

# **Black Friday Mediation and the Impossibility of Justice**

**Anuj Bhuwania**

WORKING PAPER SERIES

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**Anuj Bhawania** teaches at Jindal Global University in Sonepat, India. He was a visiting fellow at the Centre for the Study of Law and Governance, Jawaharlal Nehru University in 2007–08

## BLACK FRIDAY

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## INTRODUCTION

*The subject was so sensitive, the film was almost like a trial. It dealt with real people, real names.'—Anurag Kashyap, Director, Black Friday<sup>1</sup>*

This paper examines the anxieties of publicity and mediation in contemporary India by analyzing the ramifications of the legal challenge to the release of a Hindi film called *Black Friday* based on a book on the police investigation of the serial bomb blasts, in the city then called Bombay, in March 1993. The film was to have an all-India release on 28 January 2005 but could not be released because one of the accused in the trial successfully filed a case asking for an injunction against it, arguing that the film in re-enacting the police investigation would pre-judge him as guilty and would thus vitiate the trial that was still in process. It would therefore be a 'contempt of court' as it would 'interfere with the course of justice' and would also defame the accused pronouncing them guilty before a public audience before the court has actually done so.

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<sup>1</sup> Quoted in Shoma Chaudhury, 'Catcher in the Rye,' *Tehelka*, 7 October 2006, [http://www.tehelka.com/story\\_main20.asp?filename=hub100706Catcher.asp](http://www.tehelka.com/story_main20.asp?filename=hub100706Catcher.asp)

## THE EVENTS AND THE TRIAL

On March 12 1993, 15 serial bomb blasts took place killing hundreds of people in various iconic buildings of Bombay. The targets included the Bombay stock exchange, the most important in India, which was then just emerging as an object of obsessive attention following the new economic policies adopted in India in 1991, particularly in the new private media world. The blasts were immediately understood as organized by Muslim groups, as a massive backlash to the bloody pogrom against Muslims orchestrated by Hindu fundamentalist groups with police complicity, in Bombay in January 1993. These blasts were perhaps the most spectacular and sensational of such blasts in the India of that time. Even after many years of intermittent deadly bomb blasts and attacks in Bombay since, which have acquired a seriality of their own, these particular ones continue to be called '*the* Bombay bomb blasts.' The blasts were followed by a high-profile police investigation that continued for several months with daily press briefings. The police quickly explained the blasts as a conspiracy by Dawood Ibrahim, perhaps the most iconic and powerful of Bombay's Muslim gangsters and 'Tiger' Memon, a notorious smuggler, both of whom had moved to Dubai. During the investigation into the blasts, there were hundreds of arrests, of mostly Muslim suspects for their role in transporting and planting the RDX explosives used in the blasts. While it was clear enough that these blasts had an obvious constitutive relation to the systematic anti-Muslim violence of the preceding months, the blasts were bracketed off as 'terrorist' acts in legal terms, and right-wing Hindu groups insisted on examining the blasts in isolation from the preceding pogrom.

The police investigation culminated on November 4, 1993, in a 9,104 page long charge-sheet submitted to the special trial court that was to deal with the case under the draconian Terrorist and Disruptive Activities Act (TADA), a widely reviled statute that departed fundamentally from common law criminal trial jurisprudence. The most crucial departure incorporated in TADA was

that it made confessions issued to a police officer during investigation admissible as evidence in court. The charge-sheet named 189 accused, of which forty-four, including the alleged principal conspirators Ibrahim, Memon and Memon's family were absconding. Tellingly, all the other 145 accused had confessed to the police. While forced confessions are routinely produced during police investigation in India, TADA conferred legitimacy on such obviously torture based police practice by allowing them as evidence for the trial. A marathon trial followed began on 30 June 1995, organized in the prison complex itself where most of the accused were detained. 684 witnesses were examined by the prosecution, resulting in 13000 pages of transcribed evidence.

Meanwhile a crime reporter, S. Hussain Zaidi, who worked for the popular city afternoon newspaper *Mid-day*, wrote a book called '*Black Friday: The True Story of the Bombay Bomb Blasts*' published by Penguin Books in 2002. It primarily relied on the various documents filed by the police as evidence in the trial, especially the charge sheet and the confessional statements of the accused. (Zaidi 2002: xiii) As he himself noted, 'much of the story is culled from the case presented by the prosecution.' (Zaidi 2002: xiv) Besides this, he had access to and interviewed the various police officers involved in the investigation and the principal 'approver' (an accused who agrees to become the key witness for the prosecution in return for clemency) as well as various lawyers representing both sides. He had the co-operation of the special TADA trial judge who he notes, 'reassured and encouraged' him. (Zaidi 2002: xi) Apart from the trial, the book also describes the indiscriminate arrests and fear psychosis among Muslims in Bombay during the investigation and the related widespread police corruption and brutalities against the various people detained, as alleged by various Human Rights groups. Finally the manuscript of the book was vetted by a member of the police investigative wing 'to ensure it was factually correct in every detail.' (Zaidi 2002: xi) The book had an average print run for an English non-fiction book in India, and there was no controversy or opposition to its publication.

Soon thereafter, a Hindi film based on the book and also called *Black Friday*, was produced by the news corporation that owned the *Mid-day* newspaper. It was directed by Anurag Kashyap, a young and gifted film-maker who had made a name for himself as a highly successful Hindi film script-writer and had already directed an acclaimed film which could not be released due to censorship hassles with its explicitly violent and amoral theme. The film ‘Black Friday’ received a ‘For Adults only’ certification (popularly called an ‘A’ certificate) from the Indian Film Censor Board on the condition that the makers delete one of the two scenes showing police brutality, and reduce the duration of the other such scene by half. They also ordered that the following disclaimer be inserted at the start of the film:

The film you are about to see is based on the book titled ‘Black Friday’ published in 2002. The events depicted in the film are true to the book and are constructed from the case for the prosecution. In the adaptation to film certain creative license has been taken, nothing in this narration should be construed to be an opinion on the innocence or the guilt of the person depicted.

All these conditions were accepted and the film was set to be released in January 2005 with promos and advertisements already being aired on television, and the music album of the film having been released. The film was also shown in various international film festivals to wide acclaim. However, eight days before the film’s release, one of the principal accused Mushtaq Moosa Tarani (allegedly responsible for planting an RDX laden briefcase in a luxury hotel as part of the serial blasts) filed an application before the trial judge bringing to its attention that the film was being advertised as ‘The True Story of the Bombay Bomb Blast Case’ while the matter was still pending for final judgment at the trial court. His argument was that such publicity ‘will cause prejudice to the present case before the delivery of final verdict’ and that this will ‘have certain repercussions as the

people in general are not aware of the actual evidence on record but the said film will be believed by the people at large as true.' The film-makers promptly undertook to unconditionally withdraw the phrase 'true story' from the promos.<sup>2</sup>

However, just the day before the scheduled pan-Indian release of the film, Tarani filed a writ petition in the High Court at Bombay asking for an injunction on the release of the film itself until the trial court's final judgment is delivered.<sup>3</sup> While the petitioner notes that he is aware that the book, on which the film is based, too claimed that all the characters and incidents in it are real, he was only interested in restricting public access to the film. This, the petitioner states is because, he argues, 'movie has a very powerful visual medium', and that 'ten thousands of people will view the said movie and form an opinion which will lower the prestige and authority of the court which tries the said case and thereby Indian Judicial System as a whole.' The public dissemination of the film would therefore amount to 'contempt of court,' as statutorily defined, being a 'publication' that 'lowers or tends to lower the authority of any court' or 'prejudices, or interferes or tends to interfere with the due course of any judicial proceeding.' Besides the petitioner argued that because the accused are presumed to be innocent until proved guilty by a court and that was not yet the case as the accused might well be acquitted, the movie's release before the trial ended would defame the accused. It is noteworthy here that the reason the petitioner could ask the court for such a 'gag order' on the film at all was because unlike the American First Amendment, under the Indian Constitution the right to freedom of expression is subject to 'reasonable restrictions' on a

<sup>2</sup> Copy of Tarani's Application as annexed to pleadings filed in Special Leave Petition (Civil) 7604 Of 2005, Supreme Court of India, *Mid-Day Multimedia Ltd. & Ors v. Mushtaq Moosa Tarani & Ors.*, on file with the author. See also *Mushtaq Moosa Tarani v. Government of India*, Bombay High Court, 31 March 2005 (Unreported Judgment, on file with author)

<sup>3</sup> Writ Petition (L) No. 269 of 2005

number of grounds, as legislatively enunciated, including ‘Contempt of Court’ and ‘Defamation.’ (Article 19 (2) Constitution of India)

Just a day before the film was scheduled to be released, the Bombay High Court temporarily ‘stayed’ the all India release of the film until it had a chance to consider the various points the petitioner had raised. After hearing both sides, the petitioner accused and the respondent film-makers, the High Court judgment reserved judgment on the petition on 28 February, 2005 and gave its final detailed judgment one month later on 31 March. The final 87 page judgment by the 2 judge bench of the Bombay High Court extended the injunction on the film and accepted the petitioner’s arguments against the release of the movie till the final judgment in the blasts case was pronounced.<sup>4</sup> The film-makers appealed to the Indian Supreme Court against the High Court Judgment.<sup>5</sup> The Supreme Court kept the matter pending, not passing any interlocutory order to stay the Bombay High Court judgment and thus effectively disallowing the release of the film until the trial judgment in the blasts’ case was pronounced. The film ‘Black Friday’ was finally released on 9 February 2007 only after the trial court judgment on guilt in the blasts’ case had been passed, although sentencing of the guilty was still pending on that date.

The trial court started pronouncing its verdict in the blasts’ case on 12 September 2006 in a staggered way and gave its final verdict on 4 December 2006. 100 accused were pronounced guilty, 43 under Section 120B of the IPC for conspiracy, another 44 were convicted under Section 3(3) of the Terrorist and Disruptive Activities (Prevention) Act and 13 under the Arms Act or Customs Act. The hearing on sentencing of those declared guilty only started on Feb 15th 2007 after the film had already been released, and the trial finally concluded on 31 July 2007 with the last sentence being

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<sup>4</sup> *Mushtaq Moosa Tarani v. Government of India*, Bombay High Court, 31 March 2005 (Unreported Judgment, on file with author)

<sup>5</sup> *Mid-Day Multimedia Ltd. & Ors. v. Mushtaq Moosa Tarani & Ors.*, Special Leave Petition (Civil) 7604 of 2005

passed. Among the convicted, 12 were awarded the death sentence by the trial court and 20 were given life sentence (of them two had already died). The convicted parties and CBI filed appeals to the Supreme Court against Judge Kode's final judgment. This appeal has since been pending before the Supreme Court.<sup>6</sup> The Supreme Court bench of Justices P. Sathasivam and B.S. Chauhan finally heard the appeal on a daily basis from 1 November 2011 onwards and reserved its verdict on 29 August 2012. Interestingly, the sheer volume of the case records in this case led the bench to use laptop computers during the hearings for the first time.

### CINEMA AND CENSORSHIP

To counter the accused Tarani's plea against the film in the Bombay High Court, one of the principal arguments that the film-makers repeatedly made against any gag order on the film was that the book on which it is based has been freely available since its publication in 2002, and no complaint of prejudice to the trial was made against it. Further, every aspect of the case had received widespread media coverage since 1993. The investigation, arrests and the trial, including witness depositions had been widely reported and the roles alleged to the various accused were well-known. Moreover, the film-makers were willing to introduce another disclaimer at three different occasions in the film—at the start, interval as well as at the end to the effect that:

It is made clear that:

- (a) The accused totally deny their involvement in the crimes depicted in the film, and
- (b) The police totally deny the depiction of police brutality.
- (c) All accused are innocent until proven guilty by a court of law.

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<sup>6</sup>TADA bars any appeal to the High Court from the Designated TADA trial court. There is only one appeal available, directly to the Supreme Court.

The judgment countered this whole question by focusing on the nature of the specific media forms representing the trial and how each has differential impact on the public consuming them. Crucially, the Division Bench of the Bombay High Court also justifies its refusal to allow the release of the film by its interpretation of the impact on collective memory of the specific temporality of newspaper coverage and the trial itself in India, and how this might be disturbed by the film with its immediacy. Noting that twelve years had passed since the blasts, the court declared, ventriloquising an undifferentiated public, ‘most of the people merely remember that such blasts took place and a large number of persons died.’<sup>7</sup> The court confidently speculated that most people unrelated to the case would not remember the names of specific accused, except of course those of Dawood Ibrahim and Tiger Memon, who allegedly masterminded the blasts. The film of course would revive the memory of the viewers about each of the accused and a disclaimer could hardly undo any defamation thus caused.

But the much broader issue here was how the court articulated the specificity of cinema in India, in holding that it could not be legally allowed to represent an event that other media including newspapers, television and a non-fiction book had freely dealt with. The court stated:

The details as set out [in the film] are bound to create an impression against the accused in the minds of viewing public as cinema is a powerful and effective medium of expression. It reaches a large section of public. Presently, films are not only exhibited in theatres but are also transmitted and relayed through satellite to T.V. sets installed at virtually every home (at para 60).

Here the court follows the line of argument most clearly articulated by the Supreme Court in 1970 in *K.A. Abbas v. Union of*

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<sup>7</sup> *Mushtaq Moosa Tarani v. Government of India*, Bombay High Court, 31 March 2005 at para 55. (Unreported Judgment, on file with author)

*India*<sup>8</sup> in which pre-censorship as applied specifically to cinema was challenged, where it held:

It has been almost universally recognized that the treatment of motion pictures must be different from that of other forms of art and expression. This arises from the instant appeal of the motion picture, its versatility, realism (often surrealism), and its co-ordination of the visual and aural senses. The art of the cameraman, with trick photography, vistavision and three-dimensional representation thrown in, has made the cinema picture more true to life than even the theatre or indeed any other form of representative art. The motion picture is able to stir up emotions more deeply than any other product of art....A person reading a book or other writing or hearing a speech or viewing a painting or sculpture is not so deeply stirred as by seeing a motion picture. Therefore the treatment of the latter on a different footing is also a valid classification.

The Indian judicial opinions seem to mirror the Frankfurt School influenced sociology of Jurgen Habermas when he argues in his epic lament for the cultural logic of early capitalism, *The Structural Transformation of the Public Sphere*, ‘radio, film and television by degrees reduce to a minimum the distance that a reader is forced to maintain toward the printed letter—a distance that required the privacy of the appropriation as much as it made possible the publicity of a rational-critical exchange about what had been read.’ They are ‘more penetrating’ and place the public under ‘tutelage’ having drawn its ‘eyes and ears under their spell,’ depriving it of ‘the opportunity to say something and to disagree’ (1993:170–171).

### THE SEQUENCE OF INJURY

The insidious corollary of the court’s confident pronouncements regarding general popular amnesia about the blasts<sup>9</sup> is the amazing

<sup>8</sup> 1971 SCR (2) 446 at 458

<sup>9</sup> ‘All these depictions will bring back the memories of those blasts once again to the

fact that increasingly the temporal sequence of the blasts has got mixed up in public discourse with that of the anti-Muslim pogrom preceding it. A liberal blog<sup>10</sup> listed instances of respected writers like Pavan Varma and Ashok Banker, among others, blaming the blasts for the pogrom rather than, as it actually happened, the other way around. This is not unrelated to the fact that in the case of the preceding systematic anti-Muslim mass slaughter there have been hardly any criminal prosecutions by the state, but hundreds (mostly Muslims) have been charged in the blasts case. The fundamental religious-communal divide represented by this case is of course an open secret and is omnipresent in the trial court documents of the blasts case, especially in the form of confessions. The court can however choose to 'look' but not 'see' race, gender or religion, as Shoshana Felman has argued calling it a form of 'judicial blindness' in the case of the O J Simpson trial. The traumatic injury, which the trial here tries to compensate for instead boomerangs and the trial itself becomes 'a vehicle for trauma: a vehicle of aggravation of traumatic consequences rather than a means of their containment and of their legal resolution' (Felman 2002:60). This is related to what Felman calls 'its attempt to define legally something that is not reducible to legal concepts' (2002:59). The quandary such a situation presents is expressed by Felman in Hannah Arendt's justification of her interest in the Eichmann trial to its critic and her teacher Karl Jaspers: 'it seems to me to be in the nature of this case that we have no tools to hand except the legal ones with which we have to judge and pass sentence on something that cannot even be adequately represented either in legal terms or in political terms. This is precisely what makes the process itself, namely, the trial, so exciting.' (Felman 2002:109)

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people. By now, as stated above, most of the people, in all probability, remember at the most that these blasts were engineered by one Tiger Memon in association with Dawood Ibrahim as claimed.' *Mushtaq Moosa Tarani v. Government of India*, Bombay High Court, 31 March 2005, at para 55

<sup>10</sup> <http://dcubed.blogspot.com/2006/10/just-as-orwell-predicted.html>

The inevitability as well as impossibility of transfiguring such an event into the contours of a criminal trial is what make such trials momentous as well as traumatic.

Felman says about the O J Simpson trial that ‘the trial showed truth as an abyss between incommensurate ways of looking at the very same facts’ (2002:92). This is exactly what we see in writings about the Bombay blasts, where the over-determination on both sides with regard to the sequence of events cannot be severed from religious identity in contemporary India and is fundamentally ‘abyssal.’ Felman (2002) compares the epistemology of the criminal trial in O J Simpson’s case with Tolstoy’s treatment of an uncannily similar theme in *The Kreutzer Sonata*, which she rather broadly extends to law and literature. While the former tries ‘to throw a bridge over the abyss ... in an attempt to cover or to cover up its bottomlessness’ by ‘codifying it or by subsuming its reality into the classifying logic and into the technical, procedural coherence of the trial’ thus denying ‘the abyssal nature of the abyss.’ The literary text, on the other hand, ‘casts open the abyss so as to let us look, once more, into its depth and see its bottomlessness’ (Felman 2002:95).

#### **BETWEEN LAW AND LITERATURE: THE POLICE STORY**

Many aspects of the case were not balanced in themselves, so the choice was, should we balance them for the sake of balance or should we be honest to the overall film? We opted for the latter. The film moves like a thriller, using the police investigation not just as the driving force but as the protagonist.—Anurag Kashyap, Director, *Black Friday*<sup>11</sup>

The book and the movie *Black Friday* however would not fall into the neat divide between law and literature that Felman works

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<sup>11</sup> Quoted in Chaudhury, *supra*.

with. This is partly because the book and especially the movie here are already legal-cultural artifacts and have to anticipate a legal life (because of censorship) for their products, and indeed their access to the stories they want to narrate is only possible and necessarily mediated through legal documents in the first place. They claim to be and are predominantly based on the story of the prosecution and focus on re-enacting the police investigation. Indeed the only possible access to the story of the blasts in the film is through a legal quagmire. This leads to obvious pitfalls as the High Court judgment points out:

The film is based upon prosecution story. There is obviously another side to the whole episode. Whether that other version should be accepted or not is something which the designated court has to decide. Therefore, under the garb of making a film based on prosecution story and furnishing all details therein, it is not open for the respondents concerned to present a picture which would virtually pronounce the petitioner and others guilty.<sup>12</sup>

When I asked Anurag Kashyap, the director of the film, in a telephone interview, how he justified this, his explanation was that most of the policemen involved in the investigation were awarded President's medals. He stated that in any case he was just presenting the state's story about the blasts, and if that is found to be wrong by the trial judge, it is the state that is wrong and he can't be held responsible.<sup>13</sup> In fact, because the film was not based on any parallel investigation, unlike say the Hollywood film *JFK*, it was contended by the film-makers that it does not try to give any alternative truth

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<sup>12</sup> *Mushtaq Moosa Tarani v. Government of India*, Bombay High Court, 31 March 2005 at para 60 (Unreported Judgment, on file with author)

<sup>13</sup> Telephonic Interview with Anurag Kashyap, 4<sup>th</sup> May 2005

but follows the documents in the public domain, most of which are police documents.

Indeed, the very nature of the ‘adversarial style’ criminal trial as prevalent in India means that it is for the prosecution to prove its case ‘beyond reasonable doubt.’ The defense just has to pick holes in this account to create sufficient doubt and does not have to independently prove anything. It is in the very nature of such a system that most of the material on record will be prosecution documents. Also, this way of reporting crime is routine practice for crime reporters in the city and it is not irrelevant here that S. Hussain Zaidi, the author of the book *Black Friday*, was an experienced crime reporter. Crime reporters rely on the police as their primary informants and a symbiotic working relationship with the police personnel is in the very nature of their jobs. As Thomas Hansen says in his study of the communal violence in nineties’ Bombay, ‘the allegations of police officers are readily accepted and reported by journalists as sufficient proof of the guilt of those killed or held by the police’ (2002:187).

The film begins with the blasts and follows the police in finding leads and suspects. In fact it could be said to be from the point of view of the police. As the police arrest and interrogate the accused and other suspects, the story of the conspiracy behind the blasts unfolds. Besides the police, the only other protagonist’s point of view is that of Badshah Khan, (not his real name) the ‘approver’ in the case. Khan was one of the planters of the bomb in Bombay who thereafter agreed to depose for the prosecution witness in return for clemency for his crimes, making him the principal prosecution witness and the first to depose in the trial. His story is basically told as a narrative of his disenchantment with Tiger Memon, the main conspirator behind the blasts, and his realisation of the futility of such violent reprisals. The film’s plot thus moves like a series of quotation marks: of accounts that sound like confessions and are likely based on them, interspersed with television news coverage

from the time. In my interview with him, Kashyap insisted that the film is directly based on the evidence collected and he introduced ‘file footage’ or re-enactments of such footage only for portions he could not vouch for.<sup>14</sup>

However such a narrative based on confessions gets partially subverted when the film supplements it with a harrowing sequence of torture to extract one such confession. The accused is being made to sign a piece of paper but he cannot even hold a pen as his nails have been hammered into and his hand is all bloody. He is then forced to leave a thumb impression instead but that is even more painful for him and the police just press his thumb on the paper. The thumb impression is thus made in blood and his nail comes off which the policeman brushes aside from the confession document. All through this sequence, the senior police investigator Rakesh Maria is shown as upset and unable to deal with such treatment, dousing water over himself, embodying the liberal face of the police helpless to intercede in such inevitable torture. The open secret of torture thus gets performed as an unsavory evil that is barbaric but not excessive, just necessary, making the audience complicit in it. As John Pemberton sums up his discussion of the openly criminalised functioning of the state apparatuses, particularly the police, in Suharto’s Indonesia:

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<sup>14</sup> Telephone interview with Anurag Kashyap, 4 May 2005. Such footage in the film is interesting for another reason: as a nostalgic evocation of the early nineties Bombay with the new economic policies only recently in place. Private news television was only starting to emerge with now quaint forms like news videos distributed in video cassettes. This form is repeatedly referred to and used in the film. Before the screening of the film in Princeton University at the Davis Center, on 3 May 2005, the director, pointed out that his biggest difficulty in location shooting in Bombay was in avoiding the now ubiquitous mobile phones and the various varieties of luxury cars on the streets, and the huge billboards advertising them: all absent then. That time in the city and the nation is evoked in its familiarity and differences from the contemporary milieu with the relentless logic of the political economic changes making now a different time indeed and globalization, with mobile phones and a rampaging private news media being the most visible symbols of the change, making all that seem so dated and so ‘nineties.’

The secret itself, while generating much talk and many stories, is no longer scandalous. For this is the point where the scandal is not the secret but the apparent fact that everyone knows. ('They all know they are implicated. There is no secret at all.')...With the openness of the secret stretched to the point where it can no longer be enframed as such, where the fact that everyone knows that everyone knows is constantly disclosed, reference points are lost and uncertainties emerge, even within the routines of everyday life (1999: 209).

If everybody knows police investigations are all about extracting confessions through torture, and it is routine and unexceptional, even necessary, then the line between its legality and illegality becomes increasingly blurred and the reliability and value of such an investigation uncertain.<sup>15</sup>

Such uncertainties do emerge in the film along with the otherwise heroic portrayal of the police personnel involved in the investigation and the narrative's faithful reliance on bloody documents like confessions. The film thus manages to supplement and unsettle its primary reliance on the police documents, though while simultaneously trying to contain these uncertainties. Indeed, this is still so after half of the above sequence was cut by the censors, and another scene showing the violence of police interrogative methods was deleted. The book, on the other hand, talks of the excesses of the police investigation relatively freely—e.g. about the large numbers of Muslims indiscriminately detained as suspects while the detentions were not recorded as official arrests, the widespread practice of family members of suspects being detained in order to pressurize them to surrender or confess, many instances of police being heavily bribed to delay or avoid arrests and of course, torture in extracting confessions. But the film, of course had to anticipate a much more stringent censorship regime, and therefore does not really deal with

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<sup>15</sup> It is noteworthy here that the Indian government has refused to ratify any international convention against torture

these issues. Indeed the police had intervened in the High Court while Tarani's petition was pending, to remove the one sequence of torture mentioned above, in addition to the Censor's cuts.

### REPRESENTING THE BOMBAY MUSLIM

In order to represent of the fundamental communal abyss that the blasts and the trial reveal, the film repeatedly depicts the Muslim areas of Bombay where the accused live which are already ghettos and became particularly so after the 1992–93 communal 'riots'.<sup>16</sup> The very first scene in the film of entering Muhammad Ali Road, the most iconic area of Muslim Bombay has *Qawwali* music playing in the background. While *Qawwali* is a Sufi form universally popular in the subcontinent, it continues to be marked as 'Muslim' in film, and the director deploys this to characterize the area. The Tiger Memon character is presented as having a stereotypically 'Muslim' beard, something that his photograph in the book version does not have, instance. It is not irrelevant here that Kashyap wanted to cast Naseeruddin Shah and Irfaan Khan, two very well-known Muslim actors in Hindi cinema, in the principal roles of Tiger Memon and Badshah Khan, the two key figures involved in the execution of the blasts as shown in the film. However, both turned it down, according to Kashyap, because 'we were making the film during the Gujarat riots and both actors were uncomfortable playing Muslim terrorists'.<sup>17</sup> Eventually Hindu actors played both these roles. The film was made during one of the lowest points for the Muslim community in India, after the Gujarat riots of 2002 in which more than a thousand Muslims were killed in one of the most brazen state-sponsored pogroms since Partition. In such a climate, the film apparently tries

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<sup>16</sup> On the post-riot forced Muslim ghettoisation in Bombay, see Hansen 2002:160–193.

<sup>17</sup> Talk by Anurag Kashyap at Princeton University, 3 May 2005.

to echo a reconciliative vein by beginning and ending with ‘An eye for an eye makes the whole world blind,’ a quote which is attributed to Gandhi. This point has been repeated by the filmmakers in court and by the director in various interviews, drawing attention to the political message of the film. A greater part of the film, however, deals with the unfolding of a conspiracy to bomb various parts of the city by conspicuously Muslim looking people, living in Muslim looking places, making familiar ‘Muslim fundamentalist’ noises about taking a spectacular revenge for the violence inflicted on their community, for which help from the Middle-east and Pakistani groups is shown to be taken, all of these of course based on the prosecution evidence in the trial. Dubai, where Memon and Dawod Ibrahim operated from is marked as the ‘village,’ the place of return and origin for the Muslim underbelly of the city. Only at the end, in the last chapter of the film entitled ‘what is past is prologue’, do we see file footage of the violent Hindu right-wing campaign leading up to and following the demolition of the Babri mosque on 6 December 1992 which culminated in the massive pogrom in Bombay in January 2003.<sup>18</sup> We are finally given a basis to understand Muslim rage and why they did what they did, and in this sense it does exceed the possibilities of the criminal trial in terms of making a reconciliative move, but all of it is done in terms that are fundamentally ‘othered.’

Shahid Amin, while examining the classic Nehruvian nation-building axiom of ‘unity in diversity’ in India and the billboard advertisements and calendar art that went along with it, points out

<sup>18</sup> The movie, unlike the book, proceeds in reverse chronological order. According to Kashyap, ‘From the start, it was a very difficult and bewildering project. There were so many strands, so many characters, so many motivations, it just would not fall into place. One day Arindam [the producer] suggested, why don’t you work backwards to where it all began? Suddenly, it clicked. We started the film at a point three days before the blasts—when one of the accused allegedly tipped the police off but no one believed him—and worked backwards to the Babri demolition. I had the script ready in a week.’ See Chaudhury, *supra*.

that the Muslim figure in them used to be represented, bizarrely enough, by a Turkish fez cap that hardly anybody in India wore and of course, a beard (see Amin 2005:1–35). The national integration poster thus tried to capture ‘innate’ differences and ended up with stereotypical projections. Its widespread dissemination and acceptance led one to recognize and interpret difference largely through hegemonic visual signs. As Amin sums it up:

Within this worldview, a Muslim should either be stereotypically so, or he should be found only within a particular locality—in his habitat. This special area is normally around the major mosque of the town, which can then be pejoratively deemed a ghetto ... No diversity is countenanced unless ‘they’ appear different to ‘us’ in the way ‘we’ expect them to (2005:9).

Such a representational logic runs through the film as well. Thomas Hansen has noted that the mythology of mafia gangs and crime, as epitomized by the figure of Dawood Ibrahim, (who is considered the mastermind behind the blasts), has come into being since the 1970s as ‘a metonym of Bombay’s Muslim world.’ (2002:187) The process by which this has emerged can be understood through looking at the city of Bombay as ‘a site of cross-mediation,’ of ‘three sites of representation, narration and publicity,’ as Arjun Appadurai has suggested. The first is the site of the print media in Bombay, the seconds being the courts especially as observed by the print media and the third being the film world.<sup>19</sup> An excellent example of such a process is a confession of a blast accused Salim Kutta which reads ‘like a Bollywood potboiler’, according to the crime reporter and the author of the book *Black Friday* (Zaidi 2002: 258). In fact, according to this confession:

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<sup>19</sup> Arjun Appadurai, ‘Crime Noir: The Underworld of Film in Millennial Mumbai,’ (Unpublished), paper presented at Columbia University, Mellon-Sawyer, March 14, 2002.

In the late 1980s, he [Kutta] and some friends started the Arjun gang, inspired by the film of the same name where Sunny Deol [a well known Hindi film star] and other unemployed youths, fundamentally honest and yearning to make sense of their lives, are unwittingly drawn to crime when they fight injustice (2002:258).

Another example of such cross-mediation is the rumour, mentioned by Zaidi, that the blasts were inspired by a similar series of serial blasts in the movie *Angaar* ('Inferno') released in 1992, a few months prior to the blasts. *Black Friday* too is a result of precisely such a triangular cross-mediation.

## CONCLUSION: THE PUBLIC AND THE COURT

The method of administering justice prevalent in courts is that a conclusion to be reached in a case will be induced only by evidence and argument in open court and not by outside influence whether of private talk or public print.—*Lakhan Singh v. Balbir Singh*, Allahabad High Court, AIR 1953 All 342 at para 7.

A disturbing element has been thrown into the determination, which it would be the wise policy of the law to exclude.—*Mushtaq Moosa Tarani v. Government of India*, Bombay High Court, 31 March 2005 at para 50.

The judgment of the Bombay High Court, injuncting the film's release till the trial court's judgment in the blasts case is given, is primarily based on the specter of a cinematic public interfering with the judicial process. The judgment proceeds with the assumption that the cinematic form will ensure that large sections of its public will get convinced of the guilt of the accused. While this does not mean that the trial judge has to agree with the film's version of events and is indeed supposed to be unaffected by 'extraneous publications' because of his judicial training, there can be no guarantee that the resulting public discussion and comments on the case will have no impact on

the judge. The judgment rhetorically asks, ‘In spite of this depiction if the petitioner and the other accused are acquitted, will it not lead to comments on the judge and will it not be a factor which may weigh on his mind.’<sup>20</sup> The court can endeavour to remain wholly uninfluenced by such publicity, but the public might not necessarily believe that the court was unaffected by it. Such an eventuality would be a ‘trial by media’ that would tend to interfere with a judicial proceeding and would therefore be ‘contempt of court.’ Because, as the legal cliché that the judgment concludes with goes, ‘it is just and necessary that justice must not merely be done but must also appear to have been done.’<sup>21</sup> Whether the trial judge was actually influenced by the film or not, public opinion formed by the film would definitely influence the course of justice.<sup>22</sup>

The court, while it is expected to remain unaffected by public opinion and go strictly by evidence, clearly is wary of a situation of having to deal with an adverse public opinion and would be rather more comfortable with an uninformed public. It claims the rhetoric of immediacy and presence in emphasizing the value of an open trial based entirely on evidence and testimony before it. It denies the already textualised and overdetermined nature of trials like that of the Bombay blasts, and tries to maintain the fantasy of an unmediated trial. At the same time, the court claims to have access to the contours of public memory (e.g. the High Court knows what the general public remembers about the blasts) and somehow

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<sup>20</sup> *Mushtaq Moosa Tarani v. Government of India*, Bombay High Court, 31 March 2005 at para 60 (Unreported Judgment, on file with author)

<sup>21</sup> *Ibid.*, para 66.

<sup>22</sup> It is noteworthy here that in *Structural Transformation of the Public Sphere*, Habermas while talking of the ascendancy of public opinion for legislative legitimacy since Bentham and Burke, also mentions, ‘At about the same time trial procedures in court were made public too. Even the independent judiciary needed checking by public opinion; indeed, its independence from the executive as well as from private interference seemed to be guaranteed only in the medium of a critical public ready to swing into action.’ (1993: 83–84)

knows that the public is susceptible to cinematic influence. It can even claim to speak for the public, in sentencing situations, for instance pronouncing infamously in yet another ‘terrorist’ case that ‘the collective conscience of the society will only be satisfied if the capital punishment is awarded to the offender.’<sup>23</sup> Such unmediated access to the public seems to go hand in hand with its disavowal of publicity.

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<sup>23</sup> *State v. Navjot Sandhu*, AIR 2005 SC 3820

