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‘The struggle for justice is long, hard and often lonely’

By Newzfirst Bureau 9/8/12

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Teesta Setalvad is a well known activist tirelessly working for justice. As a journalist and rights activist she has been fighting for the justice to the victims of Gujarat carnage. Following the historic Naroda Patiya verdict she spoke with Newzfirst about her experience of a decade long struggle.

How many cases are you and your team involved in with reference to Gujarat carnage 2002? How it all started ?

We have handled a total of 68 plus cases, from the Trial Courts right up to the Supreme Court. We have tried to organizationally address the various aspects of the genocidal carnage of 2002 and ensure accountability and reparation. A class action on reparation, still pending has led us to carry out a survey of over 18,000 homes, through which we have now sought compensation for damaged properties, for lives lost in the police firing and for the victims of gender violence. The issue of a civil suit for the damages against those non-state actors and organizations, who carried

out the violence and most significant of all criminal conspiracy and culpability (The Zakia Jafri and CJP case) is also being handled by us.

Our first petition filed on May 2, 2002 itself was the only one that demanded a transfer of investigation. In this leading civil libertarian from Gujarat, DN Pathakji was one of our lead petitioners in the first case before the Supreme Court and the rest of us are co-petitioners. When the National Human Rights Commission (late, in 2003 asked for a transfer of cases out of the state) our petition asking for transfer of investigation was heard along with the NHRC petition.

I hail from Gujarat and was covering the systematic polarization and anti-Constitutional moves within the state apparatus since the early 1990s. Something awful was building up. The blood-spill of 2002 compelled me to act and engage consistently at the grassroots.

How have you legally empowered the victims of '02 carnage?

In the Naroda Pariya Case, specifically, sixty Five witnesses, most of whom are also survivors of the worst ever massacre of 2002, were provided legal assistance by the CJP Team. This entailed daily attendance at the trial courts, ensuring continued protection of the witnesses, presence at the local police station when they were threatened and intimidated (this happened at least with two dozen of witnesses during the trial) and timely applications and coordination with the Special Investigation Team (SIT) nodal officers to ensure the protection.

In General and looking at the various trials we have assisted, documenting the evidence for each case carefully, accurately and persistently following them up; ensuring legal aid through a team of lawyers at the Trial Court, assisting the Prosecution has been the major part of the work. The most emotionally exacting part of this work is to keep the community of victim survivors engaged and committed to the struggle for justice even as inexplicable delays wear us down.

In the Sardarpura case (earlier Best Bakery) and now the latest Naroda Patiya we have filed detailed written arguments and made separate applications before the Courts. This ensures that any aspect, large or small that may be overlooked is addressed. At the Gujarat high court level our courageous colleague MM Tirmizi who has risked much along with others and our team of lawyers from Bombay – Mihir Desai, Gautam Patel, Navroz Seervai—and Delhi –Kamini Jaiswal, Sanjay Parikh, Aparna Bhat, Ramesh Pukhrambam have made it possible for us to be consistently vigilant. In addition we have a strong and committed band of lawyers within Gujarat who consistently follow up each case.

I keep a hawk's eye all on the developments and then harangue and nag the team at all levels to ensure immediate interventions! But the dedication of the team as a whole makes it all happen.

Can you please throw some light on how did you manage to get the protection for the key witnesses and victims.

To understand how the victims and witnesses were protected we need to go back to 2004. The CJP through the Amicus Curaie in the Supreme Court, Harish Salve, had moved an application for the protection of all the key witnesses and the victims of the nine major cases including

Naroda Patiya massacre. Through a detailed order, individual and cluster protection by the Central Industrial Security Forces (CISF) these victim survivors have enjoyed unprecedented and unique protection enabling them to carry out their business and lives without fear.

Then after SIT completed its investigations and when the Supreme Court was lifting the stay on the trials to enable them to begin, we reiterated our concerns through written applications in our petition before the Supreme Court. The final orders of the Supreme Court ordering Special Courts to begin the trials by directing SIT to oversee the protection by the CISF.

Dr Raghavan asked CJP to outline a scheme that we had done and presented to him, in writing. This extent of Witness Protection has been unique to the trials in Gujarat supervised by the Supreme Court and has ensured that the victims had the security to seek justice, complain any number of times about the attempts at threats, inducement and intimidation. This example also makes a strong case for an enduring Witness Protection programme in the country. This protection that we have obtained from India's Apex Court since 2004 has continued till date and will continue until appeals are heard. In the course of the last few years even two among our legal team have been given protection after they received consistent threats.

About outstanding successes and de-motivating defeats in last 10 years...

The transfer of the Best Bakery case, the further investigations ordered into major trials and their monitoring by the Supreme Court, the investigation and progress of the Zakia Jafri-CJP case, and the convictions in Sardarpura, Odh, Deepda Darwaza, Naroda Patiya—the very fact that we have managed collectively to keep the memories of the horrific carnage of 2002 alive in public memory—in a healthy way to ensure justice and through this lasting reconciliation. For the very first time in the Naroda Patiya case, through a 1976 page judgement, Judge Jyotsana Yagnik has convicted political masterminds and perpetrators of incitement, murder and attempt to murder. This is an unprecedented victory and is a tributary to the raw courage of the Victim Survivors, 13 of whom deposed against Kodnani and 15 against Bajrangi.

The increased scheme for life compensation by the first UPA government, thanks to representation made by CJP team and some others. Jurisprudentially CJP's interventions have created very valuable jurisprudence on mass violence, the right of the witness to protection and legal representation, the right of the victim and witness to have a say in the appointment of public prosecutors and finally criminal and civil culpability for mass crimes.

Among the defeats has been the rejection of our plea in the Supreme Court to get the appointment of PC Pande as DGP reversed; he is the man who oversaw the carnage in Ahmedabad city and received 15 phone calls between 12 noon and 3 p.m. on 28 Feb. 2002 from the CMO and has not been made to answer for his criminal culpability yet; though promoted by the Modi government we were not able to get this appointment judicially reversed; The second disappointment was the rejection by the apex court for a transfer of investigation into the cases of missing persons in Gujarat to the CBI.

One heart warming experience that enhanced your faith in your fight

The steadfastness of the survivors... The day that Zahira turned hostile for the second time during the re-trial in Mumbai, over twenty other witnesses from Gulberg and Naroda Patiya offered to come out and speak in my support. But I wanted to protect them from vindictive state machinery as they all still live in neighbourhoods where perpetrators roam free.

The tears of joy in the eyes of survivors especially women, their profound faith in this country and the land, their belief that justice must be done and will be done, never let me give up the hope. They suffer the deadening memories of their loss and the taunts of others as they soldier on. They have lost their sleep, their health is affected and yet....I get sustenance from them.

One of the most touching moments was when three rickshaw pullers from Aligarh donated their daily earnings to our struggle. It was the most precious contribution that CJP has received.

Any frustrating experience that might have forced you think to give up?

The constant malicious propaganda based on untruths even though the Courts have exonerated our involvement as that of legitimate legal assistance.

Where have you reached, what is still left?

We have ensured some accountability from the system, hitherto unprecedented, and the Indian judiciary has displayed at many stages of the struggle, its finest hour. Constitutional values run deep into our systems of governance though there are sustained efforts to corrupt them by ideologues of partisan politics. It is the Constitutional values of parity and non-discrimination that have been strengthened by these collective efforts.

What remains is criminal culpability of the men in the uniform (Policemen and Bureaucrats) and the political masters, who allowed the elements of this wider conspiracy to unravel –in far-flung villages and prime cities of Gujarat—Ahmedabad and Vadodara. After the verdict of Naroda Patiya the logical question on everyone's lips is –did the criminal conspiracy hatched by Kodnani and Bajrangi stop with them? How much farther did it go? Why was Kodnani rewarded and made Minister after 2002?

Given the historiography of communal violence, a tragic incident like Godhra train burning would have, undoubtedly resulted in reprisal killings in some places. But for these to have superior state sanction, for the burnt down corpses of the Godhra victims to be handed over by the Godhra Collector to not an official but a strident member of the Vishwa Hindu Parishad (VHP), for killings, rapes and destruction to have to 19 districts in a sinister and similar pattern, that finally claimed over 2,000 lives could only have happened with high level enablement, ensuring, at the minimum, impunity to the perpetrators.

It is important for the health of Indian democracy that more of those who connived to allow the violence, Policemen and Bureaucrats, are also nailed. Besides other political masterminds who guided them on their murderous path, Maabehn Kodnani's colleagues need now to be brought into the net of the wider criminal conspiracy.

Have you found any unexpected support in this struggle? Some people who have ditched you and switched sides...

I would prefer to speak just on the positives. We have received unexpected support from so many quarters that have strengthened our belief that we are on the right path. Chayaben and Vithalbhai Pandya (sister and late father of the late Haren Pandya), have become close though they are from a different political allegiance—I felt very disturbed that Vithalkaka did not live to hear the verdict of the Gujarat High Court on Haren Pandyaji's assassination; Sureshbhai Mehta, former chief minister of Gujarat, who I respect deeply, extended solidarity when I was being brutally targeted needed it most...and though not unexpected, former Gujarat DGP RB Sreekumar has been an enduring guiding star for me ... retired senior IPS Officer Chaman Lal extended a rare and precious gesture of support to our struggle. I carry his letter with me at all times.

I still remember the day Harenji came and appeared before the Concerned Citizens Tribunal in the May of 2002. He was so disturbed by what had been happening in Ahmedabad and all over Gujarat. Taking me aside he explained me how he had escorted the Amirsab from the Vora Masjid, Teen Darwaza amidst blazing tyres and mob mayhem to the airport to the safety of Mumbai. Subsequently he gave his historic deposition to the Tribunal about the meeting of the night of February 27th.....

How much time does Gujarat take in your daily schedule? Gujarat 2002.

Are we speaking of 24 hour days??!!!! At least six-eight hours of time...usually more.....

Anything else you can think of....

The struggle for justice is long, hard and often lonely. The system tests your durability and consistency. I wish we could make an example of the successes from this battle, and seek to institutionalize the results so that justice to victims of mass crimes becomes the rule and not the exception. I wish more than anything else that an effective Witness Protection Programme is put in place soon.

Name and role of your team members

Our Trust Board with its Founding President Vijay Tendulkar ,today IM Kadri, and all the Trustees (Cyrus Guzder, Anil Dharkar, Alyque Padamsee, Nandan Maluste, Javed Akhtar, Rahul Bose, Cedric Prakash, Ghulam Pesh Imam, Javed Anand, Arvind Krishnaswamy) —it is so important to have a committed group backing such work; CJP's office in Ahmedabad with Rafikbhai Shaikh, Shaheda as also the legal team that includes advocates SM Vora, Yusuf Shaikh, Aslam Baig, Sameer Mansuri, Irshad Mansuri, Nasir Shaikh, Raju Mohammed Shaikh, Altaf Jidran, Moheammed Hussaini and all the others who I have named above. In Mumbai, our team of 14 dedicated day and night to this struggle – Santosh, Alice, Irfan, Surekha, Pradeep, Zahid, Dada....Countless other well-wishers from Aligarh, Madurai, Malegaon, Kerala, Delhi , Bhiwandi and other places. Not to mention SAHMAT would be so unfair. SAHMAT (Safdar Hashmi Memorial Trust) has been the backbone for our work in Delhi.

