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Harvesting Death

Massacres in Bihar and the Question of Justice

CONTENTS

Well, if one really wishes to know how justice is administered in a country, one does not question the policemen, the lawyers, the judges, or the protected members of the middle class. One goes to the unprotected — those, precisely, who need the law's protection most! — and listens to their testimony.... ask the wretched how they fare in the halls of justice, and then you will know, not whether or not the country is just, but whether or not it has any love for justice, or any concept of it. It is certain, in any case, that ignorance, allied with power, is the most ferocious enemy justice can have.

- James Baldwin

PREFACE

The context of this report is the history of mass killings in rural Bihar over the two decades of the 1980s and the 1990s. Ranged against each other were, on the one hand the dominant castes organised into landlord armies (*sena*s), and on the other hand, the rural poor hailing mainly from the dalit and lower castes and organised through Marxist-Leninist organisations. A complete list of massacres by the different *sena*s has never been made. Ranvir Sena, the last of these *sena*s, was by itself responsible for over 23 incidents of massacres in which more than 256 people lost their lives.

PUDR conducted eight fact-finding missions to the then state of Bihar and investigated into many of these massacres. The attempt was to understand the roots of such massacres, to protest the overt and covert involvement of the state actors, and to demand an end to such violence through the implementation of established laws, both reformative and penal.

This report traces the outcome of one criminal case arising out of one such massacre. On 12 February 1992, thirty-five upper-caste landowners were killed by a large armed mob organised by the Maoist Communist Centre (MCC), at village Bara in the Gaya district of Bihar. After the trial, six of the accused were convicted and sentenced to death. The trial had taken place in a designated court established under the Terrorist and Disruptive Activities (Prevention) Act (TADA), a precursor to the POTA and the UAPA of today. The Parliament had allowed this law to lapse in 1995 on account of the public outcry against the rampant misuse that it had bred, with over one lakh people in jails across the country. But the Bara trial continued to suffer all the discriminatory provisions of that law. The Supreme Court confirmed the death sentence for four of the accused while reducing the sentence to life imprisonment for the other two. Those on death row then sent mercy petitions to the Governor through the jail administration. These have not been heard of since. The four convicted have completed nearly two decades in jail.

On the other hand in the numerous criminal cases where the landlord armies massacred landless dalits, the final outcomes have invariably been acquittals. This report therefore examines four recent judgments of the Patna High Court into the massacres at villages Bathani Tola, Lakshmanpur-Bathe, Nagari and Miyanpur, where a total of 122 people were killed by members of one landlord army Ranvir Sena. In these cases, all the accused, barring one were acquitted by the court.

How did a similar criminal charge of attacks by armed mobs committing murder lead to such disparate outcomes? This report examines the impact of the social backgrounds of the accused on the investigation, gathering and recording of evidence, framing of charges, the credibility accorded to witness testimonies and finally on the conviction and sentencing. Discrimination against the poor and in favour of the rich, privileged and powerful continues to haunt every nook of the criminal justice system. The penalty of death brings this out in the most startling manner.

1. Behind the Massacres in Bihar

The massacres in central Bihar during the nineties are once again in the news. In an exposé publicised in August 2015, the media organisation Cobrapost interviewed– six leaders of the Ranvir Sena, a dreaded private army of upper-caste landlords in central Bihar. These six functionaries are caught on camera unrepentantly confessing to their involvement in the ghastly massacres that rocked the state in the late nineties. The interviews provide gory details about the barbarity of the Sena's actions, whether it is slitting the stomachs and wombs of pregnant women or dashing infants to death and the absolute lack of remorse of some of its main functionaries.

The Sena's track-record is quite gruesome. They killed about 300 people, mostly poor peasants and agricultural labourers and mostly from dalit and backward castes, in the six years after its formation in September 1994. Yet the Ranvir Sena was only the most powerful successor to a veritable zoo of caste-based private *sena*s that marauded through the plains of central Bihar in the decades of the eighties and the nineties. Organised by feudal landlords alarmed at the erosion of their privileges over labour and the bodies of the poor peasantry, as the latter demanded their rights, these *sena*s worked in tacit collusion with the local police and killed, raped and burned their way across the central Bihar plains.

Where did they come from? To understand the genesis of the *sena*s we need to begin by understanding the conditions under which the poor in Bihar have existed.

By most measures Bihar is about the most destitute state in India. Its per capita income is roughly one-third of the Indian average and it has the dubious distinction of being near or at the bottom among all states ranked on human development indicators. Poverty figures in India have shown a sharp decrease and these numbers have therefore been questioned by many. Even by that possibly flawed measure, Bihar has over half its population below the poverty line (53% in 2009-10 compared to about 30% for India). More complex measures of poverty, such as the multidimensional poverty index, suggest that almost 80% of Bihar's population classifies as falling below the poverty line (compared with about 54% for India).

Extreme landlessness and a skewed land distribution underlie rural poverty in Bihar. A large number of rural households do not even own the land for a hut. Bihar has the largest shortage of rural housing in the entire country, and the estimated shortage is twice that of the state with the second highest shortage. Estimates of the landless population based on National Sample Survey data show that in Bihar, on average, about 31% of households do not own any land except for homestead land, and another 7.6% do not own any lands at all. An additional 42.5% of households own less than 1 acre. There are wide regional variations that these averages mask: a recent survey of 12 villages commissioned by the Bihar Land Reforms Commission found that about 52% of households were landless ('Current Agrarian Situation in Bihar', Asian Development Research Institute, 2008). According to the National Sample Survey Office (NSSO, 2003), marginal and small farmers who were 96.5% of the total landowning community owned only about 66% of the cultivable land, while medium to large farmers, who constituted about 3-4% of the landowning population, owned 33% of the cultivable land. A few decades ago very large landowners used to dominate the rural landscape of Bihar. While demographic and urbanization trends have diluted the importance of the large landowners, they still exist in many parts of the state, especially in North Bihar. According to government statistics (NSSO 2003), these

large landowners constitute only 0.1% of the number of total cultivator households but own 4.63% of the land, amounting to a total of over 8 lakh hectares of land (*Economic and Political Weekly*, 21 November 2009).

The importance of land reforms in bringing about socio-economic development in Bihar has been recognised since Independence, if not earlier. Bihar came under the system of permanent settlement introduced by the colonial British administration in 1793. This fixed land revenue in perpetuity and gave revenue collection rights to a class of big zamindars, who then lived on rents from the actual tillers of the land. Ultimately multiple parasitic intermediary layers ended up being created that lived on the labour of the actual tillers of the land, whose rental burden became exorbitant. The zamindars and their henchmen were in charge of, or controlled, most of the local administration and law and order in their zamindaris. Though the system of zamindari was abolished by the Bihar Land Reforms Act, 1950, the zamindars were left in possession of the *gair mazarua khas* lands in addition to the *khudkasht* lands that they may control, both of which were typically cultivated by unrecorded tenants. However, the tenants with recorded tenancies also obtained land rights and the large tenants among them emerged as a new class of landlords. Both the landlords, old and new, were not usually the actual cultivators of the land and lived on the labour of sharecroppers and other tenants-at-will. It took more than a decade by the Bihar Government to pass the Land Ceiling Act in 1961 and another decade before it actually came into force on 9 September 1970. This gave the prominent landowners ample time to protect their holdings by transferring these on paper to their family members, fictitious trusts, or any other person, thus making these holdings *benami*. In many areas the new and emerging landlords from among the erstwhile tenants were from the backward castes too, which led to agrarian and political tensions of another kind – between the upper-caste traditional elites, from Brahmin, Bhumihar, Rajput and Kayastha castes and the backward-caste landowners, who were mostly from the Kurmi and the Yadav castes. These landowners of both types, who share a common worldview and exhibit a common attitude towards the tenants and farm labourers, are referred to as *malik*s. Lukewarm efforts by the government in response to pressures from below led to enactment of various land reform and tenancy laws which had the unfortunate effect of widespread evictions of tenants at will from the land they cultivated. Thus landlessness in Bihar has long historical roots involving dispossession of rights over land.

In this situation it was widely acknowledged that economic development of the state, not to mention social justice and equity, would get a boost by land reforms. In the decade of the nineties, for example, Bihar's agriculture had a negative growth rate in per capita terms despite having some of the most fertile soil in the country and structural causes have been typically regarded as the main culprit. It is also widely acknowledged that land reforms in Bihar have been a dismal failure largely due to the political clout of the large landowners and their control over the administration. However, because of the sheer size of the population of the landless and near-landless in the state and continual agricultural crises, land reforms continue to be a burning issue for the state. Even as late as 2005, the Nitish Kumar government established a Bihar Land Reforms Commission under the chairmanship of D. Bandhopadhyaya, a bureaucrat closely associated with the execution of land reform policies in West Bengal. The Commission presented its report to the government in April 2008 with a long list of recommendations. However, the government indicated in 2009 that they were not going to implement the recommendations of the Commission (*EPW*, 21 November 2009).

Within this sorry picture lies the even grimmer reality of extreme caste oppression,

a dysfunctional state with corrupt state officials at every level, an oppressive police machinery and a political process that seems incapable of producing any real change. In Bihar, with different districts and regions often with dominant landowners belonging to one or another particular caste, the identity of caste provides to the dominant sections the means through which it can exert its power of monopoly control over land and thus over employment. It also enables consolidation of this power in numerical terms, by uniting large and small landowners of the same caste together. This benefits all these landowners by permitting a pittance to be paid as agricultural wages, extraction of a large share of the produce in tenancy (*bataidari*) contracts, binding down the rural poor with debt bondage and subjecting them, especially the womenfolk, to barbaric oppression.

In many parts of central Bihar, the response by the peasantry to this oppression was to organise into mass organisations and to launch struggles. Since the 1970s, many of these organisations have been associated with one or the other of the Marxist-Leninist, or Naxalite, parties. During the eighties and nineties, there were three main organisations, the Communist Party of India (Marxist–Leninist) (CPI[ML]) Liberation, the CPI (ML) Party Unity and the Maoist Communist Centre (MCC). The mass organisations associated with these organisations were the Kisan Sabha, the Mazdoor Kisan Mukti Manch (MKMM) and the Krantikari Kisan Committee (KKC). These parties, as our fact-findings and many other reports on the Bihar situation show, organised the peasantry on three main demands:

1. Provision of fair agricultural wages
2. Land to the tiller, in particular, distribution of government or *gair mazarua* land to the landless peasants
3. Human dignity and respect.

All three demands are in fact guaranteed by the law of the land. Even the Bihar Land Reforms Commission (2008) report noted, 'Almost all these demands are not only legitimate but legal. There are endorsed in one way or the other in Five Year Plan documents' (p. 12). However, right from the beginning, the organisations mobilising people to demand their legal rights faced intense repression from the state as well as from the landlords they were opposing. The landlords in particular

Table 1 **The Landlord Armies**

Name	Year of Establishment	Caste Affiliation	Region of Operation
Kisan Suraksha Samiti	1979	Kurmi	Patna, Jehanabad, Gaya
Kuer Sena	1979	Rajput	Bhojpur
Bhumi Sena	1983	Kurmi	Patna, Jehanabad, Nawada, Nalanda
Lorik Sena	1983	Yadav	Patna, Jehanabad, Nalanda
Kisan Sangh	1984	Rajput, Brahmin	Palamau, Aurangabad
Sunlight Sena	1989	Rajput, Pathan	Palamu, Garhwa, Gaya
Sawarna Liberation Front	1990	Bhumihar	Gaya, Jehanabad
Kisan Morcha	1990	Rajput	Bhojpur
Ganga Sena	1990	Rajput	Bhojpur
Ranvir Sena	1994	Bhumihar	Bhojpur, Patna, Jehanabad, Gaya, Rohtas, Aurangabad

organised many armed outfits called *sena*s to enforce their writ. These *sena*s were usually organised on caste lines, some having the support of more than one caste. The Bhumi Sena was an army of Kurmis, the Lorik Sena of Yadavs, the Sawarna Liberation Front (SLF) and the Ranvir Sena of Bhumihars, the Sunlight Sena of Rajputs and so on. In each case, the role of the police and the administration ranged from complicity to callous disregard in connection with the criminal activities of these *sena*s.

GROUND REALITIES

In the decade of the eighties and the nineties, PUDR sent many fact-finding teams to the plains of Bihar to investigate the atrocities and the repression on the people's movements. The reports of these teams offer a ground-level view of people's lives and struggles in the villages the teams visited. We begin therefore by summarising some of the findings of five of our previous fact-findings into this area in 1981, 1986, 1992, 1996 and 1999. The three central issues that drove people into struggle, despite intense state repression as well as repression by the *malik*s, were wages, land and dignity, that we discuss below in turn.

Wages – paying a pittance

Every single one of our reports brings out the huge disparity between the officially stipulated minimum wages for agricultural labour and the wages actually paid. In 1981, a PUDR team visited several rural blocks of Patna district following reports of police firings and arbitrary arrests of peasants (PUDR report - *Agrarian Unrest in Patna, 1981*). In the villages, the team found that a very large percentage of the rural population had landholdings that were too small to support a family or were completely landless. These people had to work as agricultural labourers for their survival. However, wages were very low. The team also found widespread incidence of attached or bonded agricultural labour (the *harwaha* system) in the villages. These labourers were usually leased a little land (one third to half an acre) and extended a small loan, which bound them to work for their *maliks*. The *harwaha* wages for a day of labour ranged from half a kilogram of rice with half a kilogram of *sattu* and a meal, to one *seer kachha* (802 gm) of rice and about half that amount of *sattu* without a meal, along with a third to half an acre of land to cultivate in each case. The team estimated, based on local prices in the villages they visited, that the daily wage rate for labour varied between Rs 2.33 and Rs 2.50 per day. In contrast, the statutory minimum wages were between Rs 4.50 and Rs 5.00 daily plus a meal and a minimum of half an acre of land for cultivation.

In 1986, a team visited central and south Bihar shortly after the Arwal massacre in which 23 poor peasants were killed in a police firing (PUDR report - *Behind the Killings in Bihar, 1986*). The team undertook extensive interviews with agricultural labourers in Jehanabad district and found that while the attached labour system was still prevalent, the majority of labour were *chhutta* or free. However agricultural wages were still very low. Workers got 1.25 kg of rice per day instead of the statutory minimum of 3 kg of rice. A little *nashta* (snack) was also given. During the harvest season the agricultural labour were given one *bojha* (bundle) out of 17 *bojhas* harvested. The team calculated that this worked out to 1.4 kg of rice per day per worker.

The low level of earnings through wages or tenancy led to permanent indebtedness of the agricultural labour families. The team found that interest rates were very high (in the range of 25-30% per annum) and many families were indebted.

A PUDR team visited central Bihar again in 1992 (PUDR report - *Bitter Harvest, 1992*) after a spate of mass killings of landless dalits by the Sawaran Liberation Front (SLF) in Patna, Gaya and Jehanabad districts and one killing by the Maoist Communist Centre in Gaya district. The team found that wages paid

now varied significantly, depending upon the relative social power of the employers and the agricultural labour. By and large, the team found that in villages with some presence of the ML peasant organisations, wages had increased to about 2-2.5 kg of rice for a day's labour. This was still less than the official minimum wage which was 3 kg of grain and a meal (usually some *sattu*) or Rs 16.50 in cash. However, in parts of Gaya where Rajput and Pathan landlords were still quite dominant, the wages paid were as little as 2 *seer kuccha* of rice (about 1.3 kg), while smaller farmers of other castes paid 2 kg.

Another PUDR fact-finding team visited Bihar to study the depredations of the Ranvir Sena in 1996 (PUDR report *Agrarian Conflict in Bihar and the Ranbir Senam, 1997*). This team did not find a single village in which the then official minimum wage of Rs 30.50 for a day's labour was being paid. The lowest wage rates were still found among the *banihars* or the unfree labour in the *harwaha* system.

Yet another PUDR fact-finding team visited central Bihar in 1999 after another spate of mass killings in the region (PUDR report - *A Time to Kill, 1999*). The team found that wages for agricultural labour had a strong dependence on whether the ML organisation was strong in the village or not. Thus wages in Shankarbigha village, comprised 3 kg of rice and *nashta* per day, while wages in neighbouring Dhobibigha were only 1.5 kg of rice. In village Narainpur, after struggle against a local *math*, the wages were 2 kg of rice, half a kilo of s*attu* and *nashta*. This was also the wages paid in Bhimpura and Senari villages. The team found that the *harwaha* system of attached labour was still practised and the attached labourers (*banihars*) were given 1.5 kg of grain a day along with a third to half an acre of land to cultivate.

Since work on the fields for agricultural labour is available for only about four months in a year, these low wages mean that those dependent on this work live on the very edge of subsistence. That is why raising agricultural wages to the stipulated minimum wage was such a powerful slogan for the movements in this region. Our team found that wages did increase in response to the struggles of the peasant organisations, though even till the end of the nineties they had not yet reached the minimum wage floor. In places where the peasant organisations were not strong relative to the employers of labour, wages had not changed much over these two decades.

Struggle Over Land

The land struggles in these areas spanned two types of land. The first was for possession of government land, known as *gair mazarua khas* land. The second was for redistribution of land above the ceiling limit imposed by the state and sometimes imposed by the ML organisations. Our teams did not directly encounter many instances of the second kind of land struggle in these villages but plenty of examples of the first kind.

Gair mazarua land refers to land that was not under the domain of the landlord during the colonial period and was by default vested in the state. It is of two types. *Gair mazarua aam* land is community land such as common areas in the village for village *haats* (markets), grazing and fodder, the village *pokhars* (ponds), etc. *Gair mazarua khas* land is cultivable land that came under the de facto control of the local landlord and was designated *khas* land in colonial times. With the decline of traditional irrigation systems, *aam* lands also became cultivable and were taken over by the more powerful in the village. Central Bihar has seen significant struggles for the landless and the near landless for being given ownership of *gair mazarua* land for settlement and for cultivation. This is again in accord with official state policy but of course, not with its practice! Some of these struggles were also about access to common property resources on *aam* lands, especially fishing rights. In Kansara, Jehanabad, a struggle over fishing rights with a local landlord, also associated with the Brahmarshi Sena, led to

the murder of four *bidi* (*tendu*) workers associated with the MKMM (*Behind the Killings in Bihar*). In Aikil, Jehanabad, the village *pokhar* (pond) was out of bounds for the dalit labourers (*Bitter Harvest, 1992*), who were beaten if they tried to catch fish from the pond. Occupation of *gair mazarua* land for homestead purposes was what led to the infamous Arwal massacre, where the police killed 23 people and injured scores of others in a firing on a public meeting on 19 April 1986 (*Behind the Killings in Bihar, 1986*). The issue behind the public meeting was the opposition to the attempt by an engineer of the irrigation department to fraudulently take over 27 decimals (0.27 acre) of *gair mazarua* land. The land was being used as homestead land by nine landless families who were being evicted. With the increasing cost of land, attempts to fraudulently sell *gair mazarua* land by local elites in connivance with corrupt officials are probably widespread all over Bihar.

Occupation of cultivable *gair mazarua* land by the landless or near landless was another common theme of the struggles. It should be noted here that it has been official policy of the government for a long time to settle *gair mazarua* land with the landless for both homestead and cultivation purposes. However, nothing really happened till the peasant organisations made this an issue. Our teams learnt that many villages had significant *gair mazarua* land, to the tune of up to 200 acres or more. Aikil, Jehanabad had about 150 acres of *gair mazarua* land illegally occupied by landlords. However, this village did not have any struggles on this issue when the team visited. The murder of three MKMM supporters in Sawanbigha by the SLF was directly linked to the struggle over 3.5 acres of *gair mazarua* land in Narayanpur village. Some other struggles over *gair mazarua* land included Parasona, Jehanabad over 22 acres, Akuri, Patna over about 7.5 acres and in Jalpura and Bathani Tola as well as multiple struggles in Sahar and Sandesh blocks in Bhojpur district. In all of these cases the land had been occupied by one or more local landlords before the peasant movement made it an issue. The 1996 PUDR team noted that in almost all the mass killings it investigated a struggle over wages or over *gair mazarua* land was involved. This team was told by the Bhojpur District Magistrate that there were about 3,400 acres of *gair mazarua khas* and 588 acres of *gair mazarua aam* land fit for settlement in Bhojpur district. According to the same District Magistrate, about 14,655 acres of *gair mazarua khas* and 12,404 acres of *gair mazarua aam* land was unfit for settlement. Relevant figures for other districts are not available with us.

Apart from *gair mazarua* land, the peasant organisations also have raised the issue of redistribution of surplus land of large landowners, that is, land above the ceiling limit prescribed by the Land Ceiling Act. In Bihar, the official ceiling limit depends upon land quality and ranges from 15 acres of irrigated to 30 acres of unirrigated land. This land ceiling however is practically not enforced at all. In village after village the various PUDR teams were told of landlords with land above the ceiling limit, sometimes even significantly in excess of it.

Human Dignity and Caste Oppression

Another major issue, which was raised by many people our teams spoke with, was that of human dignity of the agricultural labourers and poor peasants. The teams found that a number of the landowners or their upper-caste relatives were described as possessing a *samanti* (feudal) mindset by the poor and landless peasants when narrating incidents of everyday oppression that were inflicted upon them. Every single PUDR team was told of instances of abuse, beating and molestation of the lower-caste agricultural labour and poor peasantry. Lower castes were not allowed access to all parts of the village and were not permitted to sit down in the presence of the upper-caste landowners. Women faced the brunt of the oppression, with agricultural

workers among them facing regular sexual harassment in the fields.

This harassment increased manifold when the same labourers started organising and asserting their rights. The upper-caste landowners increasingly saw this assertion by the predominantly lower-caste labouring poor as a *varchasva ki ladai*, or a struggle for dominance, against their centuries-old overlordship. They responded by creating private militias of their own and unleashed mass killings upon the rural poor.

Of all the landlord armies that roamed the plains of central Bihar, the Ranvir Sena stands out as the most powerful and ruthless organisation. One of the reasons for this is that it is a militia of the Bhumihars, who are traditionally the most dominant caste in Bihar, and in the words of the Supreme Court judge who heard the Bara massacre case, this caste 'ruled over Bihar'. The Ranvir Sena came into being at the time when left-wing extremism was perceived by the state as the main threat to India's internal security. Thus the state in Bihar, traditionally with a substantial presence of the Bhumihar caste within its functionaries, found a ready ally in the Bhumihar militia that emerged to fight the common enemy – the labouring poor asserting their rights. This led to the development of extremely close relations between the Sena and the state. This is seen most vividly in the informal political patronage that the Sena enjoyed, despite the brutality of its massacres.

THE RANVIR SENA AND THE STATE

The Cobrapost revelations of 2015 might have made more of a stir if the state in question was not Bihar. That was unfortunate since one of the most important aspects of this exposé was the candid admission by the Ranvir Sena leaders of the close support they received from BJP leaders as well as other important political personages associated with the government of Nitish Kumar.

These connections, however, were known, yet never acknowledged. In our 1997 fact-finding, people told us of close links between the Sena and politicians, and in particular, Janardhan Sharma and C.P. Thakur, both state-level BJP leaders, were named as Sena leaders. Local functionaries of both the Janata Party and the Samta Party were also believed to be having close links with the Sena.

After the massacre at Lakshmanpur-Bathe village in December 1997 where the Sena killed 58 people, the state government instituted a commission of inquiry into the Ranvir Sena, under Retd Justice Amir Das. The Amir Das Commission was hastily wound up by the Nitish Kumar government just before it was to release its report. It is quite evident from reports leaked to the media that the commission was going to name senior leaders of the BJP as well as Nitish's own party for close links with the Sena and possible complicity in the murders. At the time of the winding-down of the commission, the nexus of the Ranvir Sena with prominent functionaries of the BJP was extensively reported in the media. In April 2006, CNN-IBN brought out a report (http:.www.ibnlive.com.videos.india.caste-army-has-politician-friends-234634.html) on the just-disbanded Amir Das Commission. The news story claimed, apparently on the basis of a leaked copy of the incomplete report, that the commission was ready to name 37 politicians and it was disbanded because it would made it harder for those named to get tickets in the forthcoming elections. The Commission report reportedly named C.P. Thakur as having attended meetings of the Ranvir Sena in 1997, ahead of the Haibaspur massacre (in which the Sena killed 10 landless belonging to the most backward musahar caste) and of being close to the Sena supremo, Brahmeshwar Mukhiya. According to the news story, BJP national leader Murli Manohar Joshi had threatened the officer in

charge of Paliganj Police Station (PS) of repercussions to prevent him from taking action on the Haibaspur massacre. A number of other politicians were reported as having sought the blessings of the Sena during the elections. These include the state-level leader of the BJP Sushil Kumar Yadav as well as Akhilesh Singh and Kanti Singh (both in the RJD). Others mentioned in the news story are Shivanand Tiwari, Ram Jatan Sinha and Nand Kishore Yadav.

Though among the most detailed, the CNN-IBN reporting in 2006 was by no means the only one alleging that the Amir Das Commission had been wound up because its conclusions were politically inconvenient to the ruling parties. And this was not the only time that the Ranvir Sena and its nexus with the state would come to be commented upon by the national press. In 2013, a veritable media storm had erupted when the Patna High Court on 9 October acquitted all 26 people convicted by the Sessions Court of participation in the Lakshmanpur-Bathe massacre. Also, following the assassination of Brahmeshwar Singh Mukhiya, the chief of the Ranvir Sena, on 1 June 2012, his supporters went berserk in Arrah and Patna. They indulged in numerous acts of vandalism and attacked dalit hostels while the police looked on as silent spectators. Again in 2015, there were fresh revelations from interviews of the members of Ranvir Sena by the Cobrapost journalists. This exposé also implicated other senior leaders such as former Prime Minister Chandrashekhar and BJP leader Yashwant Sinha as having helped the Sena with procurement of arms and with money and the Jehanabad MP Arun Kumar (Rashtriya Samata Party) with having helped Sena members escape in his car.

All the above notwithstanding, the connections of the Sena with the political leaders were never officially probed; the extent of their complicity in the massacres was never determined; and the role played by other state functionaries in the actions of the Sena remained obscure. Thus nothing really changed and all those who were part of the conspiracy against the dalit labourers got away scot free.

2. The Case called 'Bara'

Located in the Tekari block of Gaya district, Bara village is predominantly upper caste. The Bara massacre was one of the most brutal attacks committed by the MCC against the Bhumihar caste. The killings were retaliatory in nature as they were meant to avenge the massacres by upper-caste *sena*s the previous year, at Sawanbigha (Jehanabad), Rampur Chai (Jehanabad), Tindiha (Gaya) and Men-Barsiwan (Gaya). In September 1991, seven landless labourers were killed in Sawanbigha; ten persons were killed in October 1991 when the dalit *tola*s were attacked in Men-Barsiwan (see *Bitter Harvest,* PUDR 1992). Both massacres had been carried out by the SLF under the leadership of Ramadhar Singh 'Diamond' and Haridwar Singh. When the MCC retaliated by attacking Bara, the attackers were primarily seeking out these two SLF leaders, who they believed were sheltered in the village.

On 12 February 1992, at around 9.30 pm, a crowd of more than 500 people allegedly entered the village in search of the two leaders. Some were disguised as policemen and were in uniforms. The squads segregated the Bhumihar males, about a hundred odd, and let off non-Bhumihar men, women and children. The Bhumihar males were marched with their hands tied behind their backs and taken to a nearby canal and killed. Their throats were slit and some were also shot. Thirty-five bled to death, seven were injured

and the rest somehow escaped. Several huts were set on fire by the killers.

Close to the time of the massacre, a patrolling police party from Tekari PS led by SI Vijay Pratap Singh arrived and met the village *chowkidar*s, anguished women, and family members of the deceased and injured. The police party did not enter the village and waited till a larger team led by the SP Gaya reached at around 1.00 am. This team met Shravan Kumar, a witness of the carnage whose hands had been tied behind his back. By this time the IGP Gaya and other officials had been informed and the police team entered the village. The injured were taken to hospital for treatment and the first information of a witness, Satyendra Sharma, was recorded. This *fard-bayan* (statement of witness before police) formed the basis of the FIR that was lodged at 3.00 am on the night of 12-13 February 1992 at Tekari PS against 34 persons who had been identified by the first informant, Satyendra Sharma, and against hundreds of 'unknown' others. The police invoked sections 3, 4 and 5 of Terrorist and Destructive Activities (Prevention) Act (TADA) and various sections of the Indian Penal Code (IPC) (147,148, 149, 302, 307, 326, 436, 452, 342).

For over two decades, the Bara trial continued in the TADA designated courts and in the Supreme Court. First, in February 1993, a charge sheet was submitted against 119 persons. Thirteen of them were brought to trial as the remaining were declared absconders. Thirty-four prosecution witnesses were examined, and the TADA Designated Court delivered its judgment nine years after the incident on 8 June 2001. The court acquitted four; awarded rigorous imprisonment of 10 years to one; convicted four to life imprisonment under rigorous imprisonment; and awarded death penalty to four.

Since the trial spanned many years, the police submitted another charge sheet in the TADA designated court on 15 April 2004 against six others, twelve years after the incident. The court delivered its judgment on 11 February 2009 in which it acquitted three and awarded death penalty to three.

In short, over seventeen years, two separate charge sheets were pursued against nineteen of the accused, of which seven were acquitted. Out of the remaining twelve, the courts awarded death penalty to seven and life imprisonment to another four. One was given imprisonment for ten years.

The state of Bihar filed for confirmation of the death sentence at the Supreme Court, as under TADA, the High Court was not permitted as a court of appeal. Five petitions were also filed by eleven accused against their conviction. Accused Ravinder Singh did not file a petition as he had already completed ten years of his prison sentence. Two different benches heard the petitions and delivered three verdicts (See above table).

Did the accused get a fair trial?

Since four death penalties were awarded out of a judicial process spanning 20 years, it is necessary to consider whether the accused were given a fair trial or not. Based on readings of the majority judgment, of Justices Pasayat and Agrawal, the dissenting judgment given by Justice Shah, the other judgment delivered by the same bench and the subsequent one by Justices Patnaik and Gokhale, the following points draw attention to the faults in the investigation and some glaring omissions and commissions that occurred during the trial.

1. *Non-examination of the informant*: Satyendra Sharma's *fard-bayan* had provided the basis for the FIR lodged at Tekari PS on the night of 12-13 February 1992. Sharma gave information describing how the crowd entered the village, terrorised the people with bullets and dynamites; how he was asked to hand over two commanders of the SLF who were allegedly hiding in the village; how along

Table 2	At the Supreme Court		
Judgment Date and Citation	**Bench**	**Appellants**	**Outcome**
15 April 2002 Krishna Mochi & Ors vs State of Bihar	BN Agrawal, A Pasayat, MB Shah	Nanhe Lal Mochi, Krishna Mochi, Vir Kuer Paswan, Dharmendra Singh	Majority judgment confirmed death penalty on all four. Dissenting judgment acquitted Dharmendra Singh, commuted others to life.
15 April 2002 Bihari Manjhi & Ors vs State of Bihar	BN Agrawal, A Pasayat, MB Shah	Bihari Majhi. Ramautar Dusadh, Rajendra Paswan, Vakil Yadav	Life sentences on all four dropped and acquitted of all charges.
20 September 2013 Vyas Ram @ Vyas Kahar & Ors vs State of Bihar	AK Patnaik, HL Gokhale	Vyas Kahar, Naresh Paswan, Bugul Mochi	One aquitted. Death Sentence on other two commuted to life.
Final Outcome: 4 death penalties, 2 life imprisonments, 5 acquittals			

with other Bhumihar males, he was taken to the eastern end of the village and made to march to the canal where the mass slaughtering took place; and how he managed to escape. Crucially, he identified 34 of the accused.

Records show that Sharma was never brought before the court and examined. Given the importance of the informant to the case, it was a strange omission to say the least. According to the defense, Sharma was a member of the SLF and later of the Ranvir Sena and had absconded after other massacres were carried out by the Sena, including the Mianpur carnage. But since Sharma was never examined or brought before the trial court, there is no means to confirm this. The defense argued and Justice Shah in his judgment concurred that this failure undermined the validity of the FIR as substantive evidence.

2. *Non-examination of investigating officer, Inspector Ram Japit Kumar:* The investigation into the carnage was marred by confusions and obfuscations. It appears that the initial investigation was entrusted to Inspector Ram Japit Kumar of Tekari PS on the verbal orders of the SP, Gaya. However, a few days later, on 17 February 1992, the case was handed over to Inspector Suresh Chander Sharma. The reasons for this replacement remain murky. The ostensible reason for the handover was that Kumar was not available for the investigation and the Tekari police were busy with arrests and entertaining the many VIPs who were thronging Bara village after the incident. The prosecution claimed that Kumar was never involved and that the initial investigation was conducted by Inspector Vijay Pratap. However, during cross examination, Inspector SC Sharma made contradictory remarks as he maintained that Kumar had done the entire investigations before him and also stated that he had taken over from Vijay Pratap.

The confusions surrounding Ram Japit Kumar were never resolved as he was never examined in court. His case diary and the details of the investigation were also never brought on record. The suspicion that his summary removal may have had more to do with the 'conclusions' of his investigation than with him being 'unavailable' can hardly be put to rest since Kumar was kept

completely out of the trial.

3. *Omissions in the statements of investigating officers*: In the absence of satisfactory explanation and in the presence of contradictory statements about who handled the initial investigation, the role of Vijay Pratap, the in-charge of Tekari PS, becomes dubious. He was said to be part of the first patrolling party, but he did not record the statements of the three village *chowkidar*s who gave first-hand information about the mayhem that was then occurring in the village. According to him, he informed the SP, Surendra Kumar Singh. However, when he returned and met Shravan Kumar who gave a witness account of the slaughtering, Vijay Pratap did not record his *fard-bayan*. Nor did he take the statements of those villagers who were non-Bhumihars and who had been let off by the squads along with women and children. The village had six Brahmin households, two dalit families and two others belonging to Yadav and Teli castes.

   In his cross-examination, Vijay Pratap admitted that he had not done a TIP (Test-Identification Parade) of any of the suspects. Neither did he record the time or place of the examination of witnesses. Significantly, his role as the investigator was further undermined as there was no written order directing him to proceed with the inquiry. Adding to the contradictions regarding who did the initial investigations, the 2013 Supreme Court judgment noted discrepancies in the depositions of Vijay Pratap and Inspector SC Sharma, the officer who took charge from 17 February 1992, as far as the case diary was concerned.

4. *Procedural lapses in invoking TADA:* The apex court noted lapses regarding the invoking of TADA. During cross-examination, Inspector SC Sharma could not remember whether written permission invoking TADA had been procured or not and whether investigations could be carried out by any person other than a DSP.

5. *Bihari Majhi's confession:* The invoking of TADA brought with it the one special provision that had found greatest favour with police forces – the admissibility of confessions of the accused given to the police. This provision was misused to such extent that inclusion of a similar provision in any subsequent central anti-terror law was never contemplated. Yet in this case where the trial was conducted after TADA had the obnoxious lapsed provision became crucial to the outcome.

   Bihari Majhi, a dalit labourer was not mentioned among the 34 named in the FIR at Tekari PS. He was arrested from Gafa village two weeks after the carnage by Inspector Sharma in the presence of Sunil Kumar, SP Gaya Virendra Kumar Singh, Station-in-charge, Bodh Gaya. During cross examination, Sunil Kumar, stated that he had told Majhi to make his statement without fear or favour. However, in violation even of TADA procedures, the confession was not recorded by him but by Inspector Sharma at night by the light of a police jeep. The confession ran on for ten pages but Majhi's signature was recorded only on five. The statement was never placed before the Chief Judicial Magistrate. Instead, after five years, it was directly sent to the TADA special court with a certifying statement by SP Gaya. Yet, in court, neither the SP nor the Inspector could recognise Majhi.

   Notwithstanding these obvious omissions and lapses, Majhi's statement was the sole evidence relied upon by the TADA court (2001) to convict Majhi and three others (Ramautar Dusadh, Rajendra Paswan and Vakil Yadav) to rigorous imprisonment for life. When the matter came up before the apex court, the court held that the confession was not in conformity with S. 15 and rule 15 of TADA, and the four were acquitted. In the later judgment of 2013,

the apex court also noted that Virendra Kumar Singh was an accused in the murder of the nephew of Vakil Yadav, a co-accused with Majhi, and that he had filed a petition before the Supreme Court for quashing the cognisance taken against him.

In the context of the investigation conducted, the three-member bench of 2002 which acquitted Majhi and three others had remarked: 'It appears that instead of collecting any material or evidence for connecting these accused with the crime, investigating agency has adopted unjustified method.' Yet, this same compromised investigation formed the basis of the conviction of the other four whose death sentences were confirmed by the same bench by a majority decision of two versus one.

6. *Unreliability of witnesses:* Sixteen eyewitnesses, mostly residents of Bara village, were examined during the trial, and their accounts were relied upon for convicting the four who were given death penalty: Nanhe Lal Mochi, Krishna Mochi, Vir Kuer Paswan and Dharmendra Singh. When the matter reached the apex court, the decision pronounced by Justice Agrawal was to validate the 'ocular accounts' of eight witnesses, as the others had failed to identify the accused in the court. While Justice Agrawal found the accounts of the eight witnesses unimpeachable, Justice Shah thought otherwise and said that 'it can be said without any doubt that almost all witnesses have exaggerated to a large extent by naming number of persons as accused but they could identify only one or two accused. This would clearly reveal that for one or other reason, witnesses were naming number of persons as accused who were not known to them or whom they had not seen at the time of incident. In that set of circumstances, their evidence to a large extent becomes doubtful and/or tutored.'

The key concern Justice Shah raised was that the evidence of the witnesses did not assign any specific role to the accused apart from their presence in the mob, nor did this evidence affirm that the identified accused bore weapons. No weapons or incriminating articles had been recovered from the accused. The delay in recording the statements of the witnesses and the failure to conduct a TIP also throws doubt on the identification of the appellants. Some of the witnesses were known to be involved in local disputes with the accused they were able to identify. At most, the evidence of the eight 'credible witnesses' places the accused at the place of the crime.

How credible were the eight eyewitnesses?

With an investigation that could at best be termed negligent if not outright discreditable for being biased and manipulated, the case against the four accused rested on the examination of eyewitnesses by the court. This examination was critical to proving that the four accused belonged to the MCC and were part of the mob that had gathered with the specific intention of creating terror and a conspiracy to target and kill persons from the Bhumihar caste. Paradoxically, the evidence of the eyewitnesses which were found wanting by Justice Shah formed the basis of the majority judgment for convicting and confirming the four death sentence, despite the flaw-ridden investigation. The crux of the argument Justice Agrawal raised for justifying the upholding of the death sentences was that these eight witnesses had established that the appellants had gathered with 'a common intention' to perpetrate the massacre. Such evidence in his view was enough not only to deem them culpable but also to sentence them to death – even if no specific killings could be attributed to them. However, a re-examination of the eight witnesses suggests otherwise.

The evidence of YOGENDRA SINGH, an injured witness who spent 24 days in hospital,

was accepted as unimpeachable even though it was not clear when exactly his statement was recorded. The majority judgment rejected the submission that the statement was recorded after 24 days as it found no 'material in support of this submission as neither this witness nor anybody else has anywhere stated that police recorded his statement after 24 days'. However, the judgment had no problem with the lack of evidence in support of the statement being recorded earlier. Yogendra Singh could identify only two – Krishna Mochi and Nanhe Lal Mochi – of the thirteen persons he had accused in court, and of these, Krishna Mochi was not mentioned in the first part of his statement, while Nanhe Lal Mochi was only mentioned as a person present at the scene of occurrence.

A second (injured) witness LAVLESH SINGH named more than eleven persons in his statement but could identify only one: Vir Kuer Paswan. During cross-examination, he said that he lost consciousness after the accused persons had broken into his house and had regained consciousness only in the hospital. If this is indeed true, his account of events after the accused entered the house cannot be treated as valid evidence. Nevertheless, Justice Agrawal upheld the validity of his statement on the grounds that the eyewitness was 'nonplussed and regained normalcy by the time he arrived at the hospital'. Lavlesh Singh spent 22 days in the hospital and the defense submitted that his evidence was recorded *after* 24 days. But Justice Agrawal dismissed this submission as 'this witness has nowhere stated that he was examined after 22 days of the alleged occurrence nor there is any other evidence to this effect.' However, once again, there appears to be no evidence that the statement was recorded immediately after the event. It should be noted here that a delay in recording of statement is a serious lapse as the witness can be tutored or can himself manipulate his statement.

DHANANJAY SINGH, who had also suffered injuries, wrongly identified two of the four appellants. Importantly, he had a dispute with the remaining two appellants whom he correctly identified: Krishna Mochi and Nanhe Mochi. The names of Krishna Mochi and Nanhe Lal Mochi were not mentioned in his statement to the police. However, in the court examination, the witness claimed that he gave their names to the police. No infirmity was noted in this evidence.

BUNDE SINGH, who had not suffered any injuries, was examined two days after the killings. This was not deemed an inordinate delay. He had named 13 accused and wrongly identified one of the appellants – Nanhe Lal Mochi.

The testimony of RAM SAGAR SINGH was also accepted without question, dismissing the suggestion that there was a long-standing dispute between him and two of the accused Nanhe Lal Mochi and Krishna Mochi. According to him, he was hiding on a roof when he saw the accused passing the street and he could identify them from the roof-top in the light of a fire.

The eyewitness RAM SUMIRAN SHARMA had claimed in his cross-examination that he did not know the appellant who had land half a kilometer away from his land and had also denied the suggestion of a hostility on account of a pending land dispute. He had been able to identify only three out of the twelve he had accused in his statement. But Ram Sumiran was, in the considered opinion of Justice Agrawal, 'a sterling witness for the prosecution' who 'stood the tests of cross-examination and there is nothing to discredit his testimony as he was quite natural witness and consistently supported the participation of this appellant in the crime with all material particulars'.

The eyewitness BUDHAN SINGH claimed to have identified the accused in the light of a fire. He was examined by the police three days after the incident. Krishna Devi another witness who in her statement testified to seeing the slaughter being committed, was examined

two days after the killings. The reason for the delay in recording statements of witnesses was that 'they were not in a position to give their statements in view of the fact that they were busy in performing the last rites of their family members who were slittered [sic] to death and relatives of the persons who died were not in a mental condition to make statement. Further, it was stated that there were visits of various political leaders in the locality as a result of which law and order condition had become complicated.'

A key standard in cases where violence is perpetrated by a large group of people, as set by the judgment in *Masalti vs the State of Uttar Pradesh* (1964), is the existence of credible and consistent accounts of the complicity and participation of the accused in the crime by at least two reliable witnesses. The majority judgment considered this precedent but was sufficiently swayed by the 'quality' of the single witness (Ram Sumiran Sharma) to uphold the death sentence awarded to Dharmendra Singh based on this solitary eyewitness account.

So a relatively lenient standard of evidence was stretched to accept the testimony of the eyewitnesses in defense of the prosecution's story and uphold the death sentence. As can be seen from in the report later, the standards of evidence that were brought to bear on the evidence of eyewitnesses where the killings were perpetrated by the Ranvir Sena were in stark contrast, considerably more stringent.

Lodged in Bhagalpur Jail, the four persons convicted to death in the Bara case have been in solitary confinement ever since their conviction. The PUDR team was able to meet the convicts as well as some members of their family in February-March 2015. The following is an account put together through these interviews.

Nanhe Lal Mochi

Nanhe Lal Mochi is the oldest prisoner in the Bara case and could barely recall his exact age, claiming it was between 75 and 80 years. He was a resident of Mirabigha village situated close to Bara village. There were 10-15 Chamar households there. These families worked on the fields of Bara village where most Bhumihar households owned 10-15 *bigha*s of land, while some owned 20-30 *bigha*s. Nanhe Lal worked as an attached labourer (*harwaha*) in the fields of his *malik* Jamuna Singh Bhumihar, who owned around 20 *bigha*s of land. His daily earning comprised 2 kg of paddy, half a kilo of *sattu* and one meal. He did not possess any homestead land and his house was situated on the village common (*gair mazarua*) land. His father, Mahate Das, had also done *harwahi* for the same landowner. The employers regularly threatened the workers. Nanhe Lal with five children, three sons and two daughters aged between 4 years and 20 years at the time of the Bara massacre, was the only earning member of the household.The MCC party was active in this area. The party people would come and leave after the meetings. Only some of the people would attend the party meetings, which would be conducted in the *chamartola*. In the massacre at Bara, no one from his *malik's* house was injured or killed. He did not know of the massacre till later in the morning. Awadh Singh, a landowner from Bara, sent word asking him to help bury the cattle that had died in his house. However, he did not go. Given the fear in the area, he ran away to his maternal uncle's house and then worked at different places. Finally, he settled in Shukla Nagar near Panchanpur, where he started working as a *harwaha*. He worked there for almost 4-5 years during which he was given 5 *kathas* of land for a house and 2 kg of paddy for a day's work. During his absence, moveable property from his house was attached (*kurki-jabti*) several times and the house was broken and burnt. On returning in 1998, he was arrested along with his son and nephew. The latter were let off after beating. Nanhe Lal suffered beating and

physical torture in police custody. He has no knowledge of his lawyer and has never met him. He also has no knowledge of the specific charges against him. Till the time Nanhe Lal was in Gaya Jail, his son would try to meet him regularly, bribing the prison officials Rs 30-40 each time. Sometimes his wife and daughter would also visit.Since being shifted to Bhagalpur jail, the visits have become rare, normally once a year. Nanhe Lal never got any parole. Even when his wife died, the administrative red tape took so long that he was unable to avail of it. His conduct in jail has been exemplary. He said, 'I have not done *jhagda*, *mar-pitai* or even *gali-galauj* ever in my life.'Nanhe Lal has been in jail for 18 years and in solitary confinement since the confirmation of the death sentence. His separate cell is flanked by a *ghelao* (encircled enclosure), where he is free to move during the daylight hours. He is not permitted to meet other prisoners. He wakes up at 6 in the morning and gets *chana-chini* in breakfast, tea twice a day, apart from the two meals of roti, dal and sabzi. Being habitual to tobacco, he saves the sugar and sells it for Rs 30 a kilo to obtain tobacco. He suffers from weakness and breathing problems but said these are all to do with old age. He gets medicines for gas, cough and cold. He recalls the mercy petition that was sent by all the four convicts together but has no idea what happened. His request is that he be sent to Gaya so his family can meet him more often. He wishes to see his grandson and granddaughters. He is sad that he could never send his children to school. But he has hope that god would set right the injustice that has been done to him and he hopes to work again when he goes out of prison and wishes to die in the company of his children. His children too believe that the father would come out of jail soon.

Veer Kuer Paswan

Paswan, a patient of bronchial asthma, now 71 years old, was the first to be arrested out of the four. He had spent 23 years in jail. He was a resident of Khutbar village and worked as an agricultural labourer (*harwaha*) in the fields of a Bhumihar family. The night when the massacre occurred, he heard the sound of bullets but had no idea of what was happening. He says he had done nothing and had no contact with the MCC. So he did not see a reason to flee and continued to stay in the same place despite an intimidating atmosphere in which other dalit families were leaving the village. A few days later when he went to his uncle's place for a family function, he was picked up by the police from there. In those days, the Public Distribution System was a cause of conflict in the village. Sumiran Singh, a Bhumihar, had the quota for distribution and there were political pressures to break the quota. Paswan said that those who were in favour of breaking the quota were penalised by the 'forward' caste by being named in the massacre case, Paswan being one of them. Dhamender Singh, his co-accused and the only upper-caste person convicted for the Bara massacre, was also named for the same reason. The police gave no reasons for detention. One constable in the local police station asked for Rs 3,000 to drop his name from the case, which Paswan could not afford and was soon charge sheeted in the massacre case. When he was taken to the court, he was told that he was accused of murdering the forward-caste people in Bara. The only evidence against him was that he was identified by the police witness. When the judge asked the police witness to identify him, he could not be identified. Thrice his name was called and the third time he himself raised his hand saying he was Paswan. That is how, he claims, he was 'identified'. He said he never dreamt of spending the life of a forward caste, to have lands of his own. He was happy working as a labourer. The only thing he wished was to make his son study and grow up to be educated and employed. His imprisonment ruined the family, the son had to take over family responsibilities and left his studies. In December 2014, his wife passed away and he could not be taken to her last rites as the administrative permissions took their course and time lapsed in between. Today he knows that the mercy petition has been sent and that no action has been taken on it. Yet he wishes and hopes that justice would take its course and he would find relief.

Krishna Mochi

At the age of 63 now, Krishna Mochi remembered his life in Bara nearly two decades ago. He worked as an agricultural labourer in Bara and as a part-time drum player on the roads and at village functions to earn some extra money. He said when the massacre took place he was sleeping in his home with other family members. He had heard of the MCC and was aware of the fact that the MCC would hold meetings in the villages but refuted any presence of the MCC in his village. It was only the morning after the massacre that the family got to know of it and fearing retaliatory violence as is common in the case of upper-caste killings, they fled. Most dalit families in his village took refuge with relatives and acquaintances staying far away. Krishna Mochi went to Delhi. In Delhi, he found some work in a factory that made shoe shelves in Naraina. For about six months, he worked in the factory on a daily wage, and throughout this period, he had no contact with his family. He had no information of the fact that he had been named in the massacre and the police was on the lookout for him. After six months, he returned to Gaya, and it was at the Gaya railway station that he was picked up by the police. Then the legal rigmarole began. He said he had no idea of the charges against him besides the fact that he had been accused of mass murder and the court was deciding on his culpability. The court hearings were for namesake. No questions were asked. No one informed him of the charges and the laws invoked in the case. He very clearly stated, 'the MCC people came from jungles, killed them and went back shouting slogans … because they could not be caught, police caught the innocent.' The 'court rounds' continued for almost 10 years after which one fine day he was informed that he had been sentenced to death for a crime he said he was not even aware of. In these two decades of incarceration, he said he had not suffered any physical torture in the jail but the mental torture weighed much heavier. His family tries to visit him annually but they have great difficulty managing to arrange for the expensive jail visits. The son he left as a toddler when he fled now works as a landless labourer in Bara and his wife as a help to the midwife in the village. His wife and mother live in a house with mud walls and palm fronds for roof. He was aware that the jail had sent a mercy petition for commutation of the death sentence but no action has been taken on that. He said he wanted his death sentence to be commuted but not into a life sentence. If the commutation meant he had to be in jail till he lives, he would rather be executed immediately.

Dharmendra Singh alias Dhiru

Dharmendra Singh is the only upper caste convict in the massacre case. He was a resident of Dihura village, some distance away from Bara village. His father had died early and his maternal uncle had looked after him. He studied at the Dihura school till class 7 and at the Prakash Vidya Mandir at Tekari till class 10. He got married in 1986 and after a year's break joined Satyendra Sinha college. At the time of the Bara incident, Dhiru had 5 *bighas* of land with a mango orchard. He had bought the tractor that year and operated it himself and worked only on the fields of Dihura village.Dharmendra owned 7-8 *kathas* of land adjacent to the road near Dihura bazaar. He said the residents of Bara wanted a road through this land. Some 6 months before the incident, this issue was heating up and the MP Ramashrey Singh also visited the village. Dharmendra had then explained that he also had a brother dependent on this land, and that the land in question was expensive. 'Get us a government job, else we do not wish to give this up', Dharmendra had said.On the night of the massacre, he had heard noises. In the morning his uncle went to the Dihura bazaar and reported that everybody in the village has been killed.After the incident, the *dafadar* of the village told Dharmendra that his name has been added to the list of the accused. Dharmendra left for his mother's brother's house 10 km away. From there, he went to Bermu in Giridih (now Bokaro) to learn driving heavy vehicles. He came back home in 1999 to attend the marriage of his younger brother, from where he was arrested.He

was taken to Alipur PS and kept there for the night. Then he was kept at the Tekari PS for two nights before being sent to Gaya jail. During the police custody he was subjected to torture in various ways. His legs were spread forcefully and policemen climbed on his legs. He still suffers pain from the permanent damage caused by that torture. One Sartaj Babu from Gaya was the lawyer. Dharmendra has no idea why he was convicted. For some time Dharmendra's father-in-law looked after the case. Sumiran Sharma, whose brother is the Sarpanch, is Dharmendra's paternal uncle Umesh Singh's friend. It was these people who conspired to implicate him in the case so as to take over his land. In 2001, six months after he was awarded death sentence, his brother Mukesh Kumar simply disappeared. He is still untraced.During his stay in the jail, Dharmendra has never written any letter to any authority. His daughter sometimes writes to him. Others from the family visit once or twice a year. After 16 years in jail, Dharmendra has this to say, 'It would have been good if you had hanged me at the beginning. What else can I say when I have got no justice. We had thought that Ambedkar's Constitution will give us justice. But that too has failed.'

3. The Uneven Hand of Justice

The Verdicts in the Bathani Tola, Lakshmanpur-Bathe, Nagari Bazaar and Mianpur Massacres

What makes the judgment in the Bara case noteworthy is the application of TADA and confirmation of death sentences by the Supreme Court. In recent times, the Bihar High Court has pronounced judgment on four other cases – the massacres at Bathani Tola, Lakshmanpur-Bathe, Miyanpur and Nagari. Each of these involved attacks by the Ranvir Sena – the private army that had emerged in the mid-nineties after the dissolution of the SLF. In each of these instances, the High Court acquitted those who were convicted, including the ones awarded death penalty by the lower court, on grounds of insufficient evidence. Since the matters have not been deliberated in the apex court, it is important to examine the acquittals of the upper-caste accused in these massacres against convictions and pronouncements of death penalty in the case of Bara.

The dead and injured have no voice at Bathani Tola

On the afternoon of 11 July 1996, a mob of the Ranvir Sena men surrounded Bathani Tola, a hamlet in village Barki Kharaon (Bhojpur district) and launched indiscriminate firing, killing 21 persons, including 2 infants. Even though the police and other high officials reached the village not long thereafter, the fard-bayan, was recorded only at 4.30 am the next day. The time at which the FIR was registered is not known, but it was finally placed before the CJM Bhojpur three days later on 14 July 1996. After almost two years, in January 1998, charges were framed against 62 persons under various sections of the IPC, Arms Act and SC&ST (Prevention of Atrocities) Act. But when the trial commenced in November 2000, the proceedings were launched against 53 accused as some died, some absconded and as against some proceedings were quashed and/or dropped. Thirteen witnesses were examined of whom nine were eyewitnesses. The evidence of one eyewitness was discarded as he did not appear for cross-examination. Of the remaining eight eyewitnesses, the evidence of only two witnesses (Radhika Devi and Naimmudin) was accepted by the Sessions Court. Fourteen years later, when the sentence was passed in the Sessions Court on 5 May 2010, 30 of the accused were acquitted and 23 were convicted,

with 3 awarded the death sentence. The death reference and appeals against the convictions were filed in the High Court. Four of the convicted filed appeals claiming juvenile status. In April 2012, a two-member bench comprising Justices V.N. Sinha and A.K. Lal of the Patna High Court upheld the juvenile status of three (including one person facing death) and acquitted all 23 who had been convicted in the lower court (Hare Ram Singh and Ors vs State of Bihar, 2012).

The High Court had overturned the lower court's convictions as it disbelieved the prosecution's story and picked holes in the evidence furnished. It cited a twelve-hour delay in the fard-bayan and weighed this delay against the fact that there was definite information about the massacre from the afternoon of 11 July. It showed the written report of the officer-in-charge of Barki Kharaon picket to Sahar PS, his meeting along with the village chowkidar with the officer-in-charge of Sahar PS, the treatment of injured people at health centres in Piro and Ara and the recording of statements of injured witnesses that evening. All these contradicted the 'necessary' delay of the fard-bayan. The High Court noted the prosecution's failure in deliberating upon the discrepancy between the timing of the fard-bayan against the availability of written and oral information about the crime. It also pointed out that the prosecution had failed in giving credence to the Barki Kharaon officer-in-charge's statement about cross-fire at the time of the carnage or the village chowkidar's statement that no weapons or ammunitions were recovered by the police. The court concluded that the prosecution story appeared to be 'far from the truth' and castigated the prosecution for failing to examine the IO and the village chowkidar, who had been examined only by the defense. Further, the bench further cited the 'fact' that the accused were arrested peacefully as 'sitting duck', that there was a two-day delay before they were presented before the magistrate and that the statements of witnesses were taken much later. All these were seen as evidence of 'fabrication'.

The judgment stated, 'Truth was deliberately suppressed by the investigating agency and the prosecution, only to project an involvement of the accused persons, examined witnesses who were totally unreliable.' In the end, the court acquitted all the appellants as it noted, via Eknath Ganpat Aher and Ors vs State of Maharashtra (2010) judgment, that if there is a reason for 'reasonable doubt' after perusal of evidence, then 'the court would be obliged to give the benefit of doubt to them [the accused]'. The Court expressed regret over the fact that a false and misleading investigation had enabled those who 'perpetrated the crime to' get 'away with it'. With this observation in mind, it is worth reflecting on a few points.

It should not be forgotten that the Bathani Tola massacre was not a one-off incident in Bhojpur – it came in the wake of a long trail of killings and massacres by the Sena such as Sarathua (July 1995), Noorpur (August 1995), Chandi (February 1996), Nanaur (April 1996) and Nadhi (May 1996). The violence at Bathani Tola was hardly unexpected as the village had been simmering for a while. Just a couple of months earlier, about 60 Muslim and lower-caste families had fled from the main Barki Kharaon settlement to Bathani Tola after a series of small attacks by the local Ranvir Sena (*Agrarian Conflict in Bihar and the Ranvir Sena).* Three police camps were set up around the village in light of the brewing conflicts. But no police personnel intervened to stop the massacre at Bathani Tola despite the outposts being close by. The court's belief that the IO's written submission (which mentioned cross-fire) should have taken precedence over the fard-bayan nowhere takes cognisance of the fact that had the police acted, the assailants would not have managed to get away with the massacre. It is astonishing that the court laid so much credence on the submission of an

officer who was suspended for dereliction of duty soon after.

The court held that the witnesses were unreliable. Among these 'unreliable' witnesses was Naimuddin, who had lost his sister, his daughter-in-law, two daughters (one a minor) and a son (a minor) in the carnage. Another son had been gravely injured, and once the Ranvir Sena attackers left the village, he rushed his son to the Primary Health Centre (PHC) in Piro town. He was deemed to be untrustworthy because he gave four different statements at different points of time. The circumstances of these 'contradictory' statements are of significance. The first statement appears to have been made at the point when the doctor refused to treat his son because of the circumstances and called the police. The police told him that unless he gave a statement, treatment would not start. So he signed a blank paper for the police where upon treatment started on the night of 11 July. The second statement was taken nearly three weeks later on 30 July after he had shifted his son to Patna Medical College Hospital. Yet another statement was taken on 7 August immediately after his injured son succumbed to injuries. In his examination, Naimuddin says that he had been made to sign on blank sheets of paper three times before he finally gave his written statement a month and a half after the incident on 30 August 1996. None of the recording officers were examined. The court was surely aware that Naimuddin had stood up against the upper-caste domination and had taken upon himself to personally safeguard the families which had fled from Barki Kharaon and that he was a well-respected leader of the CPI (ML).

Another witness whose evidence was rejected by the High Court was that of the eighteen-year-old Radhika Devi who, at the time of the killings, was pregnant. She had been shot in the chest, and she identified her attacker, Baccha Singh, as one of the appellants. She was tortured and her fingers were crushed by the attackers. She was shunted from the Piro PHC to the Ara Sadar Hospital and finally to Patna Medical College Hospital before she was properly treated. In her harrowing testimony, the High Court seized upon one detail: 'not a chit of paper with regard to her treatment or the nature of injury found and treated at PMCH has been brought on record.' After decrying the absence of any injury reports, the judgment raised further doubt about her story on the grounds that 'though she alleges that her fingers were crushed to see whether she was alive, none of the injury reports show any injury on the fingers'. Despite having gunshot wounds in the chest, her claim to have been in the house where the shooting took place was disbelieved. The statement of the informant, which failed to mention her as being present at the house, was held up as proof that she was not present, even though the same informant's statement identifying the attackers was discredited as false implication! Why did the Court not take into consideration that Radhika Devi had stood her ground during cross-examination and had identified the accused during the identification parade in court?

Kishun Chowdhury was the first informant. He had lost his brother, wife and daughter in the carnage. He stated that he had seen the attackers shooting and killing people, and setting fire to the houses, and he had escaped by hiding in a nearby ditch. It is evident from his testimony that the delay took place in the wake of the carnage, when the police had been noticeable for their strategic inaction while the Sena was on the rampage. The delay occurred when the villagers and the police were involved in a tussle over the disposal and conduct of the post-mortem of the bodies that were strewn about. The informant's explanation that the trauma of the killings and losing three family members had left him in a state of shock and that he had spent the night at house of a doctor being administered intravenous fluids was not given any credence. And yet, this delay was seen as suspiciously indicative of how the 'police and

administration had allowed him [the informant] to mark time, meet people and come up with names and stories'. Why was the Court so insistent that the statement of the officer-in-charge be regarded as the FIR? Was it because the fard-bayan made no mention of 'cross-fire'?

The questions are many and the answers few. For the survivors of Bathani Tola, the High Court judgment was not an act of 'justice' but a travesty of it. If the court had found a deliberate attempt by the police to frame the accused, action should have been ordered against the police, and if the issue was of negligence on the part of the investigation and prosecution, it should have ordered a reinvestigation and a retrial.

The net result is that no one has been held guilty for the killing of 21 people. The High Court however did not order reinvestigation or retrial in the case. The prosecution has filed an appeal in the apex court in 2012. What that will lead to is anybody's guess.

The many tragedies of Lakshmanpur-Bathe

On the night of 1 December 1997, a mob of Ranvir Sena men attacked the dalit *tola* in the village Lakshmanpur-Bathe in Arwal block of Jehanabad district. The men barged into houses, firing and shooting indiscriminately. At the end of the carnage, 58 men, women and children were dead. The majority of the victims were dalits and backward castes. The youngest was a one-year-old infant. After the mayhem, the killers left the village shouting slogans in the name of Ranvir baba, killing five poor fishermen who lived near the river Sone on the way.

The scale and barbarity of the atrocity made headlines all the way, shocking the whole nation. The then President K.R. Narayanan described it as a 'national shame'. The then Chief Minister of Bihar, Laloo Prasad Yadav visited the village on 3 December itself. One would have thought that this kind of outrage would have propelled the prosecution and the courts a little more than the routine Ranvir Sena massacre. But the second tragedy of Lakshmanpur-Bathe was the manner in which the criminal justice system of India failed in responding to the 'national shame'.

The FIR was filed at Mehandia PS on the basis of the statement of Binod Paswan on 2 December 1997 but reached the CJM Jehanabad only on 4 December. This inexplicable delay was later to have tragic consequences. Policemen started looking for some of the accused named in the statement from 3 December onwards, but these people were found to be absconding, except for one who was arrested. More statements of witnesses were recorded over the next few days and some of these accused were also arrested.

The investigation was transferred to the Deputy SP of the Bihar CID, Patna, on 10 December 1997. A charge sheet was finally filed on 27 February 1998 against 48 people citing 152 witnesses. Later a supplementary charge sheet was filed against 2 more people, and one person was excluded on grounds of being a juvenile. The case was finally committed to the Sessions court on 6 January 1999, one year and 4 months after the massacre took place. Since then things became stranger as the case never came up for hearing! Finally, the Patna High Court transferred the case to the court of the 2nd Additional Sessions Judge on 7 October 1999. Despite this transfer, the trial did not begin until the High Court was moved again and it instructed on two occasions, in November and December 2008, that the case be transferred to the third Sessions Judge and that the trial begin and be speedily conducted. Thus, it took as long as 11 years after the ghastly massacre for the trial to begin.

Charges were finally framed in December 2008 against a total of 45 people. The court examined 91 witnesses of which 17 were eyewitnesses. Their testimonies were the main plank of the prosecution case. The testimonies of the 17 eyewitnesses, which recount the voices

of people who lost their close family members and saw them being killed, makes for chilling reading. Eleven years after the massacre, their evidence was taken in court and they were asked to identify the accused they had named. After such a long gap, they were expected to remember when exactly the police had recorded their statement.

Despite the lapse in time, the 17 eyewitnesses did a convincing job. Each one of the short testimonies summarised in the High Court judgment is believable, with very few discrepancies and contradictions. Many of the witnesses must have been really young when the massacre took place. Some of the witnesses hid while their family members were being massacred, either under the charpoy like Balwanti Devi, or on the roof of their huts, concealed by creepers, or behind the earthen stores in which grain is stored. Some of the witnesses were themselves injured, like Mahurati Devi, who was shot at and fell down. She identified Girja Singh who had killed her mother, Baliram Singh who had snatched her chain and earrings, and Nawal Singh and Gopal Singh who had shot at her and others.

Based on this evidence, the Sessions Court III convicted 26 out of the 45 accused on 7 April 2010. Sixteen of the twenty-six convicted were awarded the death sentence, while ten were sentenced to rigorous imprisonment for life under various sections of the IPC, Arms Act and SC&ST (Prevention of Atrocities) Act. The remaining accused were acquitted. The convicted persons appealed in the Patna High Court. Here is where things took a strange turn again. In spite of the strong eyewitness evidence against these 26 people, the two-member bench acquitted all of them, in a judgment passed on 9 October 2013 (State of Bihar vs Girija Singh and Anr, 2013).

The V.N. Sinha and A.K. Lal bench concurred with the defense view that the prosecution had failed to establish its case against the 26 accused and that the massacre was carried out by unknown persons, who escaped towards the Sahar area over the river Sone after killing 5 fishermen on the banks of the river. The court's disbelief in the prosecution's theory rested on the following: (a) the delay in filing of the FIR, (b) the unreliability of the identification of the accused by the first informant, (c) the failure of the police to record the statements of eyewitnesses on 2 December 1997, and (d) unreliability of the prosecution witnesses. The judgment claimed the higher police officials were dissatisfied with the investigations conducted by the SDPO Arwal from the time of the massacre till 10 December 1997when the case was handed over to the Deputy SP CID Patna but who 'could not salvage the situation' as far as identifying the accused was concerned.

The core issue in the judgment is that of delay. The court held that none of the police officials had any satisfactory explanation for the delay in sending the FIR to the court of the CJM, Jehanabad. This delay, the court observed, was not a simple lapse but deeply connected with the fabricated investigation. The investigating officer met 11 eyewitnesses on 2 December but did not record their statements, and they did not furnish any names of assailants. Their statements and the names of assailants were recorded on subsequent dates. Four eyewitnesses who recorded their statement on 2 December were not called in court for recording their evidence. The timing of the first arrest and seizure of a gun on 3 December was motivated as there was no reason to believe that the same could not have been done the previous day, i.e., 2 December. The court held that once the appellants learnt about 'their implications' after the first arrest of Ashok Singh and seizure of gun from Gopal Singh's house, they turned themselves in and surrendered. The surrenders were timely as it enabled the IO from not investigating who the real accused were. The appellants, residents of nearby villages, were appropriately 'implicated'

through an antedated fard-bayan and doctored statements.

The bizarre nature of the judgment, its belief that the investigating officer was busy on all of 2 December deciding on whom to fix the blame and decided the same on 3 December by arresting Ashok Singh, defies reason. It ridicules the arrest of Singh without explaining why the accused would be sitting inside his house the previous day waiting to be arrested. Equally bizarre is the argument that the accused turned themselves in once they realised that they were being trapped by the police in a fabricated case and that there was no escape. Perhaps even more unbelievable is dismissal of the eyewitnesses on the grounds that they were unreliable and responsible for framing innocent residents. For instance, it discounted the identification of accused by Mahurati Devi as it held that she had given the names much after the occurrence. In a similar vein, the court claimed that it was impossible for the first informant to have identified 9 assailants when he had concealed himself in a room. His statement that he identified the remaining from the roof of his hut was held as untrue as the assailants were then retreating and their backs were turned to him. The evidence of some of the other witnesses was discounted on similar grounds. In numerous cases, the Supreme Court has held that identification of known people is possible in low light or even in no light as well as from modes of speech, walking and gesticulating. The High Court did not at all consider these factors.

At the end, the court put forward a preposterous theory. According to this theory, constructed out of the arguments by the counsel for the accused assailants, the police, who had no idea of the identity of the assailants, falsely accused 45 defendants and entered into what we can only describe as a conspiracy with the victims of the attack to implicate these 45 accused in a crime that they did not commit! If true this should be one of the biggest cases of police implicating people falsely in a criminal case in India, especially since 16 people were awarded the death penalty.

It is very strange that this aspect of the judgment has not yet been commented on. This is really very different from cases where judges appeal to insufficient evidence to acquit the accused, or pull up the police for bad investigations. In this judgment, the High Court bench is convinced of the innocence of the accused as well as of the guilt of the witnesses! We should be grateful that the High Court did not recommend investigation into this false case and criminal conspiracy between the police and the victims. But perhaps the system of justice in India has not yet reached such Kafkaesque proportions.

Justice has been denied to those killed and injured and their families as the murderers have been allowed to go scot free. The High court did not order a reinvestigation or a retrial in this case too.

The widespread protests after the acquittals in the Bathani Tola and Lakshmanpur-Bathe finally compelled the state to file an appeal against the acquittals in Supreme Court. The appeal against the Bathani Tola judgment was finally admitted in July 2012. The one against the Lakshmanpur-Bathe judgment is still pending. The fact that the state cares so little about the 'national shame' visited upon the dalits of Lakshmanpur-Bathe that even the appeal in the Supreme Court has not been pursued, and not yet admitted, speaks volumes about where its real sympathies lie.

No witnesses left at Nagari

On the night of 11 May 1998, about 80-90 armed Ranvir Sena activists entered Nagari, a small village under Charpokhri PS in Bhojpur. They spread out in the market creating mayhem and killing 10 persons. The officer in charge of Charpokhri PS arrived at the village after hearing about the killings and recorded the fard-bayan of the informant at

the bazaar itself. The FIR was, however, drawn by another ASI, who had been sent back to the police station. Four days later, the case was transferred to another police officer. The FIR was received in the court of the CJM Bhojpur two days later on 13 May 1998 – a delay that was never explained. Trial in the Sessions Court in Ara against 15 accused was started in 1999. The sentence was delivered more than 10 years later in August 2010. Three persons were sentenced to death and eight to life imprisonment. The death reference case and the appeal against the conviction came before the two-member High Court bench of V.N. Sinha and A.K. Lal, which acquitted all 11 appellants on 1 March 2013 (Anil Kumar Singh vs State of Bihar, 2013).

At the trial stage, a total of 15 witnesses were examined, of which 8 were eyewitnesses. Of these eyewitnesses, six supported their statement in court but two were disbelieved by the trial court and one never turned up for cross-examination. Yet another witness supported the prosecution story but could not identify the assailants. The evidence for the prosecution then rested on two witnesses. The High Court bench proceeded to demolish the credibility of the remaining two eyewitnesses. Before examining the grounds on which the court demolished the two eyewitnesses, it is important to point out that, as in Lakshmanpur-Bathe, the court drew attention to the question of delay in sending the FIR to the CJM Bhojpur. The nearly 36-hour delay, the court argued, suggested that the fard-bayan and the FIR were drawn 'much later than the date and time shown in the documents'. Further, the bench drew attention to the over two-day delay in the production of the accused. This delay was significant as it suggested that the prosecution was not sure of the identity of the accused even though the fard-bayan and FIR had named the accused and had been formally lodged on the night of the massacre.

The bench attacked the credibility of the main witness and informant, Uma Shankar, by drawing a comparison between his statement and that of the IO's. Importantly, on the basis of Uma Shankar's fard-bayan, the FIR was lodged in Charpokhri PS on the same night, i.e., 11 May. Uma Shankar had claimed that the killings took place at six successive sites and he identified sixty of the accused from two positions: first, from the generator light running in his flour mill, which the assailants had invaded, and, second, from the natural moonlight on the roof top of the adjoining shop which he climbed. The court questioned his statement by arguing that the IO had stated that none of the persons present at the site of the mayhem that evening had furnished names of the assailants. The bench further argued that even though the informant had named 27 out of the 60 for the massacre in his fard-bayan, the IO did not send 14 of them for trial as the specific allegations were found to be untrue. The bench opined that the IO found the prosecution case 'false'. Against this, the bench noted the informant's failure in taking steps in summoning these 14 accused to face trial by filing any petition under Section 319 CrPC and said that it was 'reflective of his habit to falsely implicate innocent persons'.

Next, the bench puzzled over how the informant had saved himself from the indiscriminate firing as they found not a slightest hint of this in the trial court proceedings. The bench was convinced that it would not have been possible for the informant to identify the attackers merely in the light of the full moon and generator bulbs. Since the informant had to also save himself from the assailants, the court doubted his ability to identify them from the rooftop. The bench gave credence to the IO's statement that the informant had not shown him the ladder (which he used for climbing the neighbour's shop) or the generator, against the informant's statement that he had shown the same to the officer the night of the massacre. Placing reliance on the IO's sketch of Nagari Bazaar, the bench concluded that it would be

topographically impossible for the informant to have identified the assailants.

Then there was the evidence of another witness, who according to the informant had identified the accused but denied identifying any in court. The witness was declared hostile, but his conflicting account was deemed the truth and the informant's evidence was rejected. The other eyewitness Kamlesh Pandey was present at the occurrence and had supported the informant's account and was able to identify the accused including the appellants. His evidence was rejected because he gave his statement to the police five-six days after the occurrence.

Why was the bench so ready to believe the IO over the informant-witness? If the informant-witness had not really shown the generator to the IO, then who provided the petromax to the IO when he made his inquest report that night? Just because the IO had said that no one furnished names of assailants, did it automatically stand to reason that the informant's testimony was false? Why did the court choose to pay no attention to the fact that the other witness Kamlesh Pandey had not furnished the names of the assailants of his brother to the police officer at Piro Hospital as the officer had not asked him? The bench agreed with the defense that the disclosure of the names in the examination by the courts 12 years later was 'fit to be ignored'. 'Fit to be ignored' can well be the epitaph of the evidence and accounts of witnesses of the Nagari massacre as demonstrated by the judgment.

The acquittal in this case means no one has been held responsible for the killing of 10 people. The deaths of these people do not seem to be important enough for the High Court to order a retrial if it was not satisfied with the evidence or for the government to take the next logical step of moving the Supreme Court against the acquittals. While the Bihar government has abdicated its responsibility, an appeal has been filed by CPI (ML) Liberation. Currently, the pleadings in the petition number SLP (Crl) No. 5110/2013 are not complete and the matter is yet to be listed for hearing.

A derailed prosecution at Mianpur

The Miyanpur massacre (Aurangabad district) was the last major carnage in which the Ranvir Sena killed 33 people to avenge an earlier attack, on 18 March 1999, by the MCC in Senari village of Jehanabad. On 16 June 2000, 400-500 people entered the village and began firing at the villagers. Tensions had been brewing since the Senari killings, and there were strong apprehensions of a reprisal attack. Villagers had been patrolling the village that night when the attack occurred from the east side of the village even as a police team approached from the west. The assailants are alleged to have raised slogans seeking revenge for the Senari violence. The FIR was registered on 17 June at 11.00 pm, but reached the Magistrate only on 20 June– an unexplained delay – that suggested defective investigation.

The charge of the investigation passed through three Inspectors in the first 20 days after the killings. Charge sheets were filed in two phases, a first group on 4 September 2000 and a second group on 11 April 2002. Sections of SC&ST (Prevention of Atrocities) Act were also added to the charges. Five years later, the Special Judge, in his judgment dated 20 September 2007, sentenced nine persons to life imprisonment and acquitted two. The government filed an appeal seeking enhancement of the life-sentence awarded to the nine accused to death and to revoke the acquittal of the two in the Patna High Court, where it came before the same bench of Justices Sinha and Lal that had heard the Bathani Tola, Lakshmanpur Bathe_and Nagari Bazar cases. On 3 July 2013, the bench passed an order acquitting all but one of the appellants (Nand Kumar Sharma @ Netajee vs State of Bihar, 2013).

There were 49 witnesses for the prosecution in the Miyanpur killings. Of these,

two were declared hostile. The evidence of three were rejected for failure to appear for the cross-examination as well as that of another three whose evidence was based on hearsay. The evidence of another 19 were not considered since the miscreants identified by them were not tried in the Session's trial. Only four out of the twenty who were injured that night were examined as witnesses. These witnesses were examined after six years in 2006 after the High Court passed orders for expediting the trial.

In another bizarre twist, the defense initially refused to cross-examine 22 eyewitnesses in the instant trial despite being given an opportunity to do so, and these witnesses were discharged. Thereafter, the IO gave his evidence and denied that the eyewitnesses had named and identified the appellants before him. Strangely, these witnesses included the informant, on the basis of whose evidence the charge sheet had been filed. After the evidence of the IO was recorded, a High Court order was sought to bring these witnesses back to the stand. The eyewitnesses, including the informant, were brought back for cross-examination. During this cross-examination, the witnesses, including the informant, changed their earlier statements where they had identified the appellants and other miscreants. Now, they said that they had not identified the appellants from the night of the occurrence but from earlier. In short, their role in the prosecution case fell apart. This volte-face between the initial examination and the recall reeks of witness manipulation. The prosecution pointed out before the bench that despite provisions of the Indian Evidence Act that allow for examination and re-examination of witnesses before being discharged, the defense chose not to cross-examine witnesses (Nos 31-60). Instead, these witnesses were recalled after the evidence of the IO was recorded on the strength of the High Court order. The prosecution maintained that there was 'defect in procedure of recording evidence'.

In the end, the evidence of only two eyewitnesses was accepted. The evidence of many were not considered because, curiously enough, the persons they named were simply not tried in the court. The evidence of some witnesses were deemed unreliable as they had not claimed in their evidence that they knew the accused from before and so could not have identified them. One witness was discredited for having failed to disclose the name of the attacker at the first opportunity and also for not being able to explain how he came to hide in pile of hay from where he witnessed the killings. A witness who had lost six family members was disbelieved because he claimed to identify the miscreants by torchlight, but the IO claimed that he had not been shown any torch. Another witness who lost both his wife and daughter that night was disbelieved because it was held that he could only have had a fleeting glance at the attackers as he had stated that he had fled from the scene. Another witness was disbelieved on the grounds that the statement of the IO that the witness had 'neither stated in his statement that he climbed the thatched roof' 'nor had he shown the ladder to him which was used by the witness to climb the thatched roof' was, in the view of the Bench, suggestive of fabrication. It is necessary to mention that the eyewitnesses whose evidence were rejected included persons who had been injured and many whose family members had been killed or injured.

A repeated point made while dismissing the evidence was the failure to identify and record the names of the assailants with the IO immediately after the incident and that many of the witnesses appear from the case diary of the IO to have heard the names of miscreants and not actually identified them. The unexplained delay in the dispatch and receipt of the FIR was also raised as casting doubt on the reliability of the FIR and the recorded fard-bayan of the informant. The prosecution did point out that the witnesses were involved in arranging the last rites and

attending to the injured in hospitals immediately after the incident while the IO was conducting his investigations. The judgment notes the prosecution's argument about the shoddy nature of the investigation conducted by this IO, who failed to record statements of the injured, the doctors and of the police in the neighbouring stations and even of those in the TIP. The IO also failed to maintain a full record of relevant entries in his case diary. The contradictions in the statements of the witnesses with the case-diary statements of an investigation rife with flaws were grounds enough to throw out the evidence of the eyewitnesses. The bench did, however, allow that 'it is always open for the State to prosecute the IO if he has not conducted the investigation properly and in accordance with law'.

While the conviction of one of the appellants Avinash Chandra was upheld, the state appeal to enhance the sentence to a death sentence was rejected and the other accused were acquitted. The rejection for the appeal to death penalty was based on the standard set by the judgment in Masalti vs State of Uttar Pradesh (1964). The argument presented was that 'there were only two witnesses who identified him' and both 'failed to assert any overt act against him and there does not appear to be any special reason for awarding death sentence to him'. Once again, no retrial or reinvestigation was ordered. A statutory criminal appeal has been filed by the state against the acquittals in the Supreme Court in 2013. The matter is yet to be heard.

The Questions in Bara

A comparison between the four verdicts discussed above with that of Bara raises some significant issues regarding judicial interventions in cases of massacres. As far as death tolls are concerned, the cases are comparable: 35 in Bara, 21 in Bathani Tola, 58 in Lakshmanpur-Bathe, 10 in Nagari and 33 in Mianpur. Barring Mianpur, in each case the trial court awarded death penalty: 7 in Bara, 3 in Bathani Tola, 16 in Lakshmanpur-Bathe and 3 in Nagari. Apart from this, 4 people in Bara, 20 in Bathani Tola, 10 in Laxmanpur – Bathe, 8 in Nagari Bazar and 9 in Miapur were convicted with punishment up to life imprisonment. In Mianpur, it should be remembered, the government filed an appeal seeking enhancement of nine life-imprisonment to death penalty. When the High Court awarded its judgments in the four cases (i.e., Bathani Tola, Lakshmanpur-Bathe, Nagari and Miapur), barring one person for Mianpur, all the accused were acquitted. Given that the Supreme Court conferred death penalty on four of the accused in the Bara massacre through a majority judgment, it is important to see where the differences lie.

In terms of details, it may be recalled, that in each of the High Court verdicts (delivered by the same bench), the role of the first informant, the one whose fard-bayan provided the basis of the FIR, came under heavy scrutiny. Barring Mianpur where the nature of the trial was so questionable, the High Court disbelieved the informants and their statements primarily on grounds of delay. In each of these cases, the court held that the time lag between the lodging of the fard-bayan and FIR and the same being sent to the CJM was deliberate and suggestive of fabrication of identity of the accused by the informants. In the case of Bathani Tola, the bench argued that instead of the fard-bayan, if the prosecution had relied on the officer-in-charge of Badki Kharaon's written submission, then it would have been obvious that there was a crossfire and not a one-sided attack.

In the case of Lakshmanpur-Bathe, the court held that the delay in taking statements from eyewitnesses was part and parcel of the fabrication process that the police and eyewitnesses jointly concocted. The identifications of the accused by the eyewitnesses were discarded for three prominent reasons: one, because they were motivated and hence unreliable; two, because of discrepancies between their statements; and

Table 3 **Summary of five cases**

Name of Case	Accused brought to trial	Acquittals by lower court	Acquittals by High Court	Acquittals by Supreme Court	Total number of acquittals	Final Convictions
Bara	19	7	HC disallowed due to TADA	5	12	7 (4 - death sentence, 2 - life imprisonment, 1- 10 years RI)
Bathani Tola	53	30	23	Pending	53	0
Laxmanpur Bathe	46	20	26	-----	46	0
Nagari	15	4	11	-----	15	0
Miyanpur	11	2	8	Pending	10	1 (life imprisonment)

Source: Relevant High Court and Supreme Court judgments in each case

three, because circumstantially or because darkness or from the roof top, it could not have been possible for them to identify the assailants. Notwithstanding the fact that the eyewitnesses had done a commendable job of identifying the assailants while being in a state of shock and trauma, the court discarded them as unreliable. In short, delay, shoddy investigations and unreliable witnesses contributed to the 'obvious' acquittal of the accused who were 'innocent' of all charges, barring Mianpur where the court convicted one accused to life imprisonment because he was 'reliably' identified.

While the acquittals on the basis of insufficient evidence are understandable, the court did not order a retrial in any of the four cases, thus denying justice to the dead and the survivors of these four gruesome massacres. In comparison, the snags in the Bara case seem similar, except for the judicial interpretation of the same. The first informant was never produced, but this did not compromise the trial. Post Bara, the informant Satyendra Sharma went on to become an important member of the Ranvir Sena, the Gaya district chief, who carried an award of one lakh rupees but proudly declared that 'no police will dare touch me' (Indian Express, 4 December 2004). Ironically, his role was never investigated and this was never considered a lapse. During the investigation, delays occurred in gathering statements from eyewitnesses, but these were condoned as inevitable. The case of Bunde Singh is important. His statement was recorded two days after the occurrence. The majority judgment argued that it could not be called 'inordinate' given the circumstances of a 'caste war' in the village. The case of Budhan Singh is even more interesting as his statement was recorded on the third day. The apex court held that the delay was not 'inordinate' given the fact that the place was swarming with VIP visitors and that the witness, like many others, was in a state of shock and compelled to perform the last rites of near and dear ones. The court similarly accepted the eyewitness account of Krishna Devi, whose statement was recorded two days after the massacre. The Court did not see any possibility of manipulation in these cases.

Like in the incidents of massacres committed by the Sena, eyewitnesses in Bara climbed on to neighbours' roofs to save themselves and identified the assailants from there. The apex court treated these as important pieces of evidence. For instance, Ram Sagar Singh claimed to have identified Krishna Mochi and Nanhe Mochi, as he had

climbed on to the neighbour's house, from where he alsosaw the MCC squads devastating the village. The apex court accepted him as an eyewitness and believed that his account was 'free from any doubt'. Significantly, he claimed that he opened his door and came out of his house when he heard the sounds of firing. The accused saw him and shouted at him. He then ran and climbed his neighbour's roof and saw the accused. The courts never asked him how he managed to (a) save himself from the accused and climb the roof and (b) see in darkness. On the other hand, in Nagari Bazar, the High Court doubted the ability of the informant to identify the accused from the rooftop, and in Lakshmanpur-Bathe, the court doubted the ability of the witness to identify the accused from the rooftop as the assailants were retreating, with their backs turned to him. Unlike the Mianpur case where the court discarded the testimony of certain eyewitnesses because they knew the assailants from before, in Bara case the apex court admitted the statement of Dhananjay Singh who categorically said that he knew Krishna Mochi from before. More importantly, he lost consciousness during the slaughtering operation, but when he regained consciousness, he was perfectly stable and could recognise Krishna Mochi as one of the killers. This was, however, of no significance for the court.

In sum, the actions that constitute the crimes in the all the cases detailed above are very similar. The delays and improprieties in investigation, the shortcomings and or strengths in witness testimonies, are similar too. The delays during the trials are also similar, between 6 and 14 years in the five cases. Yet the outcomes are starkly different.

The background of the killers and the victims, the composition of the state machinery and its biases, the political views of the warring sides, the proclamation of one as 'terrorist', all play their part in this saga of acquittal and the penalty of death.

4. Penalty of Death and Crimes of Terror

An unjust law is itself a species of violence.
Arrest for its breach is more so.
—M.K. Gandhi

In August 2015, the Law Commission published its report titled 'The Death Penalty' that analyses the practice and theory of death penalty in India and the world. It examines in detail the arguments for the retention of the death penalty: deterrence, retribution and public opinion. The report concludes that pronouncing death is not a solution to any penological goal: it does not serve the goal of deterrence any more than life imprisonment; the Constitution does not permit 'retribution as revenge' as a goal; retribution as deserved punishment lacks the principle to decide the scale of punishment; the principle of proportionality in punishment is itself based on evoking repentance from the offender and hence rules out death. Further, 'public opinion' is no sufficient argument for retaining the death penalty, for reliance on public opinion would never have permitted the outlawing of untouchability, sati or child-marriage.

According to the report, the reasons to eschew the death penalty are many: it leads to losing sight of the restorative and rehabilitative aspects of justice; it diverts attention from other problems ailing the criminal justice system such as poor investigation, crime prevention and violation of the rights of victims of crime; it leads to arbitrariness in awarding the sentence and no principled method exists to remove such arbitrariness; it makes irreversible the miscarriage of justice inherent in a criminal justice system marked by lack of resources, outdated modes investigation, an over-

stretched police force, ineffective prosecution, and poor legal aid; it is disproportionately slanted against the socially and economically marginalised who may lack the resources to effectively advocate their rights within an adversarial criminal justice system. In addition, the presidential powers of mercy meant to safeguard against miscarriage of justice have repeatedly failed in their stated purpose.

While there has been a systematic lack of any conviction of the accused in massacre after massacre perpetrated by the landlord armies, the death penalty was the punishment chosen by the Supreme Court in the case of Bara despite a split verdict. What seeks to justify this prejudice is the terming of one of these massacres as 'terrorist' while the rest remain 'non-terrorist'. The judgment that holds Bara to be the instance where those who once ruled Bihar were massacred dovetails nicely into the argument that the killers must be terrorists. Consequently, since the other massacres comprised killings of those who also died frequently of malnutrition, curable diseases, heat and cold, the killers did not need to be labeled terrorist. Bara thus happens to be the only criminal case among all the massacre cases that was tried under TADA.

The application of TADA conferred on Bara a 'terror' label, which made its investigation and trial extremely unfair. The accused remained incarcerated from the time of their arrest without any bail. Their trial was conducted in a Designated Court, a court created specifically to underscore that the accused brought for trial were accused of acts of 'terror'. Then, confessions extracted by the police through whatever means were admissible as evidence. And finally, the accused were denied appeal to the High Court against the trial court verdict.

The fact that three of the four accused sentenced to death, Krishna Mochi, Nanhe Lal Mochi and Vir Kuer Paswan, were landless dalit peasants who worked as harwaha before their arrest would probably have in any case led to their torture during investigation, denial of bail and lack of effective legal aid. But the application of TADA through its unholy provisions and the space that it grants for judicial biases slanted the odds to the extent that down the slippery slope was the only possible outcome. These very biases against the underprivileged, the poor, backward castes and minorities were the basis for the public condemnation of this law and for the Parliament to let TADA lapse in 1995. As the public focus on TADA waned after its lapse, for those condemned to this beast, as in the case of the Bara accused, its afterlife continued unaltered.

The successors of TADA, POTA and its current avatar, the amended UAPA, are similar in their essential structure and their impact – that they tilt the scales against the accused to the extent that a reasonable likelihood exists that an innocent may be convicted or jailed for a long period. This is achieved through permitting the violation of established procedure including the right to bail, lowering the benchmark for acceptable evidence, enhancement of punishment for the accused and widening the set of actions that constitute a criminal act. It is this bias that cripples the individual in defending himself and makes a mockery of the rights of the individual conferred by our Constitution and the Universal Declaration on Human Rights.

All terror laws inherently incorporate provisions that permit extreme arbitrariness. Take for example the definition of a terrorist act as defined in section 3 of TADA in the context of the massacres in Bihar. Each of the massacres satisfy this definition in all the three respects: intention to 'strike terror in the people or any section of the people'; with the use of 'firearms or other lethal weapons'; and causing 'death of, or injuries to, any person or persons or loss of, or damage to, or destruction of, property'. During the period of the operation of TADA (1985-1995), at least 23 massacres occurred in what is now south-west Bihar in which 256 people were

murdered. Yet none of the massacres of dalits and the labouring poor by the landlord armies was seen fit to invite the provisions of TADA. What permitted this unfairness was that the crime was decided not on the basis of what an accused does but on the accused's intention for doing so. All later versions of terror laws continue with thisbasic premise. The significant change over time is that the power to ascribe this intention gradually proceeded from the superintendent of police and the IG of police to the central government. Introduction of provisions to label organisations as terrorist and impose bans on them made this arbitrariness an issue of convenience for the political party in power at the centre. It also meant that landlord armies, or other organisations wishing to maintain the existing structure of power and dominance, would not be labeled as terrorist.

It is this unfairness, one that arises out of the arbitrariness of application of terror legislations, that endangers social life. For it prepares the ground for the belief that appeal to constitutional remedies is futile, that the state and its functionaries are mere parties to the conflict, not defenders of constitutional norms. Thus terror laws, contrary to their stated purpose, and due to the extreme unjustness in their application, promote the very forms of violence that they are expected to curb.

Examine the proceedings from the Bara cases at hand. Significantly, none of the three apex court judgments on Bara deliberated on the appropriateness of the applicability of TADA. It was accepted as a given. But the three judgments disagree on what terrorism specifically means and this has an impact on the punishments. Four of the accused were sentenced to death because the majority judgment (by Justices B.N. Agrawal and A. Pasayat) held that the eyewitnesses were reliable. Four of the accused were acquitted (by a bench comprising Justices M.B. Shah, B.N. Agrawal, A. Pasayat) because the bench held that the confessional statement should not have been relied upon for convicting the accused. One accused was acquitted and two death sentences were commuted by the third bench (by Justices A.K. Patnaik and H.L. Gokhale) that gave credence to the issues of inordinate delay, faulty investigations and the circumstances of the accused, including their impoverished status. In short, three different conclusions were drawn from the same investigation and prosecution in which the third judgment relied on the first so as not to repeat its conclusions. While the judgments and punishments are undoubtedly directed by the particularities of each of the cases, the lack of common consensus among the judgments renders the issue of 'terror' even more problematic. In this context, the contrast between the majority judgment and the third judgment are stark.

The majority judgment delivered by Justice Agrawal staunchly believed that the accused belonged to the MCC, 'an organisation of militants' which 'hatched up a conspiracy to massacre members of one particular community in the village…'It is significant to note that there was no clear evidence confirming that the accused belonged to the MCC other than the presence of a large group of persons and the chanting of slogans by people in this mob. Despite noting that it was 'a caste war between haves and have nots', the majority judgment drew attention to how the incident was a 'gruesome murder of 35 persons of one community which was the most powerful one in the State at one point of time and ruled Bihar for decades'. The reiteration of the historical dominance of the upper-caste victims begs the obvious question: was the crime particularly 'bad' or 'worse' because the 35 victims were Bhumihars who were massacred by the 'have-nots'?

The third judgment delivered in 2012 by the bench of Justices Patnaik and Gokhale referred to the majority judgment to draw an entirely different conclusion regarding the so-called caste-war between 'haves' and 'have-nots'. It noted the impoverished status of the

accused and the fact that the attack was 'retaliatory'. While the witnesses did not anywhere state that they belonged to the MCC, the judgment stated 'It is quite possible that due to their poverty and caste conflict in the villages they were drawn in the melee and participated in the crime'. Drawing upon other judgments as well as the dissenting judgment

Lost in transition - Status of the mercy petition

In the Bara massacre case, the four accused Krishna Mochi, Nanhe Lal Mochi, Vir Kuer Paswan and Dharmendra Singh were found guilty under TADA and sentenced to death by the Sessions Court, Gaya on 8 June, 2001. The Supreme Court in the judgment in Krishna Mochi & Ors Versus. State of Bihar (Appeal (Crl.) 7610.2001)] petition confirmed their death sentence on 15 April, 2002, with the dissenting note by Justice M B Shah on the award of death. The mercy petition was filed by the four prisoners on death row to the President a year later. When the PUDR team visited Bhagalpur jail, the jail authorities showed us the documents of official correspondence in which the date mentioned, on which the mercy petition was first sent by the jail was 31 March, 2003. The jail authorities informed us that the petition was sent to the President forwarded by the Bihar Government as per their information; however, there was no intimation from the Bihar government on the status of the petition until 2014.

In another response to RTI filed by National Law University to the Prison and Reform Dept., Bihar Government on 16 June, 2015, it is stated that on 10 April, 2004, the Prison and Reform Dept. had forwarded the mercy petition to the President. However, the letter dated 14 June, 2004 written by the Governor's Secretariat Bihar to the Law Department, Bihar government, states that the petition claimed to have dispatched on 10 April, 2004 has not been received by the Governor. It was in April 2014, eleven years after the petition was sent from the jail that the Chief Secretary, Bihar Government, wrote to the jailor, Bhagalpur jail enquiring about the mercy petition. This was in reference to the letter dated 4 April, 2014 in which the Ministry of Home Affairs (MHA) had written to the Bihar government stating that the mercy petition had not been received by the Central Government and also asked to state the reasons in inordinate delay in sending the petition. The Bihar Government wrote another letter in August 2014 asking the jail to send the mercy petition again. In response, the Bhagalpur jail authorities replied back to the Chief Secretary, Bihar on 17October, 2014 that they have sent the mercy petition again. Since then, the jail authorities claimed, there has been no intimation from the state government. It is worth noting that the search for the petition almost a decade after it was filed and lost began only after the intervention by the Asian Centre for Human Rights (ACHR) early in 2014. ACHR had filed an RTI in 2013 with the MHA asking for a list of mercy petition received by the President of India since 1981.

In the reply by the MHA, the list sent to ACHR did not show the names of the death row prisoners in the Bara case, following which ACHR filed a complaint with the National Human Rights Commission to intervene in the matter of the 'lost petition'. In the wake of these developments, the Central and the State governments got alarmed and series of official correspondences were exchanged to trace the untraceable petition. Whether the Bihar government sent the petition or it never managed to send it or while shuttling between different departments in the state the petition got lost in the process, we don't have an answer. The real question now is that of culpability. Is this act of authoritarial callousness not violating the fundamental right to life of the prisoners on death row? Who is guilty? The petitioners who had appealed for their right to live continue to languish in darkness, oblivious of the fatal callousness of the authorities. They know that the mercy petition was sent and it hasn't been acted upon but they do not know that their petition hasn't even reached the person it was addressed to, in now nothing less than thirteen long years of their ordeal in prison.

The mercy petition is with the president for adjudication and the Ministry of Home Affairs has sent its recommendations to the President on 8 August 2016.

delivered by Justice Shah, the third bench commuted the death sentences. There are, thus, differences in the judicial interpretations on the question of caste-war and its invocation as a ground for justifying the death sentences. There are also differences in dealing with the evidence of the association of the accused with the MCC. This lack of agreement in the different Bara judgments raises a more fundamental question about the designation of the crime as an act of terror.

It is this context that makes the death penalty imposed on the four Bara accused more significant. It also brings into question the reluctance of the Law Commission to demand abolition of the penalty of death for those convicted of terror crimes. The Law Commission report had argued for the abolition of death penalty for all crimes except those related to terror without providing any reasoning how the death penalty serves some additional purpose in such crimes. The Bara case is as good a terror case to examine this reluctance. First, the trial under TADA meant that the provisions of this law, coupled with the judicial biases emanating from the terror label and from the social stratification permit a greater deviation from settled procedure and therefore a higher probability of the conviction of an innocent. Second, the accused suffer from social and economic backwardness to the extent that they had little access to legal help or even to meet their lawyer. Third, the application of the terror law meant that one set among those accused of massacres is to be treated as terrorist and hanged, whereas all the other accused are to be acquitted. Fourth, this power to differentiate between terror and non-terror is a purely executive power exercised by the government at the centre without reference either to the judiciary or to the Parliament. And finally, the extreme apathy concerning those condemned to death, that the Law Commission report cites, is visible here in all its nakedness: the accused have been in solitary confinement for 15 years since the trial court verdict and the mercy petition sent by the accused to the Governor has been lost in transit (and this loss remained unknown to the government for 11 years). A crime designated as terror differs from others only in the fact that the political views of the perpetrator organisation are at that time considered antithetical by the government in power at the centre. The imposition of the penalty of death in cases listed as terror crimes is therefore as ill-advised, if not more, as in other cases.

5. Conclusion

The documentation of judicial outcome of the five cases of massacre should be seen in the socio-economic context of the agrarian conflicts of 1980s and 1990s in central Bihar. When the landless and near landless and mostly lower caste villagers asserting for a life with dignity, with the support of one or the other ML organisations and the upper caste landlords were crushing this assertion, through attacks using their private militia.

While all the accused (barring one) of the dreaded Bhumihar army Ranvir Sena in the four instance of killings of landless lower caste people in Lakshmanpur-Bathe, Bathani Tola, Mianpur and Nagari were acquitted by Bihar High Court between 2012 and 2013 for lack of evidence, the Supreme Court upheld the death penalty of four accused (in 2002) and conviction of two others (in 2013) in the incident of killing of 35 Bhumihars in Bara by MCC. The High Court did not order any reinvestigation or retrial in these four cases thus effectively letting the guilty of 122 killings go scot-free and denying justice to them and the survivors. In contrast the Supreme Court on the other hand ignored the shortcomings in the evidence and faulty and arbitrary invocation of TADA in even upholding the death penalty in the Bara case. The

Supreme Court made it more than clear that the offence becomes more serious as it involves killings of persons of a dominant caste. There was a huge hue and cry in the media and the socio political circles after the fourth judgment in series, i.e. Lakshmanpur-Bathe was pronounced in October 2013, all leading to acquittals, however the victims and the survivors of four massacres and their quest for justice were soon forgotten.

The investigation and trial in the four cases when contrasted against Bara massacre shows, that the criminal justice system is loaded in favour of the powerful against the powerless, and that the awarding of punishments is itself in keeping with existing inequalities. Members of the police and the judiciary in the conduct of their duties replicate the same caste structures and prejudices that characterize the society from which they come. The arc of history of people struggling for justice in India is long but it bends in favour of injustice with a regularity which tends to make it a rule.

A close look at, the investigation and trial of these five cases points to the interplay of social dynamics and the resulting judicial bias that leads to different fate of similar crimes but different accused and victims. More so because the same pattern is observed in case after case related to agrarian massacres in Bihar. In 2009, the Sessions Court of Jehanabad acquitted all 10 Ranvir Sena accused of the killing of 11 *Dalits* in Narayanpur in 1999. On 14 January 2014, a trial court in Jehanabad District of Bihar acquitted all the 24 accused members of Ranvir Sena in Shankarbigha killings of 1999 on grounds of 'lack of evidence'. In this case all the 50 witnesses had turned hostile as the accused were out on bail and threatened and pressurized them. Repeated request to the police and the court to provide security to them remained futile. On the other hand the case of killing of three including a policeman in Arwal, in 1986, reached up to the Supreme Court in 2004 which upheld the conviction of 14 accused of the CPI (ML) by the TADA Designated Court. That TADA was invoked in this case also should also be noticed. Similarly the case of killing of 42 Rajputs in Dalelchak-Bhagora, in 1987, by MCC, reached Supreme Court in 1996. The court commuted the death penalty given to the eight accused as it held that it was not 'proper' to hang the accused based on the testimony of the lone eyewitness, a child of nine years, but the conviction stays.

The question arises as to how do the evidence in the cases of massacres by Ranvir Sena always remain inconclusive and how do the cases related to massacre of upper caste reach a logical conclusion? It is surely by design and not by chance. Selective use of TADA, banning of organisations, award of death penalty all are part of the design that is required to maintain the status quo. A design that warns the have nots against raising their voices against injustice and gives a message to the dominants to carry on with their ways of exploitation.

Lastly, Law Commission's recommendation to retain death penalty in terror crimes contradicts its own argument of arbitrariness given in favour of abolition in the other cases. It is the state machinery that in a completely arbitrary fashion decides which organisations are to be branded as 'terrorist' organisations and which crimes as 'terror' crimes. Thus the use of terror laws in such instances is also completely biased and arbitrary. As can be seen in Bara case, once such labeling occurs, the judiciary also views such cases differently and the consequences can be as serious as death penalty. Hence, retention of death penalty for 'terror crimes' is absolutely wrong.

The burden of life: "*rest of their natural lives*"

In 2013, in Bara massacre case, the two-member bench (Justices Patnaik and Gokhale) of the Supreme Court acquitted Naresh Paswan and commuted the death sentences of Vyas Kahar and Bugal Mochi to life imprisonment. All three had been sentenced to death under TADA by the Designated Court in 2009 and sentenced to life under various sections of the IPC for their alleged role in the Bara massacre. The apex court acquitted Paswan for three reasons: the FIR did not mention his name; he was not identified in court; and none of the witnesses attributed any role to him. For Vyas Kehar and Bugal Mochi the bench upheld their conviction but, commuted their death sentence into one of life imprisonment, stating: "imprisonment for life, which is to mean the rest of their natural life" (Vyas Ram @ Vyas Kahar & Ors vs State of Bihar, 2013).

Notwithstanding this judicial context, it needs to be noted that the life imprisonments awarded to Kahar and Mochi are patently unfair. In the absence of any clarification, one can only conclude that along with the terror label of the case the ongoing debates on life imprisonment may have influenced the judicial power to impose the caveat, "rest of their natural life".

The problems with such sentences are manifold. First, in the context of the Bara massacre, even though the evidence collection and investigation was shoddy and unreliable yet, it was deemed sufficient to uphold the death sentences and life imprisonments. In comparable cases, like in the Laxmanpur Bathe massacre, the High Court acquitted all the accused, who incidentally belonged to forward castes, citing poor quality of evidence.

Second, imposing such a sentence invariably points to the lack of reformative intent. By keeping persons in jail for the term of their natural lives, the court ensures the impossibility of their release and rehabilitation in society. Instead, such convicted persons are treated as undesirables with no place in society. In short, such a sentence underlines the agonizing inability of our prison and criminal justice system to reform and rehabilitate accused persons.

Third, jurists and lawyers worldwide have held that certainty should be preferred over severity while sentencing; consistency and predictability in criminal trials should be the norm rather severe sentences. Severe sentences are retributive in nature as they imply a loss of faith in the person by the state and society. Such sentences encourage criminal behaviour as the accused has no incentive to enter the "reformative process" of the prison system, since the person has to spend the rest of his life in jail.

Fourth, with the pathetic state of prisons in India it can hardly be left to imagination the treatment meted out to prisoners. Our highly overcrowded prisons are hotbeds of crime, torture, and inhuman treatment. It is not surprising that the jail system consistently fails in its objective of restorative and rehabilitative justice and this aspect is not hidden from the state and the courts, as they are equally aware and culpable in such a rotten system. In such a scenario, sentencing for life without possibility of release signifies the hypocrisy of the system which does not actually believe in taking back its delinquents ever.

Life imprisonment is a contested area within jurisprudence and the recent apex court judgments have underlined an inescapable irony: if commutation is the first step towards abolition of death penalty, then the phrase, 'rest of their natural life', nullifies this claim. If the Court reserves the right to deny remission and extend the imprisonment up till the end of the convict's life, then what kind of life is that?

PUDR demands

1. All the four convicts on death row in the Bara case have been in jail for around two decades. During this entire period they have not been let out for even a day. The jail authorities have no complaints against their behaviour. Being on death row, they have suffered the fear of death each day since their conviction and more seriously since the confirmation of the penalty by the Supreme Couth in 2002. They continue to be subjected to solitary confinement in the death cell since that date. Their testimonies to our team illustrate how they have suffered the sentence of death many times over. So concerned has been this criminal justice system about the imposition of the death penalty, that they have been forgotten in jail and their mercy petitions lost in transit. It is high time that this state and this society stop this ongoing torture. The four condemned men deserve to be released so that they can spend the last days of their lives in freedom. We therefore demand that Nanhe Lal Mochi, Krishna Mochi, Vir Kuer Paswan and Dharmendra Singh should be pardoned and released by the governments to underscore their commitment to fairness and humanity.

2) While the inordinate delays have led to extreme torture for the death row convicts, the same delays have been responsible for the lack of any conviction in other cases of massacres. Any further delay by the Supreme Court in hearing the appeals is tantamount to rejecting them. We demand that these cases be heard on priority.

3) Retention of death penalty in case of terror crimes, as recommended by the Law Commission, would mean that the arbitrariness and injustice in imposing this as punishment will remain. We demand that the death penalty should be completely abolished.

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