

Annexure 5 to Tabular Presentation by Teesta Setalvad to SIT
May 29, 2008

TABLE Showing Discrepancies in GODHRA Investigation that need to Be Examined and Recitified by SIT

Table to show that 20 of the accused 1-28 were arrested as members of the mob, 24 hours after the event without any statement or complaint naming them.

1 Accused No 1 in Pota Case 1/2003

Name -Mohammad Ansar Kutubuddin Ansari

Arrest 27/02/02

Time 2130 hours

Statement of Five Policemen

Witnesses Statement Recorded – 01/03/02

2. Accused No 2 in Pota Case 1/2003

Name--Baitulla Kadar Telee

Arrest 27/02/02

Time 2130 hours

Witness Statement-01/03/02

3. Accused No 3 in Pota Case 1/2003

Name-Feroz Khan Gulzar Khan Pathan

Arrest-27/02/02

Time 2130 hours

Five Police Statements

Witness Statement 01/03/02

4. Accused No 6 of Pota case no 1/2003

Name-Ishaq Yusuf Luhar

Arrest 27/02/02

Five Police Statements

Witness Statements 01/03/02

5. Accused No 9 of Pota case no 1/2003

Name Sabir Anver Ansari

Arrest- 27/02/02

Time 2130 hours

Two Police Statements

Witness statement- 01/03/02

6. Accused No 10 of Pota case no 1/2003

Name Inayat Abdul Sattar Jujara

Arrest -27/02/02

Time 2130 hours

Two Police statements

Witness statement- 01/03/02

7. Accused No 11 of Pota case no 1/2003

Name Nasirkhan Sultankhan Pathan

Arrest-27/02/02

Time 2130 hours

Two Police Statements

Witness Statement - 01/03/02

8. Accused 12 of Pota case no 1/2003

Name-Sadiqkhan Sultankhan Pathan

Arrest 27/02/02

Time 2130 hours

Two police statements

Will all these be in the table?

(25) Five of the accused are shown as identified by a witness Dileep Ujjambhai Dasariya. Dileep Ujjambhai Dasariya has stated on affidavit that he was not even on the spot, but on duty 25 kilometers away. The school where he teaches has certified this fact. The Prosecution has however refused to bring this fact on record. It is alleged that the said witness has named the accused nos. 53,63,64,65. In the transfer petition is annexed, the affidavit of Aminabibi wife of accused Saeed Abdulsalam Badam residing in Chikhodra village in Godhra taluka stating how her husband, a poor labourer has also been falsely implicated by the accused based on the solitary statement of Dilip Dasardiya who by his own admission was not present at the scene of the crime on February 27, 2002.

(26) Accused number 54, Ishaq Mohammed Mamdu is completely blind. The civil surgeon Godhra had certified to his hundred percent blindness in 1997 following which he has received assistance as a handicap person from both the state and central government. His father has made applications for reinvestigation to his arrest but this has not been undertaken or made public. On the contrary, in a pathetic attempt to justify the arrest, the state of Gujarat has obtained a doctor's statement, dated June 2002 that states, vis-à-vis the 1997 certificate that though he is blind he can see upto 1 metre. There is no record of physical examination of the accused prior to obtaining the doctor's certificate. The contention of the State is that he was part of the mob. Despite this fact, his bail application has been consistently rejected though the only allegation against him is that he was part of the mob.

(27) Another accused person Fakruddin Musalman, aged 42 expired in the judicial custody on 30/04/2003. Accused person, Siraj Abdulla Jamsa aged-50 also expired after being granted bail. He was suffering from cancer. Gulzar Agnu Ansari, aged about 23 years, is suffering from tuberculosis. Maulvi Husain Umerji, aged about 60 years, is suffering from a malfunctioning of kidney, high blood pressure and arthritis. Siddiq Abdulla Badam, aged about 38 years, from suffering from Bone T.B. Anvar Mohammed Menda, aged about 33 years, is suffering from serious mental depression. Idris Ibrahim Charkha, aged about 32 years, is also suffering from serious mental depression. Anver Husain Ahmed Pittel, aged about 30 years, is suffering from piles.

(28) This conduct of the investigating agencies and the prosecution by the state of Gujarat in the Godhra trial is questionable and needs to be interrogated by SIT.

(29) In the SC. Besides relatives of the accused, six Hindu victims, family members of nine alleged accused in the Godhra tragedy, who have been illegal detained for over 5 years. They need to be questioned by SIT

(30) Questionable Application of POTA. The invocation of POTA itself has been under scrutiny ([see Report of the Central POTA Review Committee- Annexure 5](#)). On February 27, 2002, i.e., when the alleged offence occurred the POTO was not applicable. It was on February 28, 2002 after the Godhra incident, that the state of Gujarat issued a notification declaring the whole area to be a notified area under POTA. The government of Gujarat did not publish the circular regarding application of POTO on February 28, 2002. Even then, an attempt is made to wrongly apply POTA in this case by notifying declaration of the Ordinance under Section 4 of the Act on February 28, 2002. This means, that POTA came to be invoked *in the Godhra case* consequent to the confessional statement dated February 5, 2003 of Jabir Binyamin Behra, but the said Jabir has since, on September 25, 2003, retraced said confessional statement. POTA was applied to other alleged offences against all the accused. This addition was made after a report of the DySP, dated February 18, 2003. The petitioner further submits that on perusal of the events as mentioned above, it becomes clear that on 27th Feb, 2002 the ordinance in question i.e., POTO was not in existence in the state of Gujarat. In absence of any specific provision in law *no retrospective effect* can be given.

Interestingly, five days before POTA was applied in the Godhra train case, i.e. on February 14, 2003 bail was given for the first time by the Gujarat High Court to the accused, all accused of

alleged offences. It is therefore clear that POTA was applied to ensure that further bail orders are not passed.

Further, neither the state of Gujarat (the prosecution), nor the police officers, nor the POTA Court, Ahmedabad have accepted the decision of the Review Committee delivered on May 16, 2005 that has ruled that none of the alleged offences warrant the invocation of POTA. Matters related to bail for the accused and vis a vis the decision of the POTA Review Committee have been brought before the apex court. However these too, have continually faced delay.

Over 45 accused (more than 50 per cent) have in writing made applications showing apprehensions of a fair trial inside the state of Gujarat. It is clear from a perusal of these applications that they apprehend little chance of a fair and free trial in Gujarat. However, the stoic and persistent refusal of the investigating agencies to follow up and investigate the facts raised by these applications, and the failure of the special court to ensure this, suggests also that the trial into the Godhra tragedy is not being conducted in a matter that may inspire confidence of the citizen.

Accused who were jailed at the Vadodara central jail were transferred to the Sabarmati Central Jail and this transfer has also been challenged. This transfer has meant that accused families, already reduced to penury cannot even perform their basic fundamental right and visit their family members in jail. Through this the Godhra accused are forced to endure physical and mental torture and because of this one accused has died in the jail.

(31) The recovery of weapons is shown in the Panchnama as being through a personal search of the accused. Strangely this recovery has been as a matter of record, been carried out at police Station 12 hours after arrest and during custody in police station, implying that the accused persons were standing with the arms on their person at the police station for a good 12 hours after the arrest. Alternatively, the Panchnama suggests that the recovery was made at the police station 12 hours before their arrest as per production warrant on 28-2-02. There are such and more gross discrepancies in the evidence on record.

From the first charge sheet, from the statements of the eye witnesses and witnesses who were injured, it is clear that the prosecution has not been able to get the evidence to prove that the accused no.1 to 15 have injured any passenger with the weapons. It appears that the witnesses against the accused no.1 to 15 have been concocted by the Investigating Officer, because they are the employees of their Police Station and the nearby R.P.F. Except them, there are no other witnesses. No bloodstains have been found on the weapons recovered and it appears that the accused have been arrested from different curfew areas after which the IO has adopted this theory. In the police statements recorded under section 161 of the CrPC, it says the accused were arrested at the spot with weapons, i.e. on the morning of February 27, 2002. In the arrest memo and recovery memos, however, the arrest and recovery of weapons is shown as at the police station at 9-30 p.m. on 27-2-02. At least 20 of the accused from the first lot of 28 accused were arrested as members of the mob, 24 hours after the event without any statement or complaint naming them. 161 CrPC statements mentioning their names were recorded as late as two days after their arrest. These poor Muslims were arrested first and documents to implicate them were recorded afterwards. The trial court has consistently refused to enter into this glaring defect at this stage while bail is also consistently denied.

All police witnesses are serving in Godhra Railway Police station under the same Investigating Officer who is investigating the case further implicating the investigating agency on charges of bias. Out of 74 cases accused in all POTA cases, 36 accused persons have been acquitted in Godhra Town CR No 66/2002 -incident near Neelam Lodge on the very same day. Police witnesses are common witnesses for same accused in both cases.

(32) After filing of the first chargesheet by the police, the governments FSLR report came out in May 2002. [This report pointed fingers at the prosecution's own case] After this happened the entire team of police investigation officers were changed. Ajay Kanubhai Baria, one of the chief witnesses whose statement has been used to arrest the accused, has been kept under the strict control of the Vadodara police station.

The statements before the police as well as the 164 statements of these witnesses that allegedly led to the accused clearly indicate that the witnesses are active participants in the committal of the crime. The allegation is more serious against these persons (witnesses) than those accused who have been apprehended and given no bail for the last two years. The same magistrate who has recorded statements of these two witnesses (Baria and Kalandar) under section 164, the very same magistrate after realizing the seriousness of this lapse and the role of the IO, has refused to record the statement of Jabil Binjamin Behra on January 29, 2003.