



August 17, 2011

Dr. Kamla

Her Excellency the Governor
of Gujarat

Sub : Mahatma Gandhi..... Freedom and Justice in Gujarat.....
Indian Constitution..

Your Excellency,

Freedom Struggle :-

People of Gujarat celebrated 80th Anniversary of Salt Satyagraha – Pinch of Salt that rocked the empire!

Under the inspiring leadership of Mahatma Gandhi within 17 years of Salt Satyagraha, our great country achieved independence on the basis of values of freedom struggle of equality and justice.

Though India was partitioned on communal ground, the minorities felt safe in India and large number of Muslims stayed behind in Mother India based on faith and trust in Values of Freedom Struggle and Indian Constitution. The population of Muslims in India is larger than Pakistan or any other country except Indonesia.

Mahatma Gandhi was born in Gujarat. Gujaratis played great role in freedom struggle based on Non-Violence Satyagraha. Gujaratis were also in the forefront in Satyagraha of Mahatma Gandhi in South Africa!



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Salt March from Sabarmati Ashram, Salt Satyagraha at Dandi and Dharasana, Bardoli Satyagraha and Kheda Satyagraha are the milestones in the great history of freedom struggle.

Mahatma's Mantra :-

Mahatma Gandhi also gave us the Mantra a talisman, which reads as follows:

August 1947

"I will give you a talisman. Whenever you are in doubt, or when the self becomes too much with you, apply the following test. Recall the face of the poorest and the weakest man whom you may have seen, and ask your self if the step you contemplate is going to be of any use to him. Will he gain anything by it? Will it restore him to a control over his own life and destiny? In other words, will it lead to swaraj for the hungry and spiritually starving millions? Then you will find your doubts and yourself melting away."

In the Year 1909, Mahatma Gandhi wrote in Gujarati a small book titled "Hind-Swarajya" condemning western civilization, its Ruthless Growth and Exploitation of the Weak worldwide.

In this book, Mahatma Gandhi gave a clarion call for Return to Nature, which has become more relevant in days of Tsunami and Global Warming.

Hinduism:-

Mahatma Gandhi also gave us definition of Hindu Dharma. According to Mahatma "You cannot be a true Hindu if you hate any other religion. I consider myself follower of Islam, Christianity, Zoroastrianism and every other religion because, I am True Hindu" He also state that "It is the basic creed that India is the home of Muslims no less than of Hindus".

Rajdharma: -

Word "Dharma" has wide connotation with no equivalent word in other languages. The Dharma as enunciated includes Rajdharma. Rajdharma means fair Civil Administration and fair Administration of Justice which includes impartial investigation, honest charge sheets, impartial judicial process and verdict based on integrity of witnesses.

Indian Constitution:-

The aforesaid principles are enshrined in the Indian Constitution in its Preamble, Article 14, Article 15, Article 16, Article 19, Article 21, Articles 25 to 30, Directive principles of State Policy and Article 51A Fundamental Duties. In other words, these are the principles of Human Rights.

India is a Federal State under the Indian Constitution there is a division of powers between the Union and the States.

In the respective sphere, their own domain is supreme and the State power is exercised through the Executive which consists of the Governor, Chief Minister and Council of Ministers and Advocate General of the State.

Article 167 of the Constitution provide as follows: -

167. Duties of Chief Minister as respects the furnishing of information to Governor, etc -

It shall be the duty of the Chief Minister of each State –

- (a) to communicate to the Governor of the State all decisions of the Council of Ministers relating to the administration of the affairs of the State and proposals for legislation;*
- (b) to furnish such information relating to the administration of the affairs of the State and proposals for legislation as the Governor may call for; and*
- (c) if the Governor so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council.*

The mandate of Article 167 is that it is the Governor's duty "to ensure that as provided in Article 355, the Government of every state is carried on in accordance with the provisions of this Constitution".

The Oath of the Governor which the Governor takes at the time of Swearing-in is as follows:

Before entering the office as a Governor, the Governor has to take an Oath or Affirmation that he "will to the best of my ability, preserve, protect and defend the Constitution and the law and that he will devote himself to the service and well-being of the people of the State".(Article 159).

From the above, it is clear that it is the solemn duty of the Governor to preserve, protect and defend the Constitution and the Law and to devote himself to the service and well-being of the State.

These solemn duties become more incumbent upon the Governor when there is no Lokayukta appointed in the **Gujarat State.**ⁱ

It is also the duty of the Advocate General to give advice to the Government of the State to perform said duties of a legal character as may from time to time be referred or assigned to him by the Governor and to discharge the functions conferred on him by or under this Constitution or by any other law for the time being in force.

It is the Constitutional Principle that there is a Council of Ministers headed by Chief Minister in the State to aid and advice the Governor to exercise his functions except in so far as he is by or under this Constitution required to exercise his functions of any of them in his discretion and when any question arises whether any matter or is not a matter as respects which the Governor is by and under this Constitution required to act in his discretion the decision of the Governor shall be final. It is submitted that in this regard, the powers of the Governor are Plenary.

Constitutional Crisis in Gujarat:-

It is our submission that the Constitutional crisis has arisen in State of Gujarat for reasons stated as hereinbelow and it is the duty of the Governor to demand information relating to administration and affairs of State” and after examining the same to take such action as the Plenary powers of the Governor under this Constitution permit.

I. The main cause of the Constitutional crisis is that the Chief Minister of Gujarat is abusing his position as Administrative Head of the State in practically all spheres of the Administration and is violating the Basic Structure of the Constitution and using entire state machinery to defeat the mandate of the Constitution and subvert the cause of public justice. We particularly bring to your notice the following actions of the Government which violates the Basic Structure of the Constitution.

a) Abusing his position as a Chief Minister in Administration of Justice and instead of honestly prosecuting those who are guilty of murders, mayhem and wanton destruction of property of hundreds of people are brought to justice and instead he is taking steps to ensure that they go Scot Free. Towards this end he and his administration, including senior partymen and legislators are indulging in activities that amount to tampering with evidence, influencing witnesses and de-railing the justice process. The chief minister is also abusing his powers and specifically patronizing those lawyers who are appearing as counsel for those accused of major crimes by handpicking them as special public prosecutors at high stipends. In 2004, the Supreme Court of India had pulled up the government of Gujarat for subverting the justice system remarking that the “public prosecutors in the 2002 carnage cases were behaving like defence counsel.” **(reference)**ⁱⁱ

b) In this regard, the Chief Minister in abuse of his position, subverting the Constitution and conducting investigation and prosecution in favour of the Accused and instead of impartial investigation, honest charge sheet, fair trial and impartial verdict, The Chief Minister and his Council of Ministers and the Advocate General are themselves poisoning the fountain of justice.

c) In order to achieve this design, the Chief Minister is intimidating the Civil Service to act on his dictated and design instead of acting as per the mandate of the Constitution for fair and impartial justice.

In the event the civil servant does not comply with such illegal orders in the interest of fair administration and fair play, the Chief Minister and his Council of Ministers are abusing their position to victimize charge sheet the civil servant and suspend them. They are sneered and fixed. Those officers who stand up for the Constitution and the rule of law are and have been penalized by the Chief Minister and those that fall in line with his design to subvert the law at rewarded with cushy posts and promotions at the Gujarati tax payer's expense. The recent examples of the vindictive actions against two police officers, Shri Rahul Sharma (IPS) and Shri

Sanjiv Bhatt (IPS) are clearcut examples of this abuse of power. Earlier Director General of Police RB Sreekumar was similarly victimized and another upright IPS official Shri Rajnish Rai has not only challenged the malafide action but exposed the depth to which this politico-criminal-cop nexus in Gujarat has gone. **(references)**.ⁱⁱⁱ The extent of anti-constitutional behavior can be judged from the fact that IPS officers are opting to stay away from the state.^{iv}

The Chief Minister and Council of Ministers supported by bending civil servants and party workers are intimidating the witnesses and forcing them to recant and disown their own Affidavits so that the Accused may go scot free.

In Gujarat, that there are large number of victims are very poor and weak. The Chief Minister and his Council of Ministers abuse their position to persecute and falsely prosecute human right activists, who go to the support of the victims of murders and mayhem. (reference)^v

The Chief Minister and Council of Ministers are forcibly charging that these Human Rights Activists are tutoring witnesses. The object is that by making this false charges to ensure that all the witnesses are tutored and all the pending criminal cases failed and help the accuse to be acquitted, As if there was no Genocide .

II. Role of the Advocate General :-

The Advocate General of the State instead of performing his duty is colluding with the Chief Minister and Council of Ministers is advising the Accused and is leaking out the documents and the prosecution case to the Accused. It is requested that the Governor should forthwith asked the Chief Minister to seek the immediate resignation of the Additional Advocate General Mr. Haresh Mehta. This is a shameful abuse of a Constitutional post. (reference)^{vi}

In order to achieve this grant sinister design, the Chief Minister and his Council of Ministers are intimidating and creating psychological fear to ensure they do not come forward to the evidence or if they give evidence they will not support the prosecution.

III. Equality, Dignity of the individual and the Unity and Integration of the Nation.

The preamble of the Constitution read with Articles of Constitution mandate the Chief Minister and Council of Ministers ensure the Dignity of the Individual and Integrity of the Nation.

The Chief Minister is deliberately promoting Divisive society and intimidating minorities and creating fear complex and discriminating against the minorities including the tribals and ghettoizing the minorities violating the dignity of the individual and Violating Justice, social, economic and political and Integrity of the Nation which is the basic structure of the Constitution.

IV. Gujarat State Violating Fundamental Rights of Environment and Healthy Living.

The Chief Minister and his Council of Ministers instead of protecting the environment of Gujarat is himself the active participant in the environmental destruction of Gujarat. The Chief Minister is consciously helping the dishonest violators of environment laws and in fact is lavishing them

with State assistance to promote violations. Those corporate houses who have been blacklisted in other states for gross legal and environmental violations are being patronized by the government especially the chief minister of Gujarat. (reference)^{vii}

V. Misuse of Power and State Exchequer: The chief minister's office and other critical departments are misusing state funds and bifurcating them for politico-personal gain. The socio-economic indicators of the state indicate that the growth story has been a bubble created by an overzealous administration. (reference)^{viii}

VI. Fundamental Issues :-

The main fundamental constitutional issue in Gujarat is that when the Chief Minister and the Council of Ministers are themselves violators of Indian Constitution and the laws of the State and are violating the Constitution, what is the duty of the Governor in such a situation.

In the above such circumstances, the Fountain Head of the entire State Administration is abusing his position and implementing his Anti Constitutional design what is the duty of the Governor under the Indian Constitution. Our submission is that in such a situation, the Governor is not bound by the advice of the Counsel of Ministers but can act suo moto in his plenary powers and elicit complete information on the instances appended hereto and also in respect of such other information that may come to the knowledge of the Governor and on the basis of such information to investigate these abuses may appoint such Agency as it may think fit and thereafter take such steps as the Governor may think fit including coming to the conclusion that there is break down of Constitutional machinery in the State of Gujarat.

The situation in Gujarat is unprecedented and new Constitutional and the Governor is not without Constitutional powers to defend the Constitution and to protect the people of Gujarat. This Application is on behalf of August Kranti Kendra and All India Secular Forum and Prasanth - an N.G.O. working for human rights and justice.

With deep respect, , Yours sincerely,

SURESH MEHTA, Former Chief Minister of Gujarat

B.A. DESAI, Senior Advocate, Fmr. Minister Fmr. Addl. Solicitor General of India

President, August Kranti Kendra

ROHIT PRAJAPATI, Environmentalist

IRFAN ENGINEER, General Secretary, All India Secular Forum

End Notes

ⁱ The refusal of the state government to appoint a Lokpal has been subject matter of heated public debate.

ⁱⁱ Criminal Writ Petition No 19816 of 2009 in WP CrI No 37-52/2002 and Supreme Court Judgement in the Best Bakery Case (2004 SOL Case No 297, date of decision April 12, 2004)

ⁱⁱⁱ Rewards and Punishment; this policy of the Narendra Modi government has been in great speculation after the recent suspension and charge sheeting of IPS officers Shri Sanjiv Bhatt and Shri Rahul Sharma and is one of the specific allegations made in SLP 1088/2008, Smt Zakia Ahsan Jafri & Citizens for Justice and Peace v/s State of Gujarat and Ores on which the SC has reserved orders. The prayers in this petition are for registration of an FIR against the chief minister and 61 others.

^{iv} <http://alpha.newsx.com/story/exodus-gujarat-ips-officers-state> Exodus of Gujarat IPS Officers from State

^v Memoranda sent to President, Chief Justice and various authorities including the National Human Rights Commission and United Nations on the forced victimization of activist Teesta Setalvad and advocate MM Tirnizi. The SC has stayed the malafide investigations in the Pandharwada mass graves case in SLP 5275-76/2011 that challenges a belated Gujarat police investigation wherein Setalvad was illegally made an accused.

^{vi} Writ petition Criminal No 135/2011, Sanjiv Rajendra Bhatt v/s state of Gujarat wherein emails and annexures reveal that Shri Mehta was in fact assisting accused draft their applications against human rights activists.

^{vii} Recent reports in the media that show a nexus between the Karnataka Yedurappa government—Narendra Modi and Gautam Adani who is a huge beneficiary of Modi's largesse. The Adani group has been recommended for blacklisted in the Karnataka state Lokpal report (by former Supreme Court judge Santosh Hegde).

^{viii} The Myth of a Vibrant Gujarat, by Ram Punyani.