

TERROR TRIALS: LIFE AND LAW IN DELHI'S COURTS BY MAYUR SURESH

*Lisa Hajjar**

Mayur Suresh has distilled the dissonance in Delhi's courts, where terrorism cases are prosecuted, into a crystal-clear study of the workings of law and its effect on the lives of terror-accused people. *Terror Trials* is a theoretically sophisticated ethnography in which insights about the life of law and the making of legal meanings and judicial truths are gleaned from a vantage point that rarely is centred in socio-legal studies. Suresh foregrounds legal procedures and technicalities, which he uses as an analytical lens to structure the book. Each chapter covers a distinct procedural aspect of terror trials, narrated through the stories of individuals whose experiences illuminate that specific technicality. The originality of this approach gives readers a fresh perspective on well-established understandings of the law as simultaneously an extension of politics and society and a semi-autonomous domain.

Suresh spent years in the Tis Hazari court complex following fourteen cases. His ethnographic research experience, with largely unfettered access, and his arguments about how these courts do their work undermine prevailing views that terrorism constitutes an “exceptional” crime. In the Indian context, terror trials take place in regular criminal courts set in dense urban settings where the accused can actively participate in their own cases.

While India's anti-terrorism statute may appear on paper to be a fearsome tool of state repression, when its efficacy is examined through the legal processes in terror trials, as Suresh does, its power is revealed to be slippery, vulnerable, and negotiable. On paper, the statute reflects the state's political aims to cast a wide net over “suspicious types” of people—religious and ethnic minorities (mainly Muslims and Dalits) as well as political dissidents (especially communists and Kashmiris who advocate for independence) and critics (journalists and human rights advocates who expose and condemn official wrongdoing and repressive policies). This statutory power is enabled through provisions to prosecute conspiracy and material support as terrorism crimes.

These types of charges, in India as elsewhere, are notoriously malleable because they lend themselves so easily to the discriminatory targeting of members of disfavored communities by branding them “terrorists.” The statute also enshrines the state's authoritarian ambitions by vesting prosecutors—the arms of the state in courts—with special powers intended to intensify the helplessness of the accused; these powers are

* Lisa Hajjar is a professor of Sociology at the University of California – Santa Barbara. Her publications include *Courting Conflict: The Israeli Military Court System in the West Bank and Gaza* (2005), *Torture: A Sociology of Violence and Human Rights* (2013), and *The War in Court: Inside the Long Fight against Torture* (2022).

Mayur Suresh, *Terror Trials: Life and Law in Delhi's Courts* (Fordham University Press, 2023).

the special procedures and evidentiary rules that defy rule-of-law norms, thus enhancing the state's power to repress through the legitimization of legal exception. Another advantage, which is procedural rather than strictly statutory, is the state's prerogative—this one exercised by police and prison authorities—to hold the accused in pre-trial detention, sometimes for years, as their cases wend through the system. And yet, if the strength of the statute were evaluated by its capacity to achieve convictions at trial, it is weak because such convictions are rare. *Terror Trials* illustrates how legal technicalities can make the force and enforcement of the law so vulnerable and negotiable. However, the legal process itself serves the state's punitive goals by justifying the extended imprisonment of people who are charged with terrorism crimes but have not been convicted. One big takeaway from the book is that the process is the punishment.

The custodial dimension begins with arrest and is an adjacent component of the legal process. But it is integral to the experiences of terror-accused because of the difficulties—and for the poor, impossibilities—of being released on bail while awaiting trial. It also shapes their experiences because conditions of pre-trial detention are rife with torture and dehumanization.

Suresh addresses the custodial dimension in Chapter 1 by analyzing what he terms “custodial intimacy.” In India as elsewhere, people subject to long-term detention and interrogational violence experience intimate—meaning interpersonal—contact with their custodians. Indeed, the two defining aspects of torture that distinguish it from all other forms of violence are the custodial context in which it occurs and the interpersonal nature of applied violence by individual interrogators to cause physical pain and/or psychological suffering to those individuals against whom those techniques are applied. Protracted detention means that custodians and incarcerated people become part of a common environment, albeit with highly different statuses and rights. They get to know one another through prolonged proximity, two-way exposure, and routinized interactions. The legal technicalities that shape the nature of this “togetherness” include the rules and rulings that govern the (in)availability of bail and the institutionalized discretion and monopoly police have over the investigation of terrorism allegations.

One feature of custodial intimacy that Suresh explores is the power of rumors. His interlocutors' custodians were a constant presence in their minds, made manifest through the stories—fact-based and fictitious—that circulated in jail. He analyzes rumors as a mode through which the power of the police is incarnated. These rumors easily leach into conspiracy theories, inciting terror-accused to experience anxieties about their individual custodians' fantastical powers or monstrous motives.

In Chapter 2, Suresh focuses on legal language to probe how terror-accused come to acquire knowledge about the law through their exposure to it in courts and jails. The chapter begins with observations that would ring true to any scholar who focuses on people's first encounters with a criminal legal system. They will hear lawyers and judges saying things that are incomprehensible because they are speaking the rarified language of law. The key point of the chapter, however, is to illuminate the agency of the accused as they come to “know” the law through prolonged exposure, and how they instrumentalize this knowledge by using the law to their own advantage, which Suresh terms “recycled legality.” This process of learning law is an active and often collective enterprise; in jails, people borrow legal books from libraries, transcribe and translate documents relating to their cases, file applications, and consult with one another for advice about legal strategies.

Suresh tells the story of a man he calls Qayoom to illustrate the broader theme of “doing things with legal language.” Qayoom was accused of being part of a conspiracy to perpetrate bombings in Delhi. He and his accused co-conspirators studied the law relevant to the case against them, including the granular details of legal procedure. They discovered that the police had fabricated evidence during the investigation. The accused used this knowledge to file applications and even to question prosecution witnesses in court. Their goal was to persuade the judge that the law had been violated in order to undermine the prosecution's case against them. They succeeded because the charges were dismissed. They had put the state on trial and won.

The relationship between the law and the state is the focus of Chapter 3. The main objective is to show how the law can be—or be made—a trap for the state. The potential vulnerability of the state to its own laws exemplifies the law's functional semi-autonomy. From the vantage point of his interlocutors, Suresh explains that they see and understand the law-state relationship in several ways: law is something the state says; it signifies state power to arrest, prosecute, and imprison; and it is a source of potential vulnerability if the state fails to adhere to its own laws. Extending the theme of “doing things with legal language” in the previous chapter, Suresh uses the story of people he names Baruch and Kumar who are accused of being members of the Communist Party. They discovered and then argued that the state had failed to follow its own laws in charging them with terror crimes. In essence, by identifying a procedural defect, they were creating legal meaning that the case against them was illegitimate by emphasizing the legitimacy of the law and the significance of its violation. The result was that the terrorism charges were dismissed. Yet when two other terror-accused, whom Suresh calls Keshav and Sonia Shukla, tried to exploit the defect that Baruch and Kumar had exposed, they failed because the state—in the form of the prosecution—leveraged its

power against the judge and the accused by threatening to refile charges, thereby making all the years and money already spent on the trial a waste.

In Chapters 4 and 5, Suresh delves into the world of “the file.” In the Indian legal system, files play a central role because everything about a case must be documented, including charges, arrest procedures, source of evidence, statements by witnesses, judicial rulings, and utterances in court that become transcripts. Documents must support and be supported by other documents, and their validity is subject to technical practices of certification. The circularity of authentication is a form of “referential truth-telling.” For example, in a case file, the memos that police produce about their investigative process must be validated by testimony in court which is documented in the transcript, and each item must be certified. Suresh uses the term “hypertext” to describe the capacity of the file to fabricate—a word that can mean both “make” and “fake”—judicial “realities.” “Hypertextual” can also be used to describe the state’s capacity to fabricate different versions of reality through the file and the certification process.

To illustrate the power of paper truths, one of the stories Suresh tells is of a woman from Kashmir, Masooda Parveen, whose “terrorist” husband accidentally killed himself when a bomb in his possession exploded, or so the official account claims. Parveen challenged this official account as false and sued the army and the police for compensation and damages for murdering her husband. In response to her petition, the army and the police both submitted documents validating the general account that the husband was the victim of his own booby trap. But there were contradictions in the documents of the two state agencies, notably the police memo ascribed the time that the husband was arrested to be after the time the army memo said he had died. Yet Parveen lost because, as an ordinary citizen, she was unable to fabricate files containing the truth of what actually happened: her husband was arrested, tortured to death, and then bombs were strapped to his body to deflect accountability for his death in custody.

Throughout the book, but especially in Chapter 6, Suresh makes good on his goal to bring the human voice back into the law. His discourse analysis of petitions written by terror-accused discerns pleadings and demands that reveal human vulnerabilities, passions, pains, and grievances. He has the perfect subject to illustrate this range: a man he calls Mohsin who spent fourteen years in prison before being acquitted. Despite Mohsin’s ultimate release, he lives a ruined life. Mohsin was a prolific petition-writer even after his release, and he saved copies of all of them in a trunk. The collection of petitions that Mohsin shares with Suresh contain some that reflect his hopes and desires for justice, some that rail against those who have wronged him through false accusations, and some that lament his ruination.

Suresh gleans three ways to understand the purposes of petition writing from the perspectives of their terror-accused authors. One purpose is to make demands on the law in that the writers expect or at least hope for replies. Another is to regard petitions as a mode of self-writing to present an account of oneself for oneself, despite that petitions are intended for another (the recipient individual or agency). The third, so well demonstrated in the case of Mohsin, is to see petition-writing as an act of mourning.

The book concludes with a reflection on what it means that the vast majority of terrorism cases end in acquittals. So much time, money, energy, and paper is expended in a system that, on the surface, fails miserably in its *raison d'être* which is to obtain convictions. The people accused by the state are caught up in this system whose real purpose is to immiserate and repress them. Yet, as Suresh amply demonstrates, through the consequences of accusations and resultant legal procedures, they live, learn, use, speak, and fight the law.

Although *Terror Trials* is deeply grounded in this specific Indian context, it contains many invaluable insights and theoretical framings that deserve a wide readership. It holds empirical lessons about the workings of security law that can be adopted to understand terror trials elsewhere. It also is a model of refined scholarly writing, and as legal ethnography, it is a methodological masterpiece.