.

Figure 5.2: "Mumtaz Under Cross Examination". The Bombay Chronicle 29 April 1925. Source: Archive.org

British newspapers also had ample coverage and interest in the Bawla Murder apart from Bombay Chronicles and Times of India. For instance, I found snippets in the 'New Statesman' that republished one of its features on the Bawla case,

6 https://archive.org/details/dli.granth.5779/page/n5/mode/2up

titled 'Inside Story of Mumtaz Begum'. This and other similar coverage show a significant interest in Mumtaz, the mistress.



Figure 5.3: The Spartanburg Herald. 28 September 1942. Source: Google News⁷

It is clear from the spectacular media coverage on Mumtaz, that she moved between the political and personal, almost simultaneously. Angma Jhala has argued that Mumtaz “moved back and forth from the inner domestic world to the external realm of courtly politics in Indore”. Unlike Elokeshi, so far, I believe that Mumtaz did transcend the private but was not demeaned to the extent of the former. In fact, Jhala argues that the British courts empowered Indian women as 'individual agents before the law'. (Jhala 2015, 381) Another point that I still have to explore well but is covered by Angma Jhala is how this case becomes an important example of the changing power relation between Indian Kings and the Colonial government. On similar lines, I found mention of the case in the fifth session of the Council of State Debates, 1925, reiterating the importance of the case.

⁷https://news.google.com/newspapers?nid=1876&dat=19420928&id=A10sAAAAIbAJ&sjid=7MoEA AAAIbAJ&pg=6817%2C2312321&fbclid=IwAR39y7Vzkb_DdGJnZERUwIjgC-hqIT331UdI3Z-OjG01-arcjMx-IWBUHwQ (Accessed on 06 October 2021)

**RESOLUTION PASSED BY THE CUTCHI MEMONS ANJUMAN REGARDING THE
MURDER OF MR. ABDUL KADAR BAWLA.**

135. THE HONOURABLE MR. HAROON JAFFER: (a) Are the Govern-
ment aware that at a special general meeting of the Cutchi Memons
Anjuman held at Bombay on 20th January 1925, resolutions expressing
regret at the tragic death of Mr. Abdul Kadar Bawla were passed?

(b) Is it a fact that one of the resolutions passed at this meeting
appealed to His Excellency the Viceroy to take immediate and drastic steps
to bring to book all the perpetrators, instigators and abettors of the crime,
within or without British territory, regardless of their rank, position, status

(551)

A

552

COUNCIL OF STATE.

[16TH MAR. 1925.]

and wealth and the said meeting authorized its President to forward a copy
of this resolution to His Excellency the Viceroy?

(c) Has this resolution been received by the Government, and, if so, what
steps are being taken in the matter?

THE HONOURABLE MR. J. CRERAR: (a) and (b). Yes.

(c) The Government of India do not propose to take any action on the
resolution, a copy of which they have received, as it is a matter which is
the concern primarily of the Government of Bombay.

DISCONTINUANCE OF THE EXPORT OF OPIUM.

Fig. 5.4: "Resolution Passed By The Cutchi Memons Anjuman Regarding The Murder Of Mr. Abdul Kadar Bawla" Source: Parliament Digital Library (PDL)⁸

I also found another mention of the case in the 'Herald Journal' dated September 28, 1942, titled 'Rumors Persist Young Maharaja Has Abdicated'. You can look at the same in Fig.4. Since these are international publications, some of them are available in Google newspapers. I will be digging through them too.

I will have a more comprehensive understanding of the coverage in the coming days, as a lot from Bombay Chronicles is left to explore.

Please feel free to comment on these materials. Looking forward to discussing these tomorrow.

Best,
Sonali

⁸ https://eparlib.nic.in/bitstream/123456789/760868/1/cosd_01_05_16-03-1925.pdf

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