

Constitutional Crisis in Gujarat:-

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.”

Subversion of the Criminal Justice System

“...Doraiswamy J and Pasayat J identified serious deficiencies in the manner the case had been investigated and also the manner in which the proceedings in that case had been conducted in the trial court and in the High Court. He held: *“the role of the Public Prosecutor was also not in line with what is expected of him. Though a Public Prosecutor is not supposed to be a persecutor, yet the minimum that was required to be done to fairly represent the case of the prosecution was not done.”* (para 71, page 200)

Continued Subversion, 2010-2011

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 and Additional Advocate General are themselves poisoning the fountain of justice.

In the Ongoing Trials being supervised by the Hon'ble Supreme Court of India, the advocates appearing for the defence that is those accused for heinous crimes are being patronised by the Gujarat Government through the portfolios held by the Chief Minister as public prosecutors at huge expense in other criminal

investigations (RTI applications filed and reported in NDTV India on 29.3.2010. Data filed in Affidavit in Rejoinder by Teesta Setalvad in Crm MP 19816/2009 filed in DN Pathak/Cedric Prakash v/s State of Gujarat and Ors (WP)Cri) 37-52/2002.

Breakdown of Constitutional Machinery in Gujarat

The genocidal carnage in Gujarat 2002 has been the worst ever targeted incidents of mass crimes against India's religious minorities, where the State has perpetrated the Violence¹. In over 300 incidents spread over 19 of the state's 25 districts were involved in a well organized and state sponsored frenzy of violence that took an estimated 2,500 lives.¹

While the punishing of perpetrators is still afoot, significant judicial pronouncements have already severely indicted the Gujarat Government for its anti-constitutional functioning.

For the first time in the history of anti-minority violence in India, judicial pronouncements have worked to punish the perpetrators. A historic investigation into the chief minister of the state and 61 other co-accused was ordered by the Supreme Court of India on April 27, 2009. In other cases related to the illegal mass graves and dumping of dead bodies of victims, the Supreme Court of India has dismissed victims' pleas that prayed for a state-wide investigation into the illegal dumping of dead remains of victims all over Gujarat state.²

The most critical aspect of the struggle for justice presently concerns the nine major carnage trials currently afoot. A specially conceived mechanism was created by India's apex court (Special Investigation Team-SIT headed by a retired policeman) but victim survivor groups have successfully pointed out the failure of even this Team to withstand pressures from the State Government in power. This has compelled the Supreme Court to appoint new officers into the team. Where the victims still suffer, however, is from the weekly threats from perpetrator who have been granted by the courts and the reluctance of the Supreme Court to put in place a Monitoring Mechanism for the trials that are underway. In two of the trials related to the most brutal massacres, victims have been denied legal representation. Survivors have also demanded that the proceedings in the Courtrooms be video recorded after CCTVs are placed there. The Supreme Court is still to hear this urgent plea though it was made in November 2009.

A Nine Year Old History of Anti-Constitutional Functioning

The National Human Rights Commission

NHRC's Preliminary Report dated April 1, 2002

“...The Commission is constrained to observe that a serious failure of intelligence and action by the State Government marked the events leading to the Godhra tragedy and the subsequent deaths and destruction that occurred.,,,

¹ Report of the National Human Rights Commission 2002, Three Volume Report of the Concerned Citizens Tribunal, *Crimes Against Humanity—Gujarat 2002*, 2002: Human Rights Watch “We Have No Orders to Save You, 2002-2003: Modi debarred from visiting EU Member Nations, 2003: Human Rights Watch “Condoning Injustice”2003: Report on International Religious Freedom, 2003-2008: United Nation's Co Committee on the Elimination of Discrimination against Women (CEDAW), 2004: Report on International Religious Freedom.

² Zakia Ahsan Jafri & Anr v/s State of Gujarat & Ors (SLP 1099/2008).
Ameenabi Rasool & Anr v/s State of Gujarat dismissed in July 2009.

“ The Commission has noted that many instances are recorded in the Report of prompt and courageous action by District Collectors, Commissioners and Superintendents of Police and other officers to control the violence and to deal with its consequences through appropriate preventive measures and, thereafter, through rescue, relief and rehabilitation measures. The Commission cannot but note, however, that the Report itself reveals that while some communally-prone districts succeeded in controlling the violence, other districts – sometimes less prone to such violence – succumbed to it. In the same vein, the Report further indicates that while the factors underlining the danger of communal violence spreading were common to all districts, and that, “in the wake of the call for the „Gujarat Bandh“ and the possible fall-out of the Godhra incident, the State Government took all possible precautions” (p. 128), some districts withstood the dangers far more firmly than did others. Such a development clearly points to local factors and players overwhelming the district officers in certain instances, but not in others. Given the widespread reports and allegations of groups of well-organized persons, armed with mobile telephones and addresses, singling out certain homes and properties for death and destruction in certain districts – sometimes within view of police stations and personnel – the further question arises as to what the factors were, and who the players were in the situations that went out of control.

“...(x) As indicated earlier in these Proceedings, the Commission considers it would be naïve for it to subscribe to the view that the situation was brought under control within the first 72 hours. Violence continues in Gujarat as of the time of writing these Proceedings. There was a pervasive sense of insecurity prevailing in the State at the time of the team’s visit to Gujarat. This was most acute among the victims of the successive tragedies, but it extended to all segments of society, including to two Judges of the High Court of Gujarat, one sitting and the other retired who were compelled to leave their own homes because of the vitiated atmosphere. There could be no clearer evidence of the failure to control the situation.

“..... In view of the widespread allegations that FIRs have been poorly or wrongly recorded and that investigations are being „influenced“ by extraneous considerations or players, the Commission is of the view that the integrity of the process has to be restored. It therefore recommends the entrusting of certain critical cases to the CBI. These include the cases relating to the · Godhra incident, which is at present being investigated by the GRP; · Chamanpura (Gulbarga Society) incident; · Naroda Patiya incident; · Best Bakery case in Vadodara; and the · Sadarpura case in Mehsana district.

The fact that even today the government of Gujarat is tampering with witnesses and the trials is self-evident given the role of the Additional Solicitor General Tushar Mehta in 2010-2011, instigating those accused of heinous crimes in cases like the Gulberg Carnage case to file false applications in the Supreme Court of India against human rights activists like Teesta Setalvad demanding their criminal prosecution and also inducing through money and other means persons to file cases and applications against victim witnesses and human rights activists (Details given below).

NHRC Report dated May 31, 2002

“....The Commission has had occasion to stress that it is essential to heal the wounds and to look to a future of peace and harmony in Gujarat. ***The Commission has, however, added that the pursuit of these high objectives must be based on justice and the upholding of the Constitution and the laws of the land. 14. It therefore remains fundamentally important, in such circumstances, that those who are responsible for the promotion of communal***

harmony and the maintenance of law and order – whether in the political or administrative leadership – should discharge their duties in the present and future in accordance with that Constitution and the relevant statutory provisions, or be answerable for such acts of omission or commission that result in the violation of the law and the rights to life, liberty, equality and dignity of their fellow human beings.

(Justice J.S. Verma) Chairperson (Justice K. Ramaswamy) Member (Justice Sujata V. Manohar)
Member (Virendra Dayal, Member

Chief Justice Khare's scathing remarks against the Narendra Modi Government

Hon'ble Justice V. N. Khare, the then Chief Justice of Gujarat, heading a three-Judge Bench in the Supreme Court put the Narendra Modi Government in Gujarat in the dock and made scathing observations on the State Government and the way it was handling the riot cases. Justice Khare even advised it to follow the "***raj dharma***" or quit.

In an interview after this retirement Chief Justice Khare said: "***I found there was complete collusion between the accused and the prosecution in Gujarat, throwing rule of law to the winds. The Supreme Court had to step in to break the collusion to ensure protection to the victims and the witnesses.***"

Best Bakery Judgement, 12.4.2004

Supreme Court Judgement in the Best Bakery Case (2004 SOL Case No 297, date of decision April 12, 2004(J.Doraiswamy Raju)J.(Arijit Pasayat), New Delhi April 12, 2004

"...The modern day "Neros" were looking elsewhere when Best Bakery and innocent children and women were burning, and were probably deliberating how the perpetrators of the crime can be saved or protected.....

"....When the ghastly killings take place in the land of Mahatma Gandhi, it raises a very pertinent question as to whether some people have become so bankrupt in their ideology that they have deviated from everything which was so dear to him.....

"...The golden thread passing through every religion is love and compassion. The fanatics who spread violence in the name of religion are worse than terrorists and more dangerous than an alien enemy....

"...When a large number of witnesses have turned hostile it should have raised a reasonable suspicion that the witnesses were being threatened or coerced....

"...Strangely, the relatives of the accused were examined as witnesses for the prosecution obviously with a view that their evidence could be used to help the accused persons....

"...If the State's machinery fails to protect (a) citizen's life, liberties and property, and the investigation is conducted in a manner to help the accused persons, it is but appropriate

that this Court should step in to prevent undue miscarriage of justice that is perpetrated upon the victims and their family members.

“..If the State’s machinery fails to protect (a) citizen’s life, liberties and property, and the investigation is conducted in a manner to help the accused persons, it is but appropriate that this Court should step in to prevent undue miscarriage of justice that is perpetrated upon the victims and their family members.....

“...If a criminal court is to be an effective instrument in dispensing justice, the presiding judge must cease to be a spectator and a mere recording machine by becoming a participant in the trial.

“...Time has come when serious and undiluted thoughts are to be bestowed for protecting witnesses so that ultimate truth is presented before the court and justice triumphs and the trial is not reduced to mockery.

“...Legislative measures to emphasise prohibition against tampering with witness, victim or informant have become the imminent and inevitable need of the day. Conducts which illegitimately affect the presentation of evidence in proceedings before the courts have to be seriously and sternly dealt with.

“...The entire approach of the high court suffers from serious infirmities, its conclusions lopsided, and lacks proper or judicious application of mind. Arbitrariness is found writ large on the approach as well as the conclusions arrived at in the judgement under challenge....

“...If one even cursorily glances through the records of the case, one gets a feeling that the justice delivery system was being taken for a ride and literally allowed to be abused, misused and mutilated by subterfuge. The investigation appears to be perfunctory and anything but impartial.....

“...It is no doubt true that the accused persons have been acquitted by the trial court and the acquittal has been upheld, but if the acquittal is unmerited and based on tainted evidence, tailored investigation, unprincipled prosecutor and perfunctory trial and evidence of threatened/terrorised witnesses, it is no acquittal in the eye of law.

“...The high court appears to have miserably failed to maintain the required judicial balance and sobriety in making unwarranted references to personalities and their legitimate moves before the competent courts – the highest court of the nation, despite knowing fully well that it could not deal with such aspects or matters.

Anti-Constitutional Behavior of the Gujarat Government with Displaced Survivors

There has been widespread displacement on account of the violence with over 20,000 persons still being internal displaced persons. The party in power in 2002, who harboured the perpetrators (many elected representatives led the violence), has been twice elected back to power in Gujarat (2002, 2007)

The issue of reparation and compensation to the victims, especially those who were victims of brute sexual violence and police bullets is pending before the Gujarat High Court.³

³ Special Civil Application No. 3217 of 2003 on 10.6.2010. Citizens for Justice and Peace v/s State of Gujarat & Ors.

National Human Rights Commission, 2002

Ineffective Relief and Rehabilitation (Official Studies)

The Government of Gujarat's partisan approach was towards the victims of the communal violence was reflected in the declaration of ***two distinct and discriminatory compensation packages for the families of victims who had died in the Godhra fire and those who had been massacred thereafter.*** Under the Gujarat government's original plan, the families of victims of the Godhra train fire were to receive Rs two lakh each while the families of those who had died in the post-Godhra violence would receive Rs one lakh – half the amount. Sustained protests and numerous efforts by civil society organisations and CJP finally corrected this patent discrimination.

The Gujarat government's indifference to the plight of the internally displaced persons in relief and rehabilitation efforts in the aftermath of the communal riots has received criticism from a number of national and international NGOs, social activists, civil society organisations and the NHRC.

(PTI): Gujarat Govt indifferent to riot-affected people: NHRC (2003-2004)

In a severe criticism of the Gujarat Government on relief and rehabilitation of the victims of the post-Godhra riots, the ***NHRC has said the state has been "indifferent" in tackling the issue and the compensation paid to the people displaced by the riots was "grossly inadequate"***. The Commission, in its annual report for 2003-04 tabled recently in Parliament, states that it has continued to be concerned about the relief, rehabilitation and resettlement of the victims of the communal violence in Gujarat.

The NHRC said it had proposed several measures for relief and rehabilitation of riot victims but the experience of the Commission has been that the state Government has been less than forthcoming or cooperative in responding to the recommendations that included setting up a Grievance Redressal Authority (GRA).

Pathetic Living conditions of the Refugees (Food Commissioner's Report to the Supreme Court, 2007):

A report on the pitiable living conditions of Gujarat's refugees was submitted to the Supreme Court by Supreme Court Commissioner, NC Sexena, in the PUCL's Right to Food petition. The highlights and appalling facts of the Report are as under:

It was established prima facie that the directions of the honourable Supreme Court with regard to food and employment schemes were being violated.

- In the 81 relief camps: 4,545 families comprising around 30,000 persons still living in very difficult conditions.

- The study found that none of the colonies had been set up or assisted by the state government.
- Only five of the 81 colonies had government or government recognised schools and only four served midday meals to the children.
- Only five had ICDS centres, of which four served supplementary nutrition to the children, and one to nursing and expectant mothers.
- Only three had PDS shops and only 725 out of 4,545 families were recognised as BPL although their intense poverty as internally displaced persons facing economic boycott was acute.
- People who had APL cards are reluctant to apply for a transfer of the card because they fear that this may be cancelled.

The Commissioner proposed a number of steps that had to be undertaken immediately to ensure state accountability for the food and livelihood rights of its citizens **who remain internally displaced nearly five years after the 2002 incidents.**

National Commission for Minorities' visit to Gujarat, October 13-17, 2006

"...The NCM team noted with concern that not a single colony was constructed by the state government, nor was any land allotted by the state government. All the colonies were built on land purchased at commercial rates primarily by a range of Muslim organisations and NGOs, including the Jamiat-ul-Ulema-e-Hind, Islamic Relief Committee, Gujarat Sarvojanik Relief Committee, etc. During the tour of the camps, members observed that residents were denied the most rudimentary civic amenities.

They are deprived of potable water, sanitary facilities, street lights, schools and primary health care centres. The poor condition of the approach roads was repeatedly highlighted and the team heard reports of how in the absence of such roads even adolescent boys were drowned in the water that had collected near the village after the monsoon when the roads are submerged under several feet of water. The accumulated garbage, the slush and the puddles of water are a source of debilitating diseases, including some infectious ones.

Main findings (NCM, 2006)

".....Having visited several camp sites and interacted with members of civil society, victims and activists in the field, and government officials, the NCM came to the following conclusions:

1. The NCM found overwhelming evidence that there continue to be large numbers of internally displaced Muslim families in Gujarat who are living in subhuman conditions in colonies constructed entirely by NGOs.
2. They are not there by choice but because they are unable to return to their original place of habitation.
3. There has been no support from the state to compensate them for their loss of habitual place of residence and normal livelihood or provide basic services and livelihood options to allow them to live with dignity in their present location.
4. There has been no attempt to secure a safe environment or facilitate

their return to their homes.

5. Local Muslim organisers who have tried to procure some rights and entitlements for these displaced survivors have found themselves the targets of threat and harassment by the local police.

6. Far from admitting that the inmates were in fact 'internally displaced persons', the authorities argued that they have chosen to willingly remain in the camps even after some of their family members had returned to their original habitation where they continued to live and ply their trades in absolute security. The NCM team found such reasoning to be erroneous. It noted that the residents of these colonies fear to return to the places they had fled partly because they have nothing left back home to return to and partly because many of them are eyewitnesses to murders, arson and looting during the communal violence.

Recommendations (NCM, 2006)

"The NCM would like to make three sets of recommendations to the state government and central government to improve the lot of residents of the makeshift camps: (1) Basic amenities and livelihood issues; (2) Central government economic package; (3) National policies on rehabilitation of internally displaced due to violence.

1. *Basic amenities and livelihood in the rehabilitation colonies*

Basic amenities must be provided in the camps of displaced victims. These would cover provision of safe drinking water, street lights, approach roads, etc. This should be done by the state government.

The government of India should agree that for a period of five years or until they continue to live in camps, whichever is earlier, all the inhabitants of such camps should be given BPL ration cards without going through the formalities laid down by the government for the issue of such cards.

Similarly, widows should be allowed to claim their pension even if they have not applied within two years or even if they have sons above the age of 18.

The state government should prepare a special economic package for those displaced by the violence with a special focus on livelihood issues. For the self-employed, special efforts should be made to provide inputs like easy credit, raw material and marketing assistance. We strongly believe that this is a vital element in the rehabilitation scenario and that for it to be successfully implemented NGOs should be involved in it.

Wherever possible the state should take advantage of the National Rural Employment Guarantee Programme to cover able-bodied people in these camps and give them employment.

The government of India should return the amount of Rs 19.10 crore given back by the government of Gujarat. The state government should be asked to cover more beneficiaries under the schemes in an attempt to utilise the entire sum.

There should be a monitoring committee, consisting of representatives of the state government and civil society, which will be charged with the responsibility of ensuring that the schemes described above are properly implemented."

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. (See Annexure 1) . In January 2011, he was served notice and finally charge sheeted amidst great controversy on August 13 2011. This action is clear vendetta for his upholding the Constitution and the Rule of Law not just by submitting the CD but also observing in a letter to the Director General of Police D Chakravarthi at the time that the investigations into the Gulberg Massacre and Naroda Patiya killings were being subverted that the FIRs and Charge sheets showed a discrepancy.

Sanjiv Rajendra Bjatt, 1988 IPS : This officer has been victimized, charge sheeted and now suspended by the Gujarat Government on August 9, 2011 after the government found his witness to the illegal and unconstitutional behavior of chief minister Narendra Modi in instructing the police "to allow Hindus to vent their anger against Muslims" hugely indicting and problematic.

Rajnish Rai, IPS : This officer has moved the Central Administrative Tribunal (CAT) for deliberate and malicious dealings with his Confidential Report. A gain this is a clearcut move to reign in a brave officer who has challenged the unconstitutional functioning of the Modi government , arrested former DIG Vanzara for the extra judicial killings carried out at the behest of the chief minister. In a recent affidavit filed before the CAT he has showed a clear nexus between those senior officers who violated the Indian Constitution and Criminal Laws and were rewarded for these actions by Narendra Modi and his government. The extent of anti-constitutional behavior can be judged from the fact that IPS officers are opting to stay away from the state. 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)ⁱⁱ

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. Tushar Mehta. This is a shameful abuse of a Constitutional post. **(See Annexure 2). The Gujarat Government is abusing Constitutional posts like that of the Additional Advocate General to mislead the courts, affect the just administration of justice and actually provide protection to those accused of the Mass Massacre of the Minorities.** Annexure 2 details how accused were being helped by Additional Advocate General Tushar Mehta to draft applications against human rights activist Teesta Setalvad and her organisation who is co-petitioner in the case against Narendra Modi and 61 others (SLP 1099/2008; Zakia Ahsan Jafri and CJP v/s state of Gujarat & Ors)

As bad or worse, the emails also show how the Gujarat Government, senior lawyers were in cohorts with an extra constitutional and fascist body like the RSS (Rshtriya Swayamseval Sangh) to send memoranda through BJP's top leadership against Ms Teesta Setalvad and her organisation. (See Annexure 2)

In Writ Petition No 135/2011. Sanjiv Rajendra Bhatt v/s State of Gujarat and Ors wherein mails and annexures reveal that Shri Mehta was in fact assisting accused draft their applications against human rights activists like Teesta Setalvad and their organizations like Citizens for Justice and Peace.

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.

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.

Non-implementation of laws related to incitement and hate speech

India boasts of provisions in the criminal law that address the issue of words, written and spoken meant to incite violence.ⁱⁱⁱ However these sections of the law remains conspicuous by its non-implementation. The Indian judiciary, too, known in spurts to be proactive on some issues of public concern has never taken *suo moto* action when it comes to any acts of targeted violence against India's religious minorities, least of all against those politicians and parties responsible for systematic incitement through speech and writing.⁴

PUCL Vadodara's detailed report on the extensive use of hate speech and hate writing as also Communalism Combat's Genocide March-April 2002 issue had been mentioned in the Editor's Guild Report of 2002 as containing detailed examples of television channels and mass media reports that required to be prosecute to maintain communal harmony and Constitutional Values. Former Director General of Police RB Sreekumar in his affidavits before the Nanavati Shah Commission in 2002 and then again in 2004 and 2005 had detailed how, as head of the State Intelligence Bureay he had recommended their specific prosecution under Sections 153(a) and 153(b) of the IPCV. Then SP Bhavnagar, Shri Rahul Sharma had similarly and independently recommended the criminal prosecution of those newspapers and news channels guilty of incuiting violence. Not only did the Chief Minister of Gujarat who is also Home Minister of the State not prosecute the offending media houses and channels but it is no wonder that the police officers who recommended Constitutional Actions have been persecuted.

Vindictive Behavior Against Human Rights Activists

Malicious and Motivated Campaign Against Human Rights Activists

The malicious and motivated campaign against human rights activist Teesta Setalvad and the lawyers struggling for justice for the victims of the genocidal carnage in Gujarat in 2002 is aimed at distracting the course of public justice and attacking the personal liberties of human rights activists who have stood by the cause of truth, and justice. The attack against Teesta Setalvad is three - pronged, aimed at threatening her personal liberty through arrest, a widespread disinformation and malicious campaign to affect the process of justice and distracting her from the demands of the struggle.

Amongst the many examples of such subversion, following are the falsified cases against Teesta Setalvad, mentioned herein:

- 1.) **Pandharwada Mass Graves Case** - This is amongst the most serious and imminent cases in which Setalvad is facing harassment by being falsely implicated in the case. She has been arraigned as 'absconding accused,' five years after distraught survivors claimed bodies of their relatives and moved the courts to establish their identity. A detailed note on this is attached below. There is also a strong possibility that the Gujarat Police may try to stage an arrest of Teesta Setalvad on false grounds in the Pandharwada Mass Graves Case soon.

4

Teesta Setalvad filed a petition in the Gujarat High Court at Ahmedabad dated 17/05/2011, against the State of Gujarat & Anr. Seeking to stay proceedings from offence registered as CR No. I – 3/2006 against her and other alleged accused in the Pandharwada Mass Graves case and got partial relief after which the Supreme Court, on July 29, 2011 has stayed the vindictive prosecutions against her.

- 2.) The ongoing **Criminal Trials in Naroda Gaam and Sardarpura**, in which she and her organisation have been giving consistent legal aid to the witnesses and victims. A former employee is being set up to make allegations against her that had been earlier made during the hearing of the Best Bakery Trial in Mumbai and found to be untrue.
- 3.) **The Yasmeen Shaikh Affidavit in the Bombay High Court** - Yasmin is a witness in Vadodara's Best Bakery case where 14 people were burnt alive. She had turned hostile last year. Yasmin Shaikh has moved the Bombay High Court alleging that Setalvad had influenced her to testify against the accused. This after the February 2006 judgment in the Best Bakery re-trial that the "the signs of having been tutored were not found while analyzing the witness evidence'." It must be noted here that, Yasmin's sister in-law Zahira Shaikh, a prime witness in the Best Bakery case, served a year in prison for perjury after she turned hostile a second time. She had first turned hostile in a Gujarat trial court and then in Mumbai.

Reasons for Desperate Vindictive Actions

The charges in the criminal complaint against the Gujarat Government are serious. Despite all the efforts of Gujarat Government along with its political mentors and allies to subvert the course of public justice, preliminary investigations have revealed details of a high level involvement of the senior officials and politicians, to have indulged in a series of criminal and unconstitutional acts which has led to engineering the mass massacre of 2,500 Muslims, post Godhra destruction. It has also revealed a subsequent manipulation of evidence and subversion of witnesses.

On March 15 2011, the SC pulled up the SIT saying that evidence gathered by them does not match with their inferences. On March 20, 21 and 22, the SIT was compelled to record the statement of yet another serving IPS officer Sanjeev Bhatt who has recorded (media reports tell us) that he was present at a meeting at the Chief Minister's residence when the latter clearly said "allow Hindus to vent their anger against Muslims." On May 5, 2011 the apex court has directed the Amicus Curiae to arrive at an assessment of whether or not a criminal offence is made out, without consulting the SIT.

The allegations against Government of Gujarat, of issuing criminal instructions to their police officers and thereafter, the illegal stationing of ministers, in the State and City Police Control Rooms are substantiated by the macabre violence, killings, rapes and burnings that were unleashed on Minorities in 19 districts of the State. The illegal handing over of the bodies of victims of Godhra Mass Arson to a functionary of a rabid right wing outfit – the Vishwa Hindu Parishad (VHP) and not an official of the administration or police as also the inflammatory media coverage of the Godhra Incident by leading Gujarati newspapers, further points at how premeditated the conspiracy actually was.

These allegations and the current investigation are unprecedented in the history of independent India. Hence, the intimidation in four separate criminal cases, and consistent threats to Teesta Setalvad

need to be seen in context of the historic inquiry underway. Attacks on her and other activists are brazen attempts to scuttle the very process of inquiry and justice.

These attempts at intimidation need to be seen for what they are, given the seriousness of charges against the Gujarat State and its functionaries. In 2004 too, after the Best Bakery trial was shifted to Mumbai a star witness made similar allegations. She had thereafter to serve a jail term for perjury while those found guilty of inducing her into falsehood escaped penal punishment.

Making false accusations of doctoring testimonies (FIR lodged under the IT Act, February 10, 2011), issuing affidavits and also of instigating victims to exhume the dead bodies of their loved ones (CR 3/2006), the Gujarat State's police is using discredited persons to trump up charges against a person and an organization that has stood up for nine years in support for the legal battle of survivors.

After Tehelka's exposure of the SIT report, *The Smoking Gun (February 10, 2011)*, IPS officer Rahul Sharma was served with a show cause notice for placing crucial telephone records before the Nanavati Shah Commission and the SIT. Clearly, the Gujarat government is worried that offences could be registered against its chief functionaries for not only simply aiding a massacre in 2002 but thereafter also destroying evidence and subverting the course of justice by doing all it can do to intimidate victim survivors and human rights groups who have stood by them. This despicable campaign was initially launched in May 2009, by the State of Gujarat's counsel in the Supreme Court, and is now being echoed by Rais Khan. The purpose of this campaign is plain and simple – it is designed to disrupt the trials, derail the course of justice and influence the course of conviction.⁵

Vindication of Setalvad in 2005

Earlier, in 2004, after the historic decision of the Supreme Court to transfer BEST Bakery trial to Maharashtra, similar such efforts were made through star witness Zahira Shaikh.

Then, on an application made by Teesta Setalvad of CJP, the Honourable Court had ordered an inquiry by the Registrar General of the Supreme Court that cleared Ms. Setalvad of malicious charges, and in fact punished the witness for perjury. It can be seen therefore, that from the outset, Government of Gujarat through agents and provocateurs has subverted all efforts to punish the perpetrators of the Anti Minority Pogrom of 2002. This onslaught against Setalvad and her lawyers is a vindictive bid to derail the course of public justice. After the famed Best Bakery case was transferred to Maharashtra and re-trial ordered, agents of the state of Gujarat were used to tamper with the justice process and turn the star witness Ms Zahira Shaikh hostile for the second time. Similar allegations were made by Ms. Shaikh against the applicant that she had made her lie on oath.

⁵ 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.

On an application made by the applicant organization before the Hon'ble Supreme Court to investigate and understand the reasons for Ms. Shaikh making these allegations, a Inquiry Committee under the Registrar General of the Supreme Court was appointed who undertook a detailed examination of witnesses and evidence and came to the conclusion that it was the star witness Ms Zahira Shaikh who had been induced by ruling party MLA Madhu Srivastava to turn hostile. (<http://www.cjponline.org/SCreport.pdf>) After this report was submitted the Hon'ble Supreme Court of India ordered a simple one year's imprisonment for perjury to Ms Zahira Shaikh and an Income Tax Inquiry against BJP MLA MAdhu Srivastava,

The Gujarat Government under the chief minister instead of standing up for punishment of the guilty perpetrators is actually victimizing those individuals and organisations who have helped the hapless victims. The Citizens for Justice and Peace is an organization founded to give legal assistance and relief to victims of mass crimes and that we are proud of our work towards redeeming the victims hope in a system after the brutal violence of 2002. The CJP has also worked extensively for the victims of the Mumbai-Maharashtra floods of 2005, victims of terror in Jammu and Kashmir and Mumbai. CJP is running two ambulances in Mumbai that were raised through funds after the brute terror attacks of 26/11/08 when it was found that many of the victims at the Chhatrapati Shivaji (VT) station died of bleeding because there were not enough ambulances to reach them to hospital on time.

References:

For further information, please refer to the following:

1. 12 FEB 2011 - THE TRUTH ABOUT THE GODHRA SIT REPORT

http://www.tehelka.com/story_main48.asp?filename=Ne120211coverstory.asp

Here's the smoking gun. So how come the SIT is looking the other way?

2. 11 FEB 2011 - THE TIMES OF INDIA, DELHI EDN

<http://epaper.timesofindia.com/Default/Scripting/ArticleWin.asp?From=Archive&Source=Page&Skin=TOI&BaseHref=CAP/2011/02/11&PageLabel=12&EntityId=Ar01200&ViewMode=HTML&GZ=T>

Gujarat top cop may be paying for his 'initiative'

3. 19 FEBRUARY 2011 - 'I was there. Narendra Modi said let the people vent their anger'

DIG Sanjeev Bhatt knows the terrible truth about Gujarat 2002. ASHISH KHETAN has his explosive revelations. Will the Supreme Court take it on record?

http://www.tehelka.com/story_main48.asp?filename=Ne190211EXPLOSIVE.asp

4. February 2011 - HINDI OUTLOOK

<http://hindi.outlookindia.com/articlefullwidth.aspx?270299>

<http://hindi.outlookindia.com/articlefullwidth.aspx?270299>

Jagane Waloki awaz ko Kuchalne ki police ki koshish

5. 14 FEBRUARY 2011 - ENGLISH OUTLOOK

<http://www.outlookindia.com/article.aspx?270310>

Modi Finds A Target

6. 12 MAR 2011 – TEHELKA WHOSE AMICUS IS HARISH SALVE?

http://www.tehelka.com/story_main49.asp?filename=Ne120311WhoseAmicus.asp

7. 17 MAR 2011 - TOI MUMBAI

SIT to quiz whistle-blower cop again on Modi riot role

DIG Had Said That CM Wanted To Allow Hindus to Avenge Godhra

8. 21 MARCH 2011 TIMES OF INDIA - 2002 RIOTS PROBE

<http://epaper.timesofindia.com/Default/Scripting/ArticleWin.asp?From=Archive&Source=Page&Skin=TOI&BaseHref=TOIM/2011/03/17&PageLabel=15&EntityId=Ar01500&ViewMode=HTML>

Bhatt's testimony against Modi cut short

9. PUNISHING LAW ABIDING OFFICERS

<http://www.gujarat-riots.com/subvrPunOfficer.htm>