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Remembering Violence, On Screen, In Verdicts

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"Despite different institutional logics, judgements and cinematic representations produce remarkably similar accounts of political violence. They ultimately reaffirm the legitimacy of existing institutions even when confronted with extraordinary violence."

The adjudication of criminal cases and the production of historical memory are often understood as two distinct things. Courts determine guilt or innocence through appreciation of facts, evidence adduced, and adherence to procedures. Cultural forms such as literature and cinema, on the other hand, shape how societies remember and narrate the past. Yet, the boundary between these domains is porous. Judicial decisions and cinematic representations not only record events; they also participate in constructing the frameworks through which those events are remembered. The question, therefore, is not merely what happened. Equally relevant are the ways and persuasions by which society comes to remember what happened, and what forms of forgetting accompany the formation of such collective memories.

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The 2002 Gujarat pogrom is a test case. Despite the passage of 23 years, the event is still alive and being contested in the public sphere. An extensive body of literature on the burning of the train and the deadly riots that followed exists in the form of judicial decisions, commissions of inquiry, journalistic investigations, scholarly studies, memoirs, and films.

Oishik Sircar's *Ways of Remembering: Law, Cinema and Collective Memory in the New India* (2025) brings together the judgment and the cinematic record of some of the worst violence of 2002, "which have been previously researched separately but not together". The originality of the work lies in what Sircar terms the "Jurisprudential-Aesthetic approach", where he reads judicial pronouncements and films together as complementary archives of collective memory.

A Narrative Compact

Central to Sircar's argument is the notion of a narrative compact between judgment and cinema. Despite different institutional logics, judgements and cinematic representations produce remarkably similar accounts of political violence. They ultimately reaffirm the legitimacy of existing institutions even when confronted with extraordinary violence. Sircar's concern is therefore not simply with the outcomes of legal proceedings or films, but with the narrative structures through which they render violence intelligible and memorable.

This approach is particularly illuminating when Sircar takes up the Best Bakery case, the trial of the more gruesome killings during the pogrom. The Supreme Court noted that "The case on hand is without parallel and comparison to any of the cases where even such grievances were sought to be made. It stands on its own as an exemplary one, special of its kind, necessary to prevent its recurrence." This was while the court reversed the Gujarat High Court's confirmation of the lower court's acquittal of the accused and took the unprecedented step of transferring the proceedings to Mumbai for a retrial.

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Despite the apparent differences between the approaches of the trial court, the high court, and the Supreme Court, Sircar argues that all three judicial fora rely on a remarkably similar repertoire of narrative tropes. Across these judicial decisions was the recurring prominence of proceduralism, legal formalism, and the majesty of law. Although the courts arrived at different conclusions, they shared a common commitment to preserving the authority and legitimacy of legal institutions. What was absent was a sustained engagement with the conditions under which justice could meaningfully be secured.

A comparable narrative structure is visible in the three films Sircar analyses: *Dev* (2004), *Parzania* (2007), and *Kai Po Che!* (2013). Even as each film acknowledges the tragedy of the Gujarat pogrom, they ultimately converge on a similar conclusion. Despite the scale

of violence and the evident failures of institutions, the only viable response is imagined through the language of secular legality, constitutionalism, and developmentalism. The films thus reproduce, in aesthetic form, the same faith in institutional redemption that animates judicial discourse.

What is striking, therefore, is that both judicial and cinematic narratives recognise the enormity of the Gujarat pogrom, yet neither is primarily concerned with locating structural responsibility or interrogating the political and social conditions that enabled mass violence. Instead, the violence is framed as an exceptional rupture within an otherwise functioning social and legal order.

By foregrounding these shared narrative structures, Sircar reveals how collective memory is shaped not only by what is remembered but also by the institutional forms through which remembrance is organised and made intelligible. Memory emerges not as a neutral recollection of the past but as a political process through which certain narratives are privileged while others are marginalised.

The Limits of Constitutionalism

While Sircar brilliantly demonstrates how law and cinema do not merely document memory but actively produce it, his emphasis on memory leaves insufficient room for analysing constitutionalism and the institutional conditions through which memory becomes political power.

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Before proceeding, we must clarify the distinction between legality and constitutionalism. Legality concerns the operation of legal institutions according to established procedures. Constitutionalism, by contrast, is a normative project aimed at limiting power, protecting minorities, and ensuring that governmental authority remains subject to constitutional principles. A legal system may function according to procedural rules while simultaneously failing to realise constitutional ideals. While reading *Ways of Remembering*, we encounter recurring references to secularism, legality, and constitutional values. Yet constitutionalism itself receives relatively little sustained interrogation.

This omission is significant because the Gujarat pogrom poses a profound constitutional challenge through the sheer scale of barbarity, the organised manner in which it was carried out and, above all, the failure and complicity of the institutions. If New India emerged through a decade-long consolidation of majoritarian politics, what does this suggest about the ability of constitutionalism to resist such transformations?

The question becomes particularly pressing in relation to secular constitutionalism. The Indian Constitution imagines a political community founded upon equal citizenship rather than religious identity. Yet Sircar's account demonstrates how legal and cultural narratives can coexist with, and even facilitate, forms of exclusion that appear fundamentally at odds with constitutional commitments.

New India and the Hindutva Metanarrative

It is thus that the emergence of 'New India', the intellectual centre of Sircar's book, raises the possibility not merely of legal failure but of constitutional failure itself. For Sircar, 'New India' is neither a political slogan nor simply a chronological marker. It is a temporal and ideological formation produced through the interaction of Hindutva, legalism, secularism, and developmentalism. This formulation bears comparison with Christophe Jaffrelot's characterisation of contemporary India as an ethnic democracy, where majoritarian identity in structuring political life, and Ran Hirschl, who demonstrates how constitutional adjudication in Israel are deeply shaped by foundational religious-national commitments.

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At the same time, Sircar's genealogy of 'New India' invites a broader historical inquiry. The extensive archival and bibliographic foundations of the book suggest that New India did not suddenly emerge after 2002 or, for that matter, with Narendra Modi becoming prime minister in 2014. Its roots may be located in the political transformations of the late 20th century, particularly around the intertwined questions of *mandir*, *masjid*, and *Mandal*. The mobilisation around religious identity, Sircar notes, can be found in the politics of reservation, and the reconfiguration of caste relations all contributed to the social and political conditions from which 'New

India' emerged.

Viewed from this perspective, Hindutva increasingly appears not simply as an ideology but as a metanarrative of sort, a framework through which political, legal, and constitutional questions are interpreted and adjudicated suggesting constitutionalism either becomes a marginal entity or is reduced to symbolism. Understanding 'New India' therefore requires situating the Gujarat pogrom within a much longer history of social and political transformation.

From Interpretation to Violence

Sircar's analysis is deeply concerned with interpretation. His reconstruction of judgments and films demonstrates how narratives shape collective memory. The question that arises from this insight is: how does interpretation become violence?

This question recalls Robert Cover's famous observation that legal interpretation takes place "in a field of pain and death." For Cover, legal meaning is never merely abstract. Judicial interpretations are ultimately translated into material consequences by institutions and social actors.

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This perspective directs attention to the gap between interpretation and enactment. Courts produce legal meanings, but those meanings acquire force only when they are internalised and implemented by police officers, bureaucrats, prison officials, political actors, and ordinary citizens. The journey from legal text and its interpretation to social reality is therefore mediated by a complex network of actors and institutions.

Sircar identifies many of the rationalities that shape legal and cinematic memory, but the social processes through which these rationalities become lived realities remain less fully explored. What forms of social conditioning enable particular interpretations of legality to acquire legitimacy? How do legal narratives become common sense? To what extent are these processes unique to contemporary India, and to what extent do they reflect deeper continuities within the postcolonial state? These questions emerge naturally from Sircar's analysis but remain largely unanswered.

Yet, the greatest strength of *Ways of Remembering* are precisely the questions it leaves unresolved: the relationship between constitutionalism and New India, the transition from legal interpretation to social violence, and the longer genealogy of 'New India'. They testify to the intellectual richness of Sircar's intervention. By compelling readers to rethink the relationship between law, memory, and violence, he opens an important conversation about the constitutional and political future of India. More importantly, it reminds us that the struggle over memory is never merely about the past. It is also a struggle over how a nation imagines itself and the futures it makes possible.

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