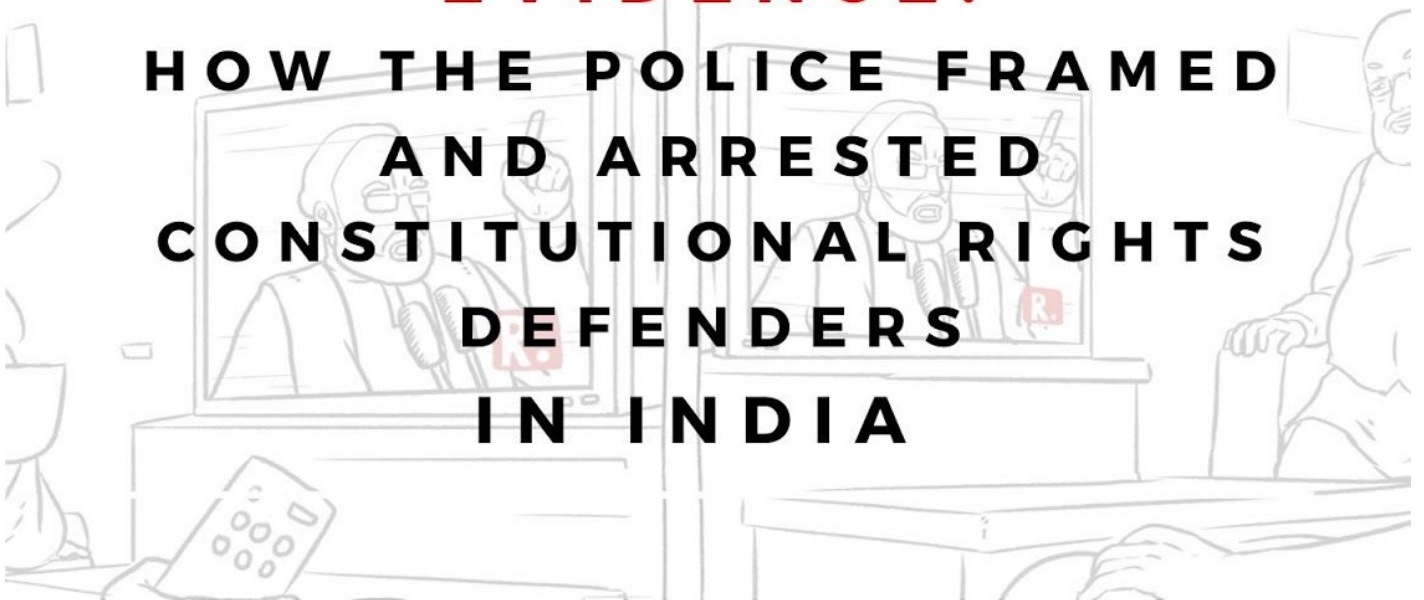




**MANUFACTURING
EVIDENCE:**

**HOW THE POLICE FRAMED
AND ARRESTED
CONSTITUTIONAL RIGHTS
DEFENDERS
IN INDIA**



Manufacturing Evidence:

How the Police Framed and Arrested Constitutional Rights Defenders

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“No riot can last for more than 24 hour without the consent of the state”

Vibhuti Narain Rai, IPS officer speaking to Teesta Setalvad, 1995

Executive Summary

This report, with inputs from human rights defenders and concerned citizens of India, documents dereliction of duty on the part of the Delhi police during the violence in North-East Delhi in February 2020. It presents evidence of abuse of power, violations of due process, and attempts at manufacturing evidence by the Delhi Police in order to weave a ‘conspiracy’ about the involvement of anti-CAA/NRC protesters in the violence. The report presents information from news stories, fact-finding reports by civil society groups, and interviews with those targeted by the Police to demonstrate grievous Police misconduct.

The key findings and charges against the Delhi Police are:

1. The Delhi Police is complicit in the violence of February 2020 in Delhi;
2. The Delhi Police failed to help survivors of that violence;
3. The Delhi Police’s refusal/delay/obfuscation in the registration of FIRs by victims, and the failure to disclose the name of persons arrested / FIRs violates due process and helps shield the guilty;
4. The Delhi Police is creating a baseless narrative about a ‘conspiracy’ that implicates Muslim victims of violence and activists protesting erosion of Constitutional rights of citizens, and erases actions of Hindu nationalist provocations.

The Delhi Police’s investigations are compromised by:

- A. Guilt by presumption rather than by presentation of evidence
- B. Suppression of evidence related to violence by Hindu nationalists
- C. Blaming the victims for producing violence that has injured/ killed them
- D. Selective use of evidence while filing charges
- E. Manufacturing false evidence using threats and intimidation
- F. Islamophobic behavior and language during interrogations

Recommendations

We urge all global actors invested in human rights to:

1. Call on Indian authorities to **release** all human rights defenders, students, and persons being held in pre-trial detention without sufficient evidence.
2. Call on Indian authorities to **carry out arrests and initiate prosecutions** of political leaders against whom there is clear evidence of incitement and abetment to violence.
3. Send written communications to the Government of India to **place on record** that Delhi Police

is using coercive, discriminatory methods during interrogations and seek assurance that Delhi Police will be ordered to desist from coercion during interrogations towards extracting statements and enlisting approvers in order to implicate 'senior' activists, with immediate effect.

4. Send written communications to the Government of India **seeking the assurance** that Delhi Police will investigate all offences related to the February 2020 violence free of any extraneous influences or illegal coercive tactics, and levy charges on any persons only on the basis of evidence and not predetermined spurious 'conspiracy' theories.
5. Call for an **independent impartial inquiry** into the role of the Delhi Police, including allegations related to failure to prevent the violence, aiding and abetting perpetrators, and up to the current failures to fairly investigate offences.

Manufacturing Evidence: How the Police Frame and Arrest Constitutional Rights Defenders.

This report documents the role played by the Police in the city of Delhi , in the investigations and arrests related to popular protests and the violence that erupted in February 2020 in Delhi. The violence occurred in the context of ongoing nationwide protests against the [Citizenship Amendment Act \(CAA\)](#) and [National Registry of Citizens \(NRC\)](#) - two legislations passed by the Hindu nationalist central government. This documentation has been undertaken under extenuating circumstances given the current political context in India of large-scale political repression— along with arrests, threats and intimidation of political activists and public intellectuals, and targeted killings of writers, reporters, judges, who have challenged Hindu nationalism. To guarantee the safety of those who are currently being interrogated and of the human rights defenders working with them, in this report names have been withheld and identifying markers have been used instead.

Background Context: The NRC/CAA, Protests, Violence And ‘Conspiracy’

On December 12, 2019, the Bharatiya Janata Party (BJP) government passed the Citizenship Amendment Act (CAA) in the Indian Parliament. This Act fast-tracks the granting of Indian citizenship to illegal migrants from three of India’s neighbors (Pakistan, Bangladesh and Afghanistan), except if they are Muslim by religion. Earlier, the government had announced its plans to establish a National Registry of Citizens (NRC), a version of which is already underway in the northeastern state of Assam. The NRC has left about 2 million people in a ‘stateless’ position having to produce documentation to prove their Indian citizenship. The passage of the CAA, the experience of the NRC, and [growing fears of systematic discrimination against Muslims](#) by the ethno-nationalist Hindu-supremacist political party currently in power sparked widespread protests in almost every part of the country including Delhi. Notably, many of the protests were met with acts of police brutality.

Protesters against the NRC/CAA in Delhi made international headlines for some of their unique methods. For example, a large group of women (mostly Muslim, many elderly and many with newborn children) began a peaceful *dharna*, a “sit-in” protest on 14 December 2019 in a place

called Shaheen Bagh in south Delhi. The [women of Shaheen Bagh](#) won the hearts of many thousands of others who joined their ranks for daily sit-in protests. The protesters were very clear that they were against the NRC/CAA because it violated the Constitution, but were also against police brutality. Many leading Indian political figures and public intellectuals visited Shaheen Bagh in solidarity. The growing popularity of the protests drew the ire of the ruling party and the Delhi police which demanded an end to the protests and engaged in assaulting students (most famously at the [Jamia Milia Islamia University in Delhi](#)). Undeterred, the protests continued.

It was in this context that violence broke out in a small part of North-East Delhi on 23 February 2020, and spread across many neighbourhoods over the next four days. It left in its wake [53 dead](#), 39 of who were Muslims [[Timeline](#)]. Additionally, hundreds of families were displaced from their homes and life as they knew it. The violence has led to huge financial losses due to the looting and arson of homes, shops, businesses and other property. Muslim residents of the area continue to feel the long lasting impacts of the violence, not only in the slow and challenging re-building of their lives, but also due to the targeting and victimization of Muslims by the police in the aftermath of the violence. Young Muslim men have been called in for interrogations lasting long hours. As one human rights defender who contributed to this report said: “...on odd days, at odd times, when we are meant to try to keep safe from Coronavirus.”

Life as they knew it has also changed for activists who have now been accused by the Indian state of “masterminding a conspiracy” that allegedly led to the violence. Several of the activists who were involved in the protests have been arrested under various charges, and now await the next bail hearing. Many other activists and public intellectuals await the midnight knock on their doors by the police. The situation of human rights defenders is similar - trying their best not to leave ‘a digital trail’ while seeking to document violations of rights enshrined in the Indian Constitution, hoping against hope that international pressure might make some difference to an authoritarian regime still somewhat concerned about its global image.

This report is a statement about the conditions of struggle of ordinary citizens of India for the preservation of their right to protest - a right guaranteed in Article 19 of the Constitution. In this case, the protests in question were organized by citizens against the erosion of Constitutional rights. The report levies **several evidence-based charges** (documents, words and actions) against the Delhi police related to the violence.

These include:

1. The role played by the Delhi police during the violence;
2. The clear targeting and pinning of blame by the Delhi police on Muslims for the violence;
3. The efforts of the Delhi police to narratively frame the violence as a ‘conspiracy’ by so-called ‘anti-national’ Muslims, activists, and intellectuals.

The Delhi police’s narrative about the violence is that of a ‘**conspiracy**’ (a term it uses repeatedly) which apparently began over two months prior to the violence. The alleged “conspiracy” is that students and activists in different locations in Delhi started spreading misinformation about the NRC/CAA, thus instigating young local Muslim men and women to protest against the NRC/CAA. These protests, according to the police, came to a head on 23rd February 2020 with a roadblock, and the instigation of allegedly ‘pre-planned’ riots, timed such that they coincided with the visit of US President Donald Trump. The rationale, as per the Police, was that the violence was created in order to ‘defame India’, and to ensure coverage in international media. This narrative however conveniently omits the role of Hindu Nationalists and in particular the role of political leaders belonging to the Hindu Nationalist ruling party (BJP), who gave speeches and raised slogans aimed at stoking Hindu Nationalist passions and inciting violence against those protesting the unconstitutional nature of the CAA and the NRC.

In an initial phase starting in March 2020, the Delhi Police arrested several mid-level activists including student and women’s rights groups. The focus of this report is, however, on the current phase of Police action in which the **Delhi Police is interrogating many young Muslim men from the local communities as well as junior activists. The goal of these interrogations is to build evidence for the arrest of senior activists, whom the Police accused of masterminding the ‘conspiracy’.** The significance of the focus on senior activists who were protesting against CAA and NRC needs to be understood in terms of producing a climate of fear that silences citizens by criminalizing dissent. This is the larger context of growing authoritarianism in India.

In the charges against the Delhi Police that follow, the protests against the CAA/NRC will be referred to as ‘the protests’, the violence that started in North-East Delhi on 20 February 2020 will be referred to as ‘the violence’, and the narrative woven by the Police to explain the violence will be referred to as “the conspiracy”.

Methodology

This report pulls together information from new stories, fact-finding reports by civil society groups, and primary data gathered by human rights defenders in Delhi, including through interviews with individuals about their experiences being picked up and interrogated by the Police. Names and sources have been withheld to protect activists, community leaders, and rights defenders.

Key Findings And Charges Against The Delhi Police

1) The Delhi Police's complicity in the violence

Violence broke out in different parts in North-East Delhi almost immediately following an incendiary speech delivered in Maujpur on 23 February, 2020 by Mr. Kapil Mishra, a BJP politician. In that speech, [Mr. Mishra openly gave an ultimatum to the Delhi Police](#) to forcefully remove the anti-CAA protestors at Jafraabad in North-East Delhi within three days, failing which he and his followers would do it themselves, and not “listen to the Police”. These open threats were delivered in the presence of the Deputy Commissioner of Police of North East, Mr. Ved Prakash Surya, who stood right next to Mr. Kapil Mishra as he delivered his speech.¹ In the violence that followed, armed mobs took to the streets attacking individuals, and looting and burning property. The mobs were armed with wooden sticks, iron rods, tear gas shells, gas cylinders and firearms.

The Delhi Police has itself been accused of participation in the violence. A series of investigative [reports](#) by respected media outlets provide testimonies (including videos) that identify and name senior Police officers of the Delhi Police as “leading, participating and encouraging targeted violence against Muslim residents of the region during the violence.” This includes open threats on the lives of anti-CAA protestors, including on Muslim women, physical attacks and assault by the Police, seen openly with armed perpetrators.

¹ On 23 February, Kapil Mishra put out a call on social media to his supporters and subsequently led a rally in Maujpur, less than a kilometer away from the site of Jaffraabad sit-in community protest against the CAA. At about 5:30pm, Kapil Mishra addressed the gathering in the presence of the Deputy Commissioner of Police for North East District Ved Prakash Surya, with the DCP standing right next to him in full riot gear. In his speech, he said “This is what they wanted. This is why they blocked the roads. That's why a riot-like situation has been created. From our side not a single stone has been pelted. DCP is standing beside us. On behalf of all of you, I am saying that till the time Trump goes back, we are going to go forward peacefully. But after that we will not listen to the Police if roads are not cleared after three days. By the time Trump goes, we request the Police to clear out Jafraabad and Chaandbagh. After that, we will have to come on the roads. Bharat mataki jai! Vandemataram”!

In one widely-publicised video of an incident involving the most grievous abuse by the Police that also went viral on social media, five Muslim young men were surrounded by Police officers and were brutally beaten up while being forced to sing the national anthem. This aggressive demand that Muslims perform their loyalty comes out of the Hindu nationalist narrative that deems Muslims to be unpatriotic, and those who protest against the CAA and NRC to be doubly so. One of the young men, Faizan, died some days later due to the injuries he sustained from the beatings during his time in Police custody. The FIR registered following his death makes no mention of the videos nor does it name any of the accused. Comparing the incident to the killing of George Floyd in Minneapolis at the hands of a Policeman, a video produced by an Indian media portal points to the similarities wherein both Floyd and Faizan were unarmed, badly injured, lying on the street at the mercy of the Police. The difference pointed out is that while the Police officer who killed George Floyd was charged with murder in the 3rd degree within 4 days of the crime, and he and his three colleagues were dismissed from service, in the case of Faizan the Policemen have not even been charged.

Other testimonies and reports about the violence have also held the Delhi Police responsible for aiding and abetting it. A fact-finding report by the Press Council of India notes that “country-made guns - apparently pistols chiefly - were also used in the communal violence, as were petrol bombs, which, according to allegations of eyewitnesses, were being prepared in full view of the Police in some instances”.

A significant indictment came from Dr Zafarul Islam Khan, the Chairman of the Delhi Minorities Commission, a commission created by the State to safeguard the rights and interests of religious minority communities. In response to the Delhi Police’s claims that it had saved people, **NAME** said: “They [Delhi Police] have not saved anything, they allowed properties and people to be burned, allowed the rioters to damage houses and even to blast them... The Police will have to answer for its acts – there are no two ways about this.” After a preliminary fact-finding investigation at the sites of violence, the Chairman and his team noted that the violence “was seemingly planned and directed to teach a lesson to a certain community which dared to protest against a discriminatory law.” They disclosed the preliminary finding that 2,000 people had been brought from outside of Delhi to participate in the riots. Victims’ accounts also confirm that perpetrators included unrecognizable persons as well as known locals. It is only a comprehensive, coordinated investigation by an independent body that can unearth the extent of the role of

outsiders.

2) Failure of the Delhi Police to help survivors of violence

Victims' testimonies reported in news stories and in fact-finding reports by civil society groups point to the failure of the Delhi Police to either be present in adequate numbers to control the violence, or to undertake rescue of survivors despite 13,000 distress calls. "We called the Police many times, but they never returned the calls, or simply humiliated us on the phone and said they cannot help" was one of depositions during a people's tribunal organized by civil society organizations.

The Police also stand charged with a failure to help those injured in the violence to access medical treatment. On the night of 23 February 2020, it took a midnight hearing, and an order passed by Justice Muralidhar (punitively transferred from his post soon after) to direct the Police to help the injured, being prevented by Hindu nationalist mobs, to be moved to hospitals where the necessary medical facilities were available.

The report by the High-Level Fact-Finding Committee constituted by the Delhi Minorities Commission, which included Supreme Court lawyers and the Chairperson of the Commission himself, noted that survivors of the violence testified that the Police had refused help saying that they had no orders to act. Specifically, regarding the failure to prevent violence, the report stated that these were not one-off instances, but that there was a pattern of deliberate inaction over several days.

3) Refusal/delay/obfuscation in the registration of FIRs by victims and failure to disclose the name of persons arrested / FIRs

Victims' testimonies highlighted in the media and fact-finding reports by civil society groups also reveal that the Police have not converted victim's complaints into First Information Reports (FIRs), or have refused to register FIRs, or have agreed to register the FIR but only after omitting the names of the accused whenever the victims named the perpetrators.² Other reports describe

² The law in India is settled that every information of a cognizable offence, irrespective of the source of information or its credibility, is to be mandatorily registered by the officer in charge of the Police station and entered into a designated register. The failure to register FIRs promptly and accurately will adversely affect the prosecution of these offences. These actions by the Police are in clear violation of the mandate of Section 154 of the Code of Criminal Procedure, as well as the conclusive judicial opinion and directives laid down by the Supreme Court in its judgement in *Lalita Kumari*

survivors who were disinclined to lodge complaints because they had lost faith in the Police. Some who filed complaints said the Police threatened to falsely implicate the victims themselves in the cases. An analysis of 40 FIRs by the People's Union for Democratic Rights (PUDR) - one of India's leading civil rights organizations - found that the Police obfuscated crimes by registering single FIRs, combining multiple incidents of violence spread across different locations, thereby debilitating the investigation from the outset.

Nonetheless, in their testimony, some Muslim victims have managed to at least file complaints with the Police, which have specifically named senior Police officials. None of these have however been registered as FIRs, which means crimes committed by the Police themselves have not entered the legal process or record.

The Delhi Police has further chosen not to publicly disclose copies of FIRs, deeming them all to be 'sensitive'; the lists of persons arrested in connection with the violence have also been held back, in spite of allegedly more than 700 FIRs being registered and more than 800 arrests having been made. By law in India the names and addresses of every arrested person, and the arresting officers, have to be posted at the district Police control room. This is a legal duty of the Police. The Delhi Police 'opting' out of doing so is a breach of law.³

4) Prejudicial Creation of a Baseless Narrative of “Conspiracy” that Implicates Muslim Victims of Violence and Erases Actions of Hindu Nationalist provocations

The Delhi Police stands accused of all of the above charges even while it is responsible for conducting the investigations. As pointed out by the lawyer for two accused students during one of

v. Government of Uttar Pradesh and Others. (AIR 2014 SC 187)

³ In the Delhi Police's status report dated 11 June 2020, filed in Writ Petition (Crl) No. 669/2020 before the Delhi High Court. In 2016, the Supreme Court in *Youth Bar Association vs. Union of India* (dated 07.09.2016 in WPCR no 68/2016) mandated every Police department to upload FIRs on their website within 24 hours of registration, except those they deem "sensitive". The Court gave the Police the discretion to decide which FIRs can be deemed sensitive, with a copy of the reasoning to be sent to the area judicial magistrate. In its status report, the Delhi Police has stated that they have taken a conscious decision to declare all the FIRs connected to the violence as "sensitive", but there is no indication that the Police's reasoning has been seen by a judicial magistrate. The Police has also refused to disclose the list of arrested persons. The Delhi Police's refusal to disclose the names of the persons arrested/detained contravenes and violates Section 41C of the Code of Criminal Procedure which mandates that the names and addresses of all arrested persons, along with the names and designations of arresting officers, are to be displayed on the notice board of every district Police Control Room. The Control Room at Police headquarters is to maintain a public database of arrested persons and the offences charged.

the hearings, “...it was evident from the videos that Police used excessive force and as such the Delhi Police was not an impartial investigator of the case.”

We believe that the various violations of the process described above were not accidental or coincidental; instead, they are active ingredients of the Police’s efforts to construct a narrative about the violence of February 2020 being the result of a ‘conspiracy’ by those opposed to the NRC/CAA. We hope to prove in this section that the Police can itself be charged with a conspiracy to implicate the anti-CAA protestors as the perpetrators of the Delhi riots of 2020 as a way to quell the anti-CAA movement.

A) Guilt by Presumption rather than by Proof

Many of the Police chargesheets presume, without evidence, that the anti-CAA protestors were the cause, the planners and instigators of the violence. A chargesheet is to be built and presented on the grounds of objective and sound evidence, and it is not meant to be a vehicle for unsubstantiated theories by the Police. Rather than presenting conclusions arrived at after examining the evidence, several chargesheets begin with long, detailed descriptions of the protests that reflect a particular biased perspective.

The narrative created by the Police is succinctly captured in one of the chargesheets which simply states with no accompanying proof that “The riots were part of a well-designed conspiracy crafted during CAA/NRC protests.” If this is to be believed, the Police would have to produce a chain of evidence conclusively linking the protests to a so-called conspiracy to the outbreak of riots. The **sweeping presumptions made, with no trace of evidence** as yet, begs the question about the motives underlying the Police narrative. Is there an attempt, in keeping with the Hindu nationalist targeting of protests as being “anti-national,” to criminalize the very right to dissent?

The Police seem to be **pursuing a dogged line of presenting anti-CAA protestors and protest organisers as the “accused”** without even prima facie evidence to support the allegations leveled against them. Yet this is passing through the Courts with only a few notable exceptions. For example, the Judicial Magistrate who granted bail to two prominent women student human rights defenders, [Natasha Narwal and Devangana Kalita](#), who had co-founded the women’s rights group *Pinjra Tod* (Break the Cage), held that the crime they were charged with - assaulting or using criminal force to deter a public servant from

discharge of his duty - was “not maintainable” since they were “merely protesting against the CAA.” Yet, a Delhi Police Crime Branch Special Investigation Team re-arrested the two women for more serious offences and they were remanded to custody. If a judicial magistrate found no evidence of lesser offences, it begs the question whether there was sufficient evidence to remand them to custody for charges as serious as murder and attempt to murder. The Police strategy of re-arresting the accused under multiple charges in serial order such that bail is not accessed, was censured by Justice Lokur, a retired Supreme Court judge. Even after the arrests, the Police sought to leak information regarding the accused to the media. Censuring them for this action, Justice Bakhru deemed that “presumption of innocence is sought to be destroyed when information contrary to that is leaked in the media.”

That the Police are targeting the accused because they were protesting was recognized more recently by UN experts who called on the Government of India to immediately release human rights defenders “who have been arrested for protesting against changes to the nation’s citizenship laws.” Further, “these defenders, many of them students, appear to have been arrested simply because they exercised their right to denounce and protest against the CAA (Citizenship Amendment Act), and their arrest seems clearly designed to send a chilling message to India’s vibrant civil society that criticism of government policies will not be tolerated,” the experts said.

B) Suppression of Evidence related to violence by Hindu nationalists

Even as the Delhi Police’s narrative holds local, student, and civil society activists and protestors directly responsible for the violence, it systematically fails to mention evidence regarding the role played by Hindu nationalists.

1. A notable omission is that of Kapil Mishra (mentioned above), a senior leader of the ruling BJP party who on the same day, and in the very area in which the violence broke out, stood next to the Deputy Commissioner of Police and declared that if the Police does not clear out the protestors, “we will not listen to the Police... we will have to come on the roads.” The open admission of “not listening” to the Police, and use of vigilante, extra-legal tactics should have been seen as incitement of violence by the Police, and by any other authorities present. The chargesheets, however, fail to

mention the speech.

Also excluded are the earlier inflammatory speeches made by two Hindu nationalist political leaders - Mr. Anurag Thakur who is a Union Minister in the government, and Mr. Parvesh Sahib Singh Verma who is a Member of Parliament. [Thakur](#), whose slogans such as *Desh ke gaddaro ko... Goli maaro saalo ko* (Those who are traitors of this country... kill the bastards), and [Verma](#) whose objectionable comments in Parliament were against the Shaheen Bagh protesters were [banned](#) by the Election Commission of India to from campaigning in the Delhi elections.⁴

A petition was filed seeking the registration of a First Information Report against all three political leaders (Mishra, Thakur, and Verma) on the grounds that their speeches incited violence. Further, [Justice Muralidhar](#) questioned the Delhi Police on the delay and the lack of acknowledgment of the speeches themselves as crimes. Nonetheless, till date the FIR has not been filed. Eight complaints against the ruling party's leaders have been buried by the Delhi Police. The [report](#) by the High Level Fact-Finding Committee constituted by the Delhi Minorities Commission notes that this [inaction](#) by the Delhi Police against the BJP leaders is accompanied by the filing of cases against Muslim victims for the violence. The report made particular mention of the Kapil Mishra speech referred to above, which the Police did nothing to stop and “almost immediately after” which the violence started.⁵

⁴ On 29 January 2020, the Election Commission of India ordered the removal of Union Minister of State Anurag Thakur and BJP MP Parvesh Verma from the BJP's list of star campaigners for the Delhi Assembly Elections after finding that they made “statements/speeches contents of which were in violation of the letter and spirit of the various provisions of the Model Code of Conduct for Political Parties and Candidates”.^[5] In notices sent to Thakur^[6] and Verma^[7], the Commission cited clauses from Part 1 of the Model Code of Conduct, and Sections 123 and 125 of the Representation of the People Act 1951, stating the Commission's, prima facie, view that the statements they made have the potential of “disturbing communal harmony and aggravating the existing differences between social and religious communities” and thereby violated the provisions of the Model Code and RP Act cited. Among others, the statements of “desh ke gaddaro ko...goli maaro saalo ko” (Those who are traitors of this country...kill the bastards) were specifically cited by the Commission. The provisions of the Model Code and RP Act seek to prevent actions or statements by candidates that create divisions, or promote feelings of enmity or hatred between different citizens on the grounds of religion, caste, community or language.

⁵ As the violence escalated in February 2020, on the 26th of February, the High Court of Delhi, while hearing a petition seeking the registration of a First Information Report against BJP leaders Kapil Mishra, Anurag Thakur and Parvesh Verma for their speeches that they argued led to incitement of violence among other prayers, asked the Delhi Police to take a “conscious decision” to

Recently, the Delhi Police identified a WhatsApp group with at least 125 members named *Kattar Hindu Ekta*, in three charge sheets filed in connection with the killings of three men. In the conversations in the group, three members bragged about “killling Muslims” and “dumping their bodies in the sewer” and offering manpower and guns when necessary. This is the first hard evidence placed on record in a Police chargesheet of the commission of violent crimes by a Hindu nationalist group during the violence. It remains to be seen whether the Delhi Police will be compelled to change the course of its investigation, either by its own investigators or by the courts, due to this. At present, there are no indications of a change in course.

The glaring omission of the evidence of incitement and abetment of violence by Hindu nationalist leaders, in contrast to the emphasis on the unsubstantiated allegations about the anti-CAA/NRC protestors causing violence (including murder) is illustrated by examples of the following two chargesheets:

- A. The 70-page chargesheet for the death of a Police Head Constable begins with 12 pages devoted to the Police narrative about the anti-CAA/NRC protests from December 2020 onwards. (The entire charge sheet is 1032 pages, including assorted documents). Evidence of the pressure brought upon young local Muslim men by the Police to turn into hostile witnesses is to be found in the striking similarities across three different statements, including the repetition of specific words and sentences, purportedly made by three ‘independent witnesses.’ The confessional statements of the 17 young local Muslim men who are the accused are also similar to each other. The Police constable received one bullet, but all 17 youth have been booked for his murder. Several ‘senior’ activists have been named as “conspirators” in the murder case, even though there is no evidence linking them to the crime. The chargesheet simply alleges (without evidence) that there was a “conspiracy” to commit riots, and that the violence was unprovoked. It however fails to include in its theory the inflammatory speech by the BJP leader Kapil Mishra. Notably, the chargesheet starts with the death of the Police Head Constable, who was a Hindu man, and goes on to

register an FIR in 24 hours. Justice Muralidhar expressed “anguish” that the city is burning and questioned the Delhi Police on the delay and its lack of acknowledgment of the speeches themselves as crimes. Solicitor General of India, Mr. Tushar Mehta, appearing for the Delhi Police, repeatedly asserted that FIRs will only be “registered at an appropriate stage”. However, the matter reverted to a different bench for the hearing on 27 February and the Court gave the Union of India four weeks to file a counter-affidavit in response. To date, no FIR has been registered against the BJP leaders.

mention the total death toll of 53 dead in the violence without mentioning the fact that a majority (39) of them are Muslim. Instead, the analysis blandly states that “the violent mob in communal frenzy rampantly started selectively targeted the properties of Hindu community.”

- B. A second charge sheet related to the death of an official from the Intelligence Bureau provides a chronology of events leading up to the violence. It begins with the student protests against CAA and NRC at Jamia Millia University on 13 December 2019, and continues to list almost all the other protests in Delhi including Shaheen Bagh till it reaches the protest near the site of the violence on 23 February 2020. The 1500-word chronology of events does not however mention Kapil Mishra’s speech. As an investigative media report aptly comments: “Strangely, the Police considers protests in Jamia Millia Islamia - separated from the riots by a period of two months and a distance of over 20 kilometers - more relevant than a provocative speech delivered on the exact area where violence broke out 24 hours later.”

The ‘conspiracy theory’ being propounded by the Police is breath-taking in its sheer lack of logic. If anti-CAA Muslim protestors were solely responsible for the violence, as the Police narrative on the causal sequence has repeatedly sought to emphasize, then how does one account for or explain the overwhelming fact that a very large majority of the victims of violence, according to the Police’s own affidavit, as well as over three-fourths among those dead were Muslims themselves? Surely, even the Police cannot suggest that this violence too was carried out by the Muslims themselves as part of a deep, diabolical conspiracy?

C) Grave Inconsistencies, Selective ‘Evidence’ in filed charges

Other than a highly disproportionate focus on anti-CAA and NRC protests, and insufficient evidence on the basis of which to charge the “accused,” the chargesheets are also marked by grave inconsistencies.

- a) A key piece of the conspiracy theory is that activists had “pre-planned” the violence to time it with Donald Trump’s visit to India. One of the chargesheets states that in the meeting in which this plot was hatched, “it was decided to have a big blast so that the Central Govt. could be shaken on the issue of CAA/NRC and so as to defame the country in the international arena.” The meeting allegedly took place on 8 January 2020, but the first report about Trump’s visit was made public only on 14 January

2020.

- b) The Police are also guilty of making allegations based on selected portions of ‘evidence’ which in effect distort the intent of the accused. In the affidavit filed by the Delhi Commissioner of Police, the sections of the speeches made by social activists Harsh Mander and Umar Khalid exclude other sections of those speeches which call for peace as the only way forward. This selective focus enables the Police to then accuse Mr. Mander and Mr. Khalid of incitement to violence, in glaring contradiction to what the accused were actually communicating.

D) No Evidence But Serious Charges and Heavy Punishment?

The “conspiracy” according to the Police affidavit filed in July 2020 was not only an attempt to generate violence in order to claim international attention and to discredit the Indian State; the affidavit also claims that the riots were a conspiracy to “execute a secessionist movement in the country by propagating an armed rebellion” in which “the anti-government feelings of Muslims, will be used at an appropriate time to destabilise the government.”

The total lack of evidence and the manufacturing of an alleged “conspiracy” have been pointed out repeatedly by legal scholars. It is unfortunate and of grave concern that the courts are continuing to keep students and other activists in custody even when the absence of evidence against them is so apparent and reflected in the court’s own orders. Legal scholar Gautam Bhatia points out in his analysis of an order by a sessions judge that denied bail to Safoora Zargar (a student leader who was kept in jail during the pandemic despite being pregnant) that “in denying bail the Delhi court stretches facts and uses metaphors in place of law.” He continues with his analysis to conclude that “what it [the Court] effectively does...is criminalise the exercise of one set of constitutional rights (the freedom of speech and expression), and deny the exercise of another (personal liberty). Bhatia concluded that “metaphor instead of law” was used to keep her detained. From this, it is clear that the Police have not amassed any evidence linking Safoora Zargar to the alleged offences.

The extreme nature of the accusations, not backed by any evidence, is matched by the extreme nature of the proposed punishment. Retired Supreme Court judge Justice Lokur describes it as a “sledge hammer” approach. “You don’t have to use serious offences like sedition, UAPA [Unlawful Activities Prevention Act - a draconian anti-terror law]” he said at

an event related to the Human Rights Council organized by several international Human Rights organizations.

5) Discrimination against the Muslim community

The Police narrative of a ‘conspiracy’ outlined above makes it clear that the Muslim community is targeted by the Delhi Police.

A) Blaming the Victims

The chargesheets primarily target Muslims, who are themselves victims, or those who helped the victims, including a physician who treated survivors of the violence. Young Muslim men from underprivileged communities who live around the sites of protest are called in for long interrogations, sometimes repeatedly, and often made to sit for hours without access to food or water. Further, many Police officers within the special cell have tested positive for Covid-19 which puts at risk those that are called in for interrogations.

On 28 May 2020, a Judicial Magistrate, during a bail hearing of a student from Jamia Milia Islamia, commented that the investigation was targeting one community but that “rival factions” (that is, Hindu rioters) were not being investigated properly.

B) Manufacturing False Evidence using Threats and Intimidation

During the interrogations, the young men are put under severe pressure to act as “witnesses” and produce statements corroborating the Police narrative that the violence was caused by the “conspiracy” of the anti-CAA/ NRC protesters. In particular, the Police coerce the youth to testify against ‘senior activists’ in order to falsely implicate the latter in the violence.

The following are some examples:

- *Tune kisko kisko dekha hai bol, warna tujhe bhi ander dalenge* (Tell us who all have you seen, or else we will lock you up also.) The young Muslim men are being threatened that they will be booked under sections of UAPA, a stringent law with offences of terrorism and restricted rights to bail for accused people under it, like the other accused and being reminded that it is very difficult to get bail under UAPA.
- They are also offered incentives such as, for example, that no action will be taken against

them if they agree to cooperate. *Tu pechanne me madat kar, tujhe kuch nahi hoga* (Help us identify people, and you will be fine). *Hum tumko bacha lenge bus tum humari madad karo* (We will protect you, just help us).

- Those being interrogated have also been pressured to lie: *Tu tha vahan, aur tujhe pata hai. Tujhe pechanna padega* (You were there, and you know. You will have to identify them). This was said in a context in which the Police were aware that the person was not present at the scene of the violence.

Media reports also confirm that the Delhi Police exercised coercion in order to get **false statements**:

- On 1 July 2020, The Hindu carried the story of a 24 year-old Muslim man who was seriously injured and has lost almost all his vision, but has been made an accused in a case related to the violence. He is currently out on bail on humanitarian grounds due to his health condition. The Police claimed the man had confessed to participating in the violence and had named members of the student group *Pinjra Tod* (Break the Cage) in his confession statement. But he told The Hindu that he had no idea who these activists were, and that he was forced to sign the statement by the Police. He could not read the contents, nor could his mother who is his sole source of support.
- On 2 July 2020 the Indian Express reported that nine of the twelve confession statements related to the murder of a young waiter were virtually identical, including the repetition of exact words and sentences. According to Section 161 of the Code of Criminal Procedure, these statements extracted during interrogation cannot be admitted as evidence, but they can be used to confirm or deny facts or evidence during the trial. Further, the law mandates that the Police are to record Section 161 statements as a “separate and true record of the statement of each such person” whose statement is recorded. Analysis by the newspaper Indian Express strongly indicates that the Police are tampering with statements rather than recording them independently and accurately.
- Another threat being made during interrogation is about harassment that would be meted out to the families of the persons being interrogated. Needless to say, Indian criminal law prohibits the Police from threatening or compelling anyone in any way to admit to an offence (Section 24, Indian Evidence Act and Section 163, Code of Criminal Procedure).

C) Islamophobic behavior and language during interrogations

Those who have been interrogated have been continually subjected to Islamophobic comments by all levels of the Police establishment from the Deputy Commissioner of Police to the person who serves tea, and the drivers of Police vehicles. Senior Police officers have used Islamophobic slang words such as *mulla* (a term originally used for a religious preacher but in today's context connotes a fanatical devotion to Islam) and *katua* (derogatory reference to one who is circumcised). They have been made to feel like traitors for the simple reason that they participated in the anti-CAA/NRC protests. Those being interrogated have been asked by the Police about why they did not choose to go "their" country Pakistan when it was created, why they had remained in India. *Tum logon ne gand macha di hai, is baar tumko batayenge.* (You guys are spreading filth all around. This time we will put you in your place). They were also told: *Tum log protest bus Musalman ke liye karte ho, Hinduon ke saath jo galat hota ha uske liye toh koi nahi bolta.* (You all only protest for Muslims. You don't speak a word against all the wrongs which are anti-Hindus).

Recommendations

In light of the above, we urge all global actors invested in human rights to:

1. Call on Indian authorities to release all human rights defenders, students, and persons being held in pre-trial detention without sufficient evidence
2. Call on Indian authorities to carry out arrests and initiate prosecutions of political leaders against whom there is clear evidence of incitement and abetment to violence
3. Send written communications to the Government of India to place on record that Delhi Police is using coercive, discriminatory methods during interrogations and seek assurance that Delhi Police will be ordered to desist from coercion during interrogations towards extracting statements and enlisting approvers in order to implicate 'senior' activists, with immediate effect.
4. Send written communications to the Government of India seeking the assurance that Delhi Police will investigate all offences related to the February 2020 violence free of any extraneous influences or illegal coercive tactics and levy charges on any persons only on the basis of evidence and not a predetermined spurious conspiracy theory
5. Call for an independent impartial inquiry into the role of the Delhi Police, including allegations related to failure to prevent the violence, aiding and abetting perpetrators, and

up to the current failures to fairly investigate offences

Conclusion

This report demonstrates fundamental dereliction of duty by the Delhi Police. It also documents how the Delhi Police is complicit in repeated violations of fundamental Constitutional rights in their practices. Both these serious charges illustrate the lack of independence on the part of Delhi Police, and their complicity with the ruling political party, the BJP. It is deplorable that instead of protecting citizens from the abuse of political power and repressive practices, the Police are actually abetting that party's ultranationalist Hindu supremacy and attendant Islamophobia. The Delhi Police's practices violate the fundamental rights of Indian citizens. We condemn their discriminatory behavior and demand accountability.

A summary of the charges against the Delhi Police levied by Human Rights Defenders are therefore as follows:

- 1.Failure to prevent or control violence, apprehend the perpetrators and rescue survivors.
- 2.Abetment and participation in the violence.
- 3.Fundamentally flawed approach to investigation which presumes cause of violence rather than arriving at it based on evidence, towards creation of conspiracy theory
- 4.Glaring flaws in evidence to support the Police's own "conspiracy" theory
- 5.Omission of key evidence with the intent of supporting "conspiracy" theory and simultaneously protecting dominant ideology of Hindu supremacy and its promoters
- 6.Failure to provide specific evidence against the accused that link them to the crimes they have been charged with
7. Failure to arrest and prosecute key functionaries of the ruling political party, against whom there is clear evidence of incitement and abetment to violence
8. Coercion and threats directed at vulnerable members of the Muslim community to terrorize them into testifying against 'senior' activists, towards generating fear in order to

crush future dissent

9. Islamophobic behavior and language during interrogations

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