

Citizens for Justice and Peace

## **Gujarat Genocide 2002**

**Long wait for justice**

### **MAJOR TRIALS**



September 12, 2011

#### **Press Release**

Victim survivors and Citizens for Justice and Peace welcome the judgement passed by the Honourable Supreme Court in the Zakia Ahsan Jafri & Citizens for Justice and Peace SLP 1088/2008 today. The order is annexed to this press release.

While the prayers in our petition was for the registration of an FIR against chief minister Narendra Modi and 61 others and transfer of the investigations to CBI, the Order of the Court goes far beyond this and in fact directs the SIT to, under Section 173(2) chargesheet all accused on the basis of our complaint and submit all reports of the SC-driven investigation including the SIT reports, the Amicus Raju Ramachandran reports to the Magistrate's Court hearing the Gulberg trial. Moreover as paras 8 and 9 of the Order excerpted below show, we as complainants have been given full locus to be heard and make our case whether the SIT decides to drop some of the accused or if the Magistrate decides to file a closure report. The victim survivors and CJP hope that the SIT will now undertake its job professionally.

The CJP would also like to take this opportunity to express gratitude to all its

advocates and lawyers who have appeared *pro bono* in this and other 2002 related matters.

**SC Order in SLP 1088/2011 in Zakia Ahsan Jafri & Citizens for Justice and Peace”**

**Excerpts:**

“.....7. The learned Amicus Curiae has now submitted his final report dated 25<sup>th</sup> July, 2011. In light of the above conspectus and the report of the learned Amicus Curiae, the question for determination is the future course of action in the matter.

“...8. We are of the opinion that bearing in mind the scheme of Chapter XII of the Code, once the investigation has been conducted and completed by the SIT, in terms of the orders passed by this Court from time to time, there is no course available in law, save and except to forward the final report under Section 173 (2) of the Code to the Court empowered to take cognizance of the offence alleged. As observed by a three-Judge Bench of this Court in ***M.C. Mehta (Taj Corridor Scam) Vs. Union of India & Ors.***<sup>1</sup>, in cases monitored by this Court, it is concerned with ensuring proper and honest performance of its duty by the investigating agency and not with the merits of the accusations in investigation, which are to be determined at the trial on the filing of the charge-sheet in the competent Court, according to the ordinary procedure prescribed by law.

“....9. Accordingly, we direct the Chairman, SIT to forward a final report, along with the entire material collected by the SIT, to the Court which had taken cognizance of Crime Report No.67 of 2002, as required under Section 173(2) of the Code. Before submission of its report, it will be open to the SIT to obtain from the Amicus Curiae copies of his reports submitted to this Court. The said Court will deal with the matter in accordance with law relating to the trial of the accused, named in the report/charge-sheet, including matters falling within the ambit and scope of Section 173(8) of the Code. However, at this juncture, we deem it necessary to emphasise that if for any stated reason the SIT opines in its report, to be submitted in terms of this order, that there is no sufficient evidence or <sup>1</sup> (2007) 1 SCC 110 reasonable grounds for proceeding against any person named in the complaint, dated 8<sup>th</sup> June 2006, before taking a final decision on such ‘closure’ report, the Court shall issue notice to the complainant and make available to her copies of the statements of the witnesses, other related documents and the investigation report strictly in accordance with law as enunciated by this Court in ***Bhagwant Singh Vs. Commissioner of Police & Anr.***<sup>2</sup>. For the sake of ready reference, we may note that in the said decision, it has been held that in a case where the Magistrate to whom a report is forwarded under Section 173(2)(i) of the Code, decides not to take cognizance of the offence and to drop the proceedings or takes a view that there is no sufficient ground for proceeding against some of the persons mentioned in the FIR, the Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report.”

The current special leave petition SLP 1088/2008 that has resulted in today’s detailed directions from the Hon’ble Supreme Court was the result of a detailed criminal complaint filed by complainant and petitioner No 1, Smt

Zakia Ahsan Jafri assisted by Petitioner No. 2, the Citizens for Justice and Peace (CJP), Mumbai on June 8, 2011. Thus was a historic first ever complaint following mass communal violence unleashed against a minority community. The Complaint and SLP can be accessed at [www.cjponline.org](http://www.cjponline.org). It leveled specific and detailed allegations against and arraigned as accused the Chief Minister, and eleven of his Cabinet Ministers, three sitting M.L.As., three members of the Ruling Party, three office bearers and three members of an extremist right wing organization, and 38 high ranking police officers and bureaucrats (including IPS and IAS officers) starting from the Director General of Police and the Chief Secretary of the Government of Gujarat. None of the 63 persons named as the accused in Petitioner No.1's complaint figures as an accused in any of the FIRs/charge sheets that formed the subject matter of the various Session Trials regarding the said riots whose proceedings have been stayed by this Hon'ble Court. Petitioner No.1's complaint runs to 128 pages and is supported by documentation running to over 2000 pages which were sent along with the complaint. Petitioner No.1's complaint was made possible only because of the said documentation being compiled and afforded to her by Petitioner No.2. The current petition has sought the lodging of a F.I.R. and registration of a case against the said 63 accused for offences punishable under Section 302 r/w Section 120-B, Section 193 r/w Sections 114, 186, 153-A and 187 I.P.C. The complaint was addressed to "Mr. P.C. Pande, The Director General of Police of Gujarat", who also happens to be accused No.29 in the said complaint viz. "P.C. Pande, Former Commissioner of Police, Ahmedabad, then on deputation to the Central Bureau of

Investigation, New Delhi; now D.G.P., Gujarat”.

**The brief facts leading to the present appeal are as under:-**

- (a) The petitioner no. 1 has lost her husband who happened to be Ex-Member Of Parliament Mr. Ahsan Jafri in the 'conspiracy offence' that occurred at least between February 27, 2002 and September 2002, specifically on February 28, 2002. The husband of the petitioner no. 1 was brutally killed along with at least sixty eight others on February 28, 2002 by the miscreants by surrounding the Gulberg Society where the petitioner no. 1 lived along with her family at that time. The incident was one of the three dozen mass carnage cases that occurred over 19 districts of Gujarat. In the space of five days 2,500 lives were lost, 300 women were victims of brute sexual violence, more than 18,000 homes burnt down and broken and property and businesses worth Rs 4,000 crores destroyed. Over 270 Masjids and Dargahs, associated with the worship and culture of the minority community also fell victim in this genocidal carnage. The petitioners have attached **two maps** that graphically illustrate the scale and intensity of the state sponsored genocide. The petitioners state that the police registered a FIR being CR No. I 67 of 2002 with Meghaninagar Police Station, Ahmedabad related to the specific incident were 70 of the 2,500 were slaughtered at Gulberg society but there is no composite FIR relating to the vast extent and serial crimes committed by state functionaries in Gujarat. This individual case, the Gulberg society

case, is committed to the court of Sessions, Ahmedabad but the trial has been stayed by the Hon'ble Supreme Court on November 21, 2002. The present petitioner no. 1 is not the complainant in the aforementioned FIR.

In this historic petition, Zakia Ahsan Jafri and CJP have obtained and attached certain documented material to show that the offences occurred during the period mentioned and were aided, abetted and conspired to by the co-accused persons involved in the mass carnage and masterminded by the chief minister Shri Narendra Modi himself. Further the serial offences by persons in positions of power and responsibility, aided by top brass in the administration and the police shook at the very foundations of Constitutional Governance. Over 1,68,000 were turned by a cynical regime into refugees in their own land, overnight. Considering the gravity of the offences and the danger to public order and security if mass murderers and conspirators are allowed to go scot free, petitioner no.1 therefore sought to register the First Information Report against the accused named in the FIR dtd. June 8, 2006 FIR for the offences punishable u/s 302 r/w 120-B, of the Indian penal Code with sections 193 r/w 114 IPC, 186 & 153 A, 186, 187 of the Indian Penal Code and u/s Section 6 of the Commission of Inquiry Act; The Gujarat Police Act and The Protection of Human Rights Act [PHRA], 1991. To the petition was annexed over 2,000 pages of substantive evidence obtained in certified copies from the Nanavaty

Shah Commission. These include affidavits of serving and retired police officers, including prominently former Director General of Police, Gujarat, Gujarat and serving senior police officer Rahul Sharma. Petitioners No 2 CJP analysed in detail the phone call records submitted before the Nanavty Shah Commission and filed these in the present proceedings before the Hon'ble Supreme Court in July-August 2011. This was after it was felt that the SIT had not given these and other documents sufficient consideration. These may be accessed at [www.cjponline.org](http://www.cjponline.org).

Some of the key issues raised in the Petition are:

- (a) Why no minutes of the meetings held by the CM and other senior officers for review of the situation from February 27, 2002, onwards were prepared and circulated to the concerned officials?
- (b) Why dead bodies of the Godhra train fire victims were paraded through the streets of Ahmedabad city and that too when over 50 % of the deceased persons belonged to places out side Ahmedabad city and a few dead bodies were not even identified at that juncture ?
- (c) Did CP, Ahmedabad (PC Pande) or DGP, Gujarat (K Chakravarty) report to CM or higher officers about the possible adverse repercussions on law and order about parading of dead bodies?
- (d) Why was no preventive action against communal elements taken on February 27/28, 2000, even after the announcement of Bandh call by the Sangh Parivar on February 27, 2000?
- (e) Why was the Communal Riot scheme was not put into operation

in relevant areas, from February 27, 2002, evening onwards?

(f) Why was no prompt and effective action against the rioters by the officers of the rank of DySP and above, particularly in Ahmedabad city (nearly 40 of them) and Vadodara city (nearly 30), who were having striking forces of additional policemen moving with them?

(g) Why was no action by nearly 100 police mobiles on the move in Ahmedabad city and similarly in Vadodara city against crowds which congregated in small numbers in the morning of February 28, 2002 onwards?

(h) Why was no action taken, when the enforcers of the Bandh indulged in traffic disturbance and petty nuisance, more for testing the mood and strategy of police, on the morning of February 28, 2002?

(i) Why was there an inordinate delay on the imposition of curfew, particularly in Ahmedabad city? (In Ahmedabad city curfew was imposed as late as 13.00 hrs on February 28, 2002)

(j) Despite regulations, why there was no arrangement for videography of the violent mobs?

(k) Why police failed to videograph mobs, while electronic media succeeded? Was there any constraint from higher authorities?

(l) Why was no effective action by policemen in static points and by mobile patrolling groups, both by vehicles and on foot, against rioters from February 27, 2002, evening onwards?

(m) Why was there such delayed response in distress calls from prominent Muslim citizens, like Ahsan Jafri, (Ex.MP), despite their

contacting the Chief Secretary, the DGP, the CP Ahmedabad city, etc.

(n) Why were there higher casualties of police firing and riots among the Muslims communities?

(o) Why were the instructions in the compilation of Circulars captioned "Communal Peace", issued to all District Magistrates and police officers in the rank of SPs and above not implemented?

(p) Why "Instructions to deal with communal riots (strategy and approach)" prepared by Shri Z. S. Saiyed, IPS Retd., Officer on Special Duty and forwarded to all executive police officers for strict implementation, vide DGP, K.V.Joseph's, No. SB / 44 / OSD / 1175, dtd. 19.11.1977, had not been implemented?

(q) Why no monitoring of the implementation of instructions issued by the Chief Secretary, Home Department, DGP and other higher officers, from February 28, 2002 onwards ?

(r) Why no action against vernacular press publishing communally inciting news and articles, despite proposals from SP Bhavnagar, CP Ahmedabad and ADGP (Int.), Sreekumar? Please note that ADGP (Int.), Sreekumar had even presented one of such reports as an exhibit to the Nanavati Commission, on August 31, 2004, during his cross-examination?

(s) Why no action or enquiry against police officers, to date, for their alleged failure to record FIRs and provide proper response to the complaints of riot victims, mostly minorities, though this matter was reported graphically and repeatedly by ADGP (Int.), R.B.Sreekumar, in



his reports to Govt. dtd. (1) April 24, 2002, (2) June 15, 2002, (3) August 20, 2002 and (4) August 28, 2002, etc.?

(t) Why no action or enquiry against officers of the Executive Magistracy, particularly, the District Magistrates of the Districts, who failed to initiate prompt action against rioters, particularly, from February 27, 2002 to March 4, 2002? Similarly, why no action or enquiry against the DM and his staff for recommending pro BJP, VHP advocates for appointment as Public Prosecutors, to present cases against Hindu rioters ?

(u) Why no action on Supervisory Officers, i.e. from Supdt. of Police of Districts, Range IGs / DIGs, Commissioners of Police and the DGP, who violated Rules 24, 134, 135 and 240 of Gujarat Police Manual, Vol. III, by not properly supervising investigation of serious riot-related crimes and thereby committing culpable omission and grave misconduct ?

(v) Why no action on the supervisory officers i.e. the Range IG, Vadodara Range and CP Vadodara, who had done the misconduct of negligent supervision of Bilkis Banu and Best Bakery cases, whose trials had been transferred by the Hon'ble Supreme Court to the Maharashtra State?

XVII. The specific and sharp queries that this FIR addresses are:

[a] There are some State Intelligence Reports of a VHP meeting in Ahmedabad around 4 p.m on February 27, 2002. Who attended this meeting? Were any elected members of the Gujarat legislature, and

the state cabinet present?

[b] Why were there no minutes of the meetings held by the CM and other senior officers for review of the situation from February 27, 2002, onwards prepared and circulated to the concerned?

[c] Why are there no copies of such minutes, if any existed, were not presented to the Nanavati-Shah Commission of Inquiry?

[d] Why were the dead bodies of Godhra train fire victims brought in a motor cavalcade to Ahmedabad despite the local administration advising otherwise, paraded through the streets of Ahmedabad city and that too when many of the deceased persons belonged to places out side Ahmedabad city and a few dead bodies were not even identified at that juncture ?

[e] Did CP or DGP report to CM or higher officers, in writing, about the possible adverse repercussions on law and order about parading of dead bodies ?In case any such letters were sent to higher authorities, why these were not informed to the Nanavati-Shah Commission ?

[f] Why was no preventive action against communal elements on February 27/28, 2000 strictly enforced and taken, even after the announcement of Bandh call by the Sangh Parivar on February 27, 2002?

[g] Why the Communal Riot scheme was not put into operation in relevant areas, from February 27, 2002, evening onwards?

[h] Why was no prompt and effective action against the rioters by the officers of the rank of Dyes and above, particularly in Ahmedabad

city (nearly 40 of them) and Vadodara city (nearly 30), who were having striking forces of additional policemen moving with them?

[i] Why was no action taken by nearly 100 police mobiles in Ahmedabad city and similarly in Vadodara city against crowds which congregated in small numbers in the morning of February 28, 2002?

[j] Why was no action taken when the enforcers of the Bandh indulged in traffic disturbance and petty nuisance, more for testing the mood and strategy of police, in the morning of February 28, 2002?

[k] Why was there such preposterous delay in the imposition of curfew, particularly in Ahmedabad city? In Ahmedabad city curfew was imposed as late as 13.00 hrs on February 28, 2002?

[l] When was curfew imposed in different parts of Gujarat on February 28, 2002?

[m] Despite regulations, why there was no arrangement for videography of the violent mobs in all districts? Why police failed to videograph mobs, while electronic media succeeded? Was there any constraint from higher authorities?

[n] Why was there no effective action by policemen in static points and by mobile patrolling groups, both by vehicles and on foot, against rioters from February 27, 2002, evening onwards?

[o] Why was there such a delayed response in distress calls from prominent Muslim citizens, like Ahsan Jafri, (Ex.MP), despite their contacting the Chief Secretary, the DGP, the CP Ahmedabad city, etc.

[p] Why were there more casualties of police firing and riots among

the Muslims?

[q] Why were the instructions in the compilation of Circulars captioned "Communal Peace", issued to all District Magistrates and police officers in the rank of SPs and above were not implemented?

[r] Why were the "Instructions to deal with communal riots (strategy and approach)" prepared by Shri Z.S.Saiyed, IPS Retd., Officer on Special Duty and forwarded to all executive police officers for strict implementation, vide DGP, K.V.Joseph's, letter No. SB / 44 / OSD / 1175, dtd. November 19, 1977, not been implemented?

[s] Why was there no monitoring of the implementation of instructions issued by the Chief Secretary, Home Department, DGP and other higher officers, from February 28, 2002 onwards?

[t] Why was and has then and has not been since, no action against vernacular press publishing communally inciting news and articles, despite proposals from SP Bhavnagar, CP Ahmedabad and ADGP (Int.), Sreekumar? Please note that ADGP (Int.), Sreekumar had even presented one of such reports as an exhibit to the Nanavati Commission, on August 31, 2004, during his cross-examination?

[u] Why was no action taken or any enquiry held against police officers for their alleged failure to record FIRs and provide proper response to the complaints of riot victims, mostly minorities, though this matter was reported graphically and repeatedly by ADGP (Int.), R.B. Sreekumar, in his reports to Govt. dtd. (1) April 24, 2002, (2) June 15, 2002, (3) August 20, 2002 and (4) August 28, 2002, etc.?

[v] Why was no action taken or enquiry held against officers of the Executive Magistracy, particularly, the District Magistrates of the Districts, who failed to initiate prompt action against rioters, particularly, from February 27, 2002 to March 4, 2002? Similarly, why no action or enquiry against the DM and his staff for recommending pro BJP, VHP advocates for appointment as Public Prosecutors, to present cases against Hindu rioters ?

[w] Why was no action taken against Supervisory Officers, i.e. from Supdt. of Police of Districts, Range IGs / DIGs, Commissioners of Police and the DGP, who violated Rules 24, 134, 135 and 240 of Gujarat Police Manual, Vol. III, by not properly supervising investigation of serious riot-related crimes and thereby committing culpable omission and grave misconduct ?

[x] Why was no action taken on the supervisory officers i.e. the Range IG, Vadodara Range and CP Vadodara, who had done the misconduct of negligent supervision of Bilkis Banu and Best Bakery cases, whose trials had been transferred by the Hon'ble Supreme Court to the Maharashtra State?

[y] Why has there been no further investigation on the deposition of Shri Rahul Sharma, IPS, the then S.P., Bhavnagar, on 30.10.2004, before the Commission, about the location of BJP leaders and senior officers? In November, 2004, the newspaper Indian Express, published a investigative report in this matter? Why no clarification on inadequate implementation of recommendations of NHRC, National

Commission for minorities, etc.?"

[z] Repeated phone calls made to Chief Minister Modi, Ahmedabad Police Commissioner PC Pande, then DGP Chakravarti and senior policemen, cabinet ministers and officials. Phone records of these top men would be critical in unearthing aspects of the criminal conspiracy.

In this historic petition, the petitioners have contended that the accused named in the FIR are very head strong persons with malicious and vile motivations that strike at the soul of India and the core of Indian democracy. That, considering their clout in the administration it would be almost impossible for the State's police to investigate the offence freely and fairly. It is under these circumstances, impartial investigation by the independent investigating agency i.e., the respondent no. 3 would be required and therefore the investigation of the offence after registration of the same is required to be taken over by the respondent no. 3 i.e., the C.B.I.

Our lawyers in this historic struggle have been Suhel Tirmizi, Gujarat High Court, Aparna Bhat and Ramesh Pukhrambam Supreme Court and Senior Advocate Sanjay Parikh in the SC. Ms Kamini Jaiswal has been a stalwart engaged in all CJP's legal battles.

Time Line and Chronology of the Case

Smt Zakia Ahsan Jafri & Citizens for Justice and Peace v/s Narendra Modi and  
61 Others

Charges: Criminal Conspiracy to Commit Mass Murder, Subvert the Criminal

## Justice System, Destroy Evidence, Violate the Oath of Constitutional Governance

June 8, 2006: Zakia Ahsa Jafri files a mammoth 119-page complaint with the Director General of Police, Gujarat, making out a case for criminal conspiracy to commit mass murder, destruction of evidence, intimidation and subversion of the criminal justice system. By this time PC Pande the former Commissioner of Ahmedabad (accused in the complaint) has been promoted to the position of DGP Gujarat. Citizens for Justice and Peace assists this quest for justice for the victims of a mass genocidal carnage.

The Gujarat Police takes no action on the complaint.

February 28, 2007: Zakia Ahsan Jafri and Citizens for Justice and Peace file a petition in the Gujarat HC praying for the registration of an FIR on the charges mentioned in detail below and also for the transfer of investigation to the CBI

November 2, 2007: After two Judges decline to hear the petition, the matter is heard in the Gujarat HC for a week in September 2007. Justice MR Shah dismisses the petition in November 2007.

March 3, 2008: The Petitioners i.e. SLP 1088/2008 in the SC and on March 3, 2008 Justices Pasayat and Ganguly issue Notice to the Gujarat Government. Prashant Bhushan is appointed amicus in the case.

April 27, 2009: The SC asks the already appointed SIT to Investigate the Charges in the SLP and take action according to law. Raghavan gets in AK Malhotra and Paramveer Singh to investigate.

May 14, 2010: RK Raghavan and AK Malhotra submit the report to the SC. By this time serious charges have been upheld against the functioning of the SIT in other carnage related cases and two Gujarat Officers, Shivanand Jha and Johri have been removed by the SIT.

October 2010: When amicus Prashant Bhushan is about to submit his report, the state of Gujarat makes allegation against him accusing him of bias. He refuses himself as Amicus. Thereafter the SC appoints Shi Rohinton Naiman, who declines. Mr Raju Ramachandran is then appointed as Amicus.

January 2011: During the January 21, 2011 hearing of the matter, Amicus submits a ten page report after which SC gives a chance to the SIT for further investigation.

May 2, 2011: Thereafter on May 2, 2011 in a speaking order the Amicus is given powers to bypass SIT and meet witnesses, including police officers directly. By July 25, 2011 this report has been submitted to the SC.

July 28, 2011: At the last hearing of the matter on July 28, 2011, while



praising the Amicus for his detailed report the SC reserves orders indicating it will be passing detailed orders.

September 12, 2011: Day of Judgement

Advocates for the Petitioners Zakia Ahsan Jafri and Citizens for Justice and Peace v/s Narendra Modi and ors  
(SLP 1088 of 2008)

Shri Sanjay Parikh

Mr. MS Ganesh

Ms Kamini Jaiswal

Ms Aparna Bhat

Mr. Ramesh Pukhrambam

Mr. Suhel Tirmizi, Gujarat HC

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Cyrus Guzder

Alyque Padamsee

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