

Citizens for Justice and Peace

Gujarat Genocide 2002

Long wait for justice

MAJOR TRIALS



Lend your Voice to Our Struggle

Eighth Anniversary of the Gujarat Genocide 2002

FEBRUARY 27-28, 2010

Dear Comrades In Arms,

This weekend, February 27-28, 2010 commemorates the Eight Year Anniversary of the Genocide in Gujarat 2002

VICTIM SURVIVORS AND LEGAL SUPPORT GROUPS, THE CITIZENS FOR JUSTICE AND PEACE (CJP) WILL COMMEMORATE THE OCCASION WITH PRAYERS AT THE GULBERG SOCIETY MEGHANINAGAR BETWEEN 11 AM AND 2 PM ON SUNDAY FEBRUARY 28, 2010.

MEANWHILE OUR STRUGGLE FOR JUSTICE IS AT A CRITICAL STAGE. WE APPROACHED THE HON SC OCTOBER 2009 POINTING OUT THE GRAVE FAILURES IN THE SPECIAL INVESTIGATION'S TEAM INVESTIGATIONS THAT HAVE BETRAYED THE VICTIMS AND THE MANDATE OF THE HON. APEX COURT.

THE HEARING OF THIS CRITICAL CASE WILL BE ON MARCH 15 2010 A CRITICAL DAY IN OUR STRUGGLE FOR JUSTICE.

This Open Letter is an Appeal to you from all of us, the Victim Survivors of the Genocide of 2002

We write this letter, personally addressed to you as a fervent appeal to lend your voice to the struggle of the victim survivors of the genocidal carnage in Gujarat (2002) a struggle for dignity, justice, reparation and against the impunity enjoyed by perpetrators of mass crimes in India.

This struggle is today at a critical and sensitive stage. And it is to lend our efforts, within the Supreme Court and the Trial Courts in Gujarat, weighty and successful that we write this detailed note to you. **It comes with an appeal.** To use the material detailed below to write individual and collective letters to important functionaries of the Indian State and the Media, cautioning against the efforts by powerful and malevolent forces within and outside Gujarat to thwart this battle that has reached a decisive stage

Application Filed by the Legal Support Group, CJP and Victim Survivors on the Failure of Investigation by the SC Appointed Special Investigation (TEAM) and *the Trials Afoot in Gujarat*

Today our collective efforts for justice and reparation are at a critical stage. Eight major trials related to the carnage that cost 2,500 lives and also involve allegations of complicity in mass murder are being prosecuted within Gujarat under direct supervision of the **Supreme Court of India.**

For over eighteen months 210 eyewitnesses who are also victim survivors supported by CJP deposed before SIT and also submitted material evidence pointing towards direct complicity in the violence from high functionaries of the State. Teesta Setalvad of CJP also filed a detailed statement running into 250 pages detailing various aspects of *each investigation that SIT needs to*

*investigate. Deplorably SIT has ignored most of the points and done a superficial job. At best there has been a twenty to thirty per cent improvement over the Gujarat police's earlier investigations. **The historic mandate of the SC in imposing faith in a high-powered SIT has, in our view, been betrayed. SIT was mandated to not only investigate and further investigate but also, after May 1, 2009 ensured the protection of witnesses, order regulate and monitor both the appointments of the Special PPs and the functioning of the Courts.** Since **April 27, 2009** the SIT was also ordered to take over the second, more sensitive investigation ordered into the role of the CM and 61 others (SLP 1088/2008). **The application made by Teesta Setalvad, CJP that will be heard on March 15 2010 highlights the following issues***

- a. Problems with investigation; **(we have obtained an order under 173 (8) for re-investigation in the infamous Gulberg society case in which former parliamentarian Ahsan Jafri was butchered that exposes SIT for deliberate exclusion of documentary evidence and non-investigation of specific instances state complicity;** similarly we have filed 173(8) applications in **two other trials as well.** The application details how
i) significant issues were not re-investigated by SIT, including state complicity and involvement revealed by **Tehelka's Operation Kalank** despite being provided all material by the petitioners in May 2008; ii) clear-cut attempts by SIT members to shield the favoured and higher ups from among the Gujarat police, administration and state executive;
- b. Problems with the SIT members **especially those from the Gujarat cadre** and the roles that are being played by them; (The application details of one police officer from the Gujarat cadre, Smt Johri who has been comprised by the state government both through pecuniary benefits (plot of land) and through an anti corruption case in which her husband is allegedly involved; how Shri Shivanand Jha has always toed the state government's line

including being appointed as Home Secretary by the very state opposing re-investigation ordered by the Hon apex court; how the third Gujarat member Shri Ashish Bhatia today stands exposed for compromising the Gulberg society, and Naroda Gam and Patia investigations. We have also pointed out that Chairman SIT spends only two to three days a month in the state and hence has not paid any attention to this historically driven mandate...

- c. Problems with the prosecutors and the Courts in some cases.
Despite the SC supervision, some of the local Courts have shown a hostility towards victim survivors and witnesses refusing even to allow them independent legal representation and in one case, a copy of the chargesheet!

Before the Special Investigation Team was constituted the **intervenors/petitioners by way of an application** in the Transfer Petition filed by the National Human Rights Commission **had raised their doubts about the officers suggested on 25.3.2008 by the State of Gujarat and agreed to by the Learned Amicus Curiae. The team was finally appointed in line with the Gujarat state's (accused of complicity) suggestions on March 26, 2008.**

The issues raised then and those that have resurfaced now are:

- a) Can the officers chosen by SIT investigate the highest political functionary at whose behest the entire massacre was orchestrated or whose role in containing the violence is suspected?
- b) Can the officers investigate against their own then DGP (P.C. Pandey), whose role is under a cloud and who would be writing their ACRs (Confidential Reports)?
- c) Can the officers keep the progress of investigations a secret from the DGP (The Director general of Police the highest police functionary in any state in India? Will the confidentiality of investigations be compromised?

d) How would the integrity of investigations be ensured?

The background of this historic process of litigation is that it has given a voice to the victim survivors and restored their faith in the Indian system.. Through **four painful years after the initial impetus, the matter was delayed by tardy system within the apex court.** It is important and relevant to recall the history of this present litigation and especially the circumstances in which the State Government has agreed for reinvestigation and proposed the names of three senior officers to be part of the SIT.

- i) The State Government had consistently **opposed/resisted** the reinvestigation of cases by an independent agency, and transfer of these cases outside the State.
- ii) In 2004, the state of Gujarat misled this Hon'ble Court on the issue of Bail being granted to influential accused by filing only partial bail orders deliberately concealing the granting of bail by the high court. This was not appreciated by this Hon'ble Court.
- iii) In early 2008, the Central Government expressed its willingness to get the cases investigated by CBI.**
- iv) The State Government vehemently opposed the investigation of these cases by the CBI and agreed for investigation by a SIT provided that the officers constituting the team are not from outside the State.
- v) The State Government came to court prepared with a list of officers and immediately proposes the name of three senior officers which were accepted by the Court on the recommendations of the amicus curiae.**

In retrospect it appears that this was actually a pre-emptive move of the State Government to prevent the transfer of cases to CBI, and forestall and independent investigation and man the SIT with pliable officers who would toe its line.

In the application that will be heard **on March 15 we have asked** for the following directions

- a. Re-constitute the SIT and appoint members suggested by us, the Petitioners
- b. Direct all the SIT members to spend atleast 15-20 days in a month in Gujarat while the investigation and trials are on-going;
- c. Order transfer of the trials out of the state of Gujarat and
- d. pass such other order or orders as this Hon'ble Court may deem fit in the facts and circumstances of the case.

It was in the fitness of things that we keep you abreast and informed of the latest developments in this case given the high stakes for justice on the one hand and the equally powerful, and malevolent forces working towards its subversion on the other.

What makes you supportive actions both urgent and necessary is the parallel investigation being conducted under supervision by the Supreme Court, an investigation of mass murder and criminal conspiracy against the chief functionary of the state and 61 others. This investigation too is being carried out by the Special Investigation team (SIT) and hence it is mandatory that SIT is made to function with both transparency and accountability.

It does not need to be over emphasised that the malicious and malevolent designs of the most powerful within the Gujarat state are making every efforts to subvert a Supreme Court ordered, historic justice delivery process for which **SIT was constituted to revive the faith of the victim survivor and common man in the process of justice *not make a mockery of it.*** It is critical for us that this blatant attempt at subversion of the apex court itself by those who have been named as culprits and perpetrators and masterminds of a state sponsored genocide are thwarted.

Background TO THE LITIGATION AND THE ENTIRE STRUGGLE

The ***Citizens for Justice and Peace*** (a Victim Survivors Support and Legal Rights Group) has been at the forefront of the struggle for reparation and against impunity of the perpetrators of the genocidal pogrom in Gujarat in 2002. It was thanks to the publication first of the **Gujarat Genocide** (March April 2002) issue of *Communalism Combat* and thereafter the publication of the *Concerned Citizens Tribunal Report –Crimes Against Humanity, 2002* that aspects of the Gujarat Genocide got widespread national and international attention. While several human rights reports on Gujarat's were thereafter and since published, it is ironical that seven years down as the victim survivor's battle it alone in Gujarat, we are the only civil rights groups openly and visibly backing their support for justice in Court. The success of the CCT can be seen in the fact that a former minister in state chief minister Narendra Modi's Cabinet, Haren Pandya, testified before it, revealed shocking facts of an illegal meeting held by the chief executive of the state ordering top policemen and administrators not to protect Muslim lives. He was killed a few months later. The investigation into that murder was shoddily conducted by both state and central agencies.

In 2004, the famous judgement by India's Supreme Court (**Zahira Shaikh and CJP v/s state of Gujarat**) not merely transferred the BEST Bakery Trial to outside the state while ordering a re-trial. For the first time in post independent India's judicial history, the apex court did not shy away from indicting the masterminds and perpetrators of anti-minority pogroms, calling those in power who had masterminded a genocide, "modern day Neros" and observing also that "religious fanatics are worse than terrorists." Jurisprudentially for the first time, victimology, victim's voice and representation and reparation have become the focus of widespread attention and invited some legal reform. Four major lacunae in the Indian criminal justice system, interminable delays that reflect the cosy and unethical relationship between the Bench and the Bar, unprofessional investigations influenced by the elected Executive that enjoys a unhealthy control

and relationship over central and state investigative agencies, absence of Independent Directorate of Prosecution and Lack of Witness Protection stood exposed through this process. The CJP can justifiably claim its share and role in highlighting these issues largely with the Gujarat carnage cases it has successfully (and unsuccessfully) handled and further expanded by this group to its understanding of Caste and Gender driven violence.

The CJP was the first to file a class action on reparation for the victims, ensured that the Central Government (2004-2005) gave an enhanced life compensation package to the victims as well as increased housing damage) **while we are still arguing within the Gujarat High Court** for comparative reparation for victims who died by police bullets, reparation for gender violence etc. CJP conducted a 18000 household survey to authenticate its claims before the Court.

The issue of 'missing' persons after a violent carnage, the illegal dumping of bodies in mass graves etc was also highlighted through the struggles of victims supported by us.

The Extent of SIT's Failure to investigate

i. The Godhra Trial (58 persons killed)

In the Godhra Train Burning Case, [wherein 58 persons were burnt alive when a coach caught fire and the accused, a vast majority of whom (all Muslims) have been wrongly detained and lie without bail for over seven years] SIT has fully endorsed the theory put forward through the earlier investigations by the Gujarat police and has not probed at all into the revelations made through *Tehelka magazine's Operation Kalank*. In this sting operation witnesses have stated on camera that they have been

bribed by the Gujarat police to speak in favour of the “conspiracy” theory of the Gujarat police. Whatever the facts of the matter, given the sensitivities involved in the case, the SIT ought to have investigated it thoroughly and not leave it unexplored. Initially Shri Noel Parmar, a police officer accused of complicity was given several extensions even after retirement from the Gujarat police and was continued by SIT and removed only after an uproar in the media. The special PP in this matter has been defending the state of Gujarat’s conspiracy theory as Special PP since almost the start of the trial and SIT has not seen fit to replace him even in the interests of transparency.

On June 30, 2009 and then again on August 15, 2009 the role of SP Panchmahals, Shri. Mothaliya was brought to the our attention, first through a letter by the son of one of the accused Shoeb Sattar Juzara and thereafter through senior Defence Counsel Advocate A Hassan appearing before the Hon’ble Trial Court. Both communications annexed hereto and marked as **Annexure B in the SC application** suggest that SP Panchnamhas Motahliya was in fact keeping witnesses to ransom hostage and thereby trying to influence testimonies. In fact advocate Hasan had objected to his presence in the court during trial because as an investigating officer, he cannot remain present in the courtroom when evidence is being recorded.

ii. Gulberg Trial (70 killed):

- a) The SC appointed SIT's failure to investigate, interrogate and produce before the court critical documentary evidence such as print outs of mobile phones of police officers, message books and wireless message books of Meghaninagar police station and the city control room, log books and inward telephone register;
- b) The SC appointed SIT's failure to interrogate senior police officers higher than the PI Erda, for example joint commissioner MK Tandon, and even CP PC Pandey (arraigned as accused on serious allegations of destruction of evidence (burning bodies to an unrecognizable state, thereby abetting the criminals));
- c) The SC appointed SIT's failure to investigate the failure of the Fire Brigade that did not arrive at the scene of crime, in the heart of Ahmedabad city for three days after the incident;
- d) The SC appointed SIT's failure to complete investigations related to the sting operation by witness 481, Ashish Khaitan of *Tehelka* that includes a failure to check the mobile phone records of accused named in the sting operation and reluctance to obtain original equipment to prove the evidence;
- e) The SC appointed SIT's failure of SIT to produce the video-graph of the scene of crime until the witnesses made an application for the same before the Trial Court; (after which it has been produced in a sealed cover)

- f) The SC appointed SIT's deliberate lapse in investigating the circumstance behind the vanishing phone record of former parliamentarian Ahsan Jafri who is reported to have made close to 200 distress phone calls for help;
- g) The SC appointed SIT's failure to prepare an effective site map of the scene of attack;
- h) The SC appointed SIT's failure to investigate or produce the log books of individual police officers assigned on duty, the Meghaninagar station diary among other lapses.

The victims made an application to the Trial Court and the Trial Court found merit in the application of the victims and ordered further investigation in the matter as per the request of the victims. The order of the Trial Court has been annexed to the application. This order was passed on September 7, 2009 and the Judge hearing the case ordered re-investigation on key points argued by victims' advocates including obvious lacuna by SIT in investigating documentary evidence like station diary and inward registry entries of the local and city police stations, fire brigade records as also telephones of key accused in the massacre.

On October 5, 2009, a police witness in the Gulberg society case, Babubhai Pandor was declared hostile retracting from his earlier statements under section 161 Cr.P.C. made in 2002 and then before SIT. The Judge while declaring him hostile stated "that it was pointed out that here is a policeman, a government employee and public servant turning hostile and this fact has been noted." A true copy of the evidence recorded has also been annexed to

the application. It is a matter of concern that SIT allowed key witnesses to get into the witness box without guaranteeing **security from the central paramilitary forces.**

iii. Sardarpura Trial (33 persons burnt alive)

a) Key witnesses appear to have deliberately not been examined by SIT. These include **Head** Constable Devjibhai (P.S.O. Vijapur) at the time of incident (At the most critical time while the incident was taking place in Sardarpura village, from 8 p.m. of the night of 1.3.2002 till the morning of 2.3.2002) PSO HC Devjibhai's presence required that his statement be recorded which has not been done; (2) V.H.F. Operator Babubhai (Wireless operator from the police who would be aware of all wireless calls and records has not been examined by SIT); (3) Jamaben Harchandji Thakor (Munsaf Khan stated in his statement before SIT that this Jamaben, resident of Sardarpura that a meeting of Patels had taken place in the village and hence big trouble and violence will happen); (4) Mansuri Nisar Ahmed Gulamnabi (Munsafkhan stated in his SIT statement that he had contacted Mansuri resident of Nisarg society Ahmedabad when the attacks started that night after 9.30 p.m. who had repeatedly contacted DGP Control Gandhinagar and Mehsana too for help from his mobile phone and yet his statement has not been not recorded by SIT);

b) SIT has been tardy and superficial in obtaining key documentary evidence related to the crime at the time. For instance, SIT has not

obtained the mobile call records or details of calls of PSI Rathod and PSI Parmar between 28.2.2002 and 2.3.2002;

c) Police witnesses according to the chargesheet are PSI ML Rathod, Nayab Police officer, Visnagar division Bachuba Vesalji, DSP Mehsana, Anupamsingh Gahlot, PI Vijapur, KR Vaghela PSI Vijapur, GK Parmar and PSI BD Gohil. From the witness statements it appears that these officers roaming around in the police wireless vans were constantly in touch with each other on the wireless. However there are no corresponding message books in the charge sheets nor has SIT thought it fit during its investigations to inquire into whether their presence and movements is borne out in the records;

d) It is apparent from the charge sheet filed by SIT and statements of witnesses Munsafkhan Yasinkhan Pathan and police witness GK Parmar that witness Munsafkhan made innumerable phone calls from his own landline number 32328 and the mobile numbers of Nisar Ahmed Gulamnabi appealing for help from the police for the attacks on Muslims, for increased police protection and timely action. These phone calls were made from 8 p.m. of 1.3.2002 until 4 a.m. of 2.3.2002 to both the Vijapur police station and state Control room. Yet in the re-investigation, SIT has simply not bothered to investigate these distress calls, not recorded any statements in connection with these innumerable calls, not collected investigated or produced any telephone call records of the relevant time

period, not produced the telephone *vardi* book or telephone incoming register. No statements have been recorded in this connection;

e) It appears clearly from the investigation papers that without panchnamas being carried out and recorded, bodies of the dead victims were removed from the spot. SIT has simply not bothered to investigate this major procedural lapse. Key documentary evidence is also absent from the SIT investigation papers;

f) The case papers in this case and the witness statement of Firojabano Bachumiya suggest that iron rods with an electric current were forced and suspended into the home of Mehmoodmiya where women, old men and children had fled to take shelter. These statements say that the electric connection was taken from an electric pole near the home of Nathubhai Karsanbhai but nothing in the SIT investigation has explored this aspect of the crime.

iv. Naroda Patia Trial & Naroda Gam Trials (110 persons killed)

a) Fifteen witnesses in their statements both before SIT and made earlier, at the minimum have named accused number one Babu Bajrangi Patel as not just accused but leader of the mob, mastermind etc. He is a key person behind the massacre that led to 95 (non official figures state 110) persons being slaughtered. Despite this evidence against him SIT has not sought to move the courts for cancellation of his bail and he is free, enjoys

the special patronage of the Gujarat chief minister and is in every position to tamper with investigations and intimidate witnesses and victims;

b) Suresh Langda Richard Chara, another accused named by as many as 53 witnesses as also an accused figuring on a self-confession of heinous crimes in *Tehelka's Operation Kalank* for murder rape and ghastly crimes similarly has not sought to be re-arrested by SIT;

c) Similarly while SIT has arraigned second PI from the Naroda police station as accused, despite crucial criminal lapse being attributed by half a dozen witnesses to first PI KK Mysorewala (after 2002 promoted to rank of SP) no moves have been made to charge him until recently when some witnesses who were attacked allegedly at the behest of Smt. Maya Kodnani complained of this lapse to SIT;

d) Similarly names of other powerful and influential accused from among the state apparatus have been ignored by SIT;

e) the entire procedure for arrest of minister Maya Kodnani after "notice" was served on her allowing her time to go underground while attending official duties and failure of SIT to investigate any further during her and Dr Jaideep Patel's remand period has also raised questions about SIT's investigations.

There are three other key trials which are being supervised by the SIT. The Petitioners in this case have been assisting victims in one of those trials that is arising out of the Odh incident (**27 persons killed**). The Petitioners are not able to analyse its status as the Sessions Court has

rejected their application to get a copy of the report/charge sheet filed by the SIT.

Teesta Setalvad

Secretary Citizens for Justice and Peace

ANNEXURE TO THE OPEN LETTER

BRIEF WRITTEN SUBMISSIONS:

(SUBMITTED BY TEESTA SETALVAD, SECRETARY FOR CITIZENS FOR JUSTICE AND PEACE, MUMBAI BEFORE THE HON SUPREME COURT)

1. The Special Investigation Team was constituted by the Government of Gujarat pursuant to the order / direction of the Hon'ble Supreme Court dated March 26, 2008 to carry out further inquiries/ investigation into nine cases, with the object of ensuring that all those who were guilty of offences were arraigned and punished.

2. The context of the said order / constitution of the SIT, was material which established that:

- (i) FIRs had been wrongly and incompletely recorded & names of accused officers & those politically connected had been dropped/excluded
- (ii) that inquiries / investigations had not been adequately carried out especially regarding the involvement of police officers, civil servants and politically influential individuals in these offences both by way of actual involvement and by way of complicity: deliberate inaction
- (iii) There were threats to and intimidation of witnesses

- (iv) Prosecutors were appointed who had earlier appeared for the accused and who were associated with organizations who were involved in the offences,
- (v) *Bail Orders granted out of turn by the lower and higher courts in Gujarat ensured that that these politically influential accused moved free in areas and neighbourhoods of their influence that were also the sites of the worst carnages.*

3. It is submitted that the record establishes that the SIT has failed:

- i. to adequately investigate/ inquire into the involvement of police officers, civil servants, ministers and politically influential individuals in these offences (both by way of actual involvement and by way of complicity: deliberate inaction),
- ii. *to investigate the carefully planned build up of arsenal, men and arms in the lead up to the Godhra tragedy of 27th February 2002 (Volume II and III of CMP at pages 76-84 of the volume).* This build up of bombs, swords, gas cylinders and chemical powders in preparation for the carnage was exposed both in Tehelka's Operation Kalank and affidavits of police officers former DGP RB Sreekumar and former SP Bhavnagar and DCP Crime Branch Ahmedabad Rahul Sharma
- iii. *has deliberately failed to investigate thoroughly documentary evidence including phone call records, mobile van records, control*

room registers, station diary entries and fire brigade registers, a scrutiny of which would have indicated the levels of, and extent of pre-planning and conspiracy that went into the post Godhra violence (Additional Affidavit to the CMP dated December 1, 2009)

- iv. has failed to ensure that all those involved are arraigned as accused, and has failed to take adequate steps to prevent threats to and intimidation of witnesses.*
- v. has also failed to apply for the cancellation of bail of the most powerful arraigned ensuring that they are free while the trials are conducted.*

4. In the cases relating to Naroda Patiya & Naroda Gam where over 110 persons were brutally murdered and girls and women were brutally gang raped:

- (i) 129 witness statements were NOT recorded by the SIT [Ref Vol B pg 256 – 260]
- (ii) Although numerous witness statements [Ref: Vol B: Sr No 3/ Witness No 18 – Pg 260; Sr No 32/ Witness No 228/1 Pg 270, Sr No 53 / Witness No 409 Pg 276, Sr No 15/ Witness No 142 Pg 264] had referred to the active involvement (police firing on Muslim victims) and deliberate inaction of policemen under the charge of **Police**

Inspector K K Mysorewala (now promoted to Superintendent of Police) who had ordered police firing on Muslim victims after discussing with Maya Kodnani & who had repeatedly informed those desperately seeking his protection , that there were “***instructions/orders from higher authorities not to protect you***”; “***there is no order to save Muslims***” & “***you have to die today***”; - has not been arraigned as an accused by the SIT. Nor has there been any investigation by the SIT into the “***higher authorities***” which had given him the order/ instructions not to protect Muslims – nor has any such “***higher authority***” been arraigned by the SIT.

An analysis of the call details of PI KK Mysorewala (09825190775) (now promoted) show that on 27.2.2002 there is only one call received by him from his official number. The number calling was 09825047044. On 28.2.2002, his phone records show that he (Mysorewala, a policeman) was in touch with VHP accused, Jaideep Patel, accused in the Naroda Gam and Patiya cases. He received a call from Jaideep Patel (09825023887) at 10:55:20 for 28 seconds. He was shown in Narol, Naroda at the time and this was when the massacre was at its height. All this material has been placed by us before SIT and yet SIT has chosen to ignore the implications and not conduct further investigations.

- (iii) Although numerous witness statements [Ref: Vol B: Sr. No 15/ witness No 407 Pg 264, Sr. No 51/ Witness No 406/1 Pg 276 & Sr. No 54/ witness No 410 Pg 277, Sr. No 55 Witness No 412 Pg 277, Sr. No 56 Witness No 413 Pg 278, Sr. No 57 Witness No 420 Pg

278, Sr. No 58 Witness No 421 Pg 278, Sr. No 61 Witness No 425 Pg 279, Sr. No 67 Witness No 433 Pg 281] have referred to the actual involvement of the SRP Personnel and in particular **SRP Officer K. P. Parekh** in firing on fleeing Muslim victims, in encouraging the mob to attack Muslims and in categorically refusing to protect Muslims and who had informed hapless victims that ***“Today you have to die. No one can save you. We will never save you, we have order from higher authorities to kill you”***; -- neither officer K. P. Parekh nor any SRP personnel have been arraigned by the SIT as an accused

- (iv) 15 witnesses have named Babu Bajrangi Patel as the leader of the mob that slaughtered 95 people and of having personally killed many & having cut open the stomach/ womb of Kauserbanu and killed her foetus [Ref: Vol B Pgs 288 – 292]. Despite this the SIT has not moved for cancellation of his bail. He roams free today to threaten & intimidate victims & witnesses. He has even been allowed to go abroad. (CMP Pg 13)

Babu Bajrangi Patel has also stated on video tape to Tehelka, that he was protected / housed by Chief Minister Modi in State Government guest house in Mount Abu, that his bail was managed and that judges were changed to get him bail. He has stated that

justice Dholakia had refused bail and that his case was later brought before Justice Akshay Mehta in order to get him bail. Apparently there has been no investigation / inquiry into these aspects by the SIT.

- (v) 53 witnesses have named Suresh Langda Richard Chara of instigating the mob to rape, kill & burn Muslims and of being directly involved in murder and rape [Ref: Vol B Pgs 292 to 297]. Despite this, the SIT has not moved for cancellation of his bail. He roams free to threaten and intimidate victims & witnesses (CMP Pg 13)

Suresh Chara has stated on videotape that he was congratulated & garlanded by Chief Minister Modi when he arrived there later in the evening. Apparently there has been no inquiry/ investigation into this aspect by the SIT.

- 5. Goldberg Case: This offence relates to the cold-blooded rape and killing of 70 hapless Muslim victims including Ahsan Jafri, in the heart of Ahmedabad city, over a 11 hour period on 28th February 2002.
 - i. Significantly the SIT has arraigned an additional 25 persons as accused, including **K. G. Erda: PI Meghaninagar Police Station** (now promoted to ACP) who was also the Investigating Officer for

this case/ offence. However the SIT has totally failed to inquire/ investigate into the circumstances in which repeated calls for police assistance went unheeded, in the very heart of Ahmedabad city, for _____ hours and whether this was merely criminal neglect or a matter of design.

- ii. P.I. Erda's phone records shows that during the hours of the carnage on 27th & 28th February 2002 he had made regular calls (23 calls: 13 + 10) to the Police Control Room / Police Commissioner P C Pandey, calls (2) to Joint Commissioner M.K. Tandon & calls (2) to DCP Gondia. The SIT has apparently not interrogated Jt. Commissioner Tandon, or DCP Gondia or Commissioner P.C.Pandey (now DGP Gujarat State) as to the nature of their communing with PI Erda and the steps they took in the matter or their failure to respond / act.
- iii. Jt. Commissioner Tandon has admitted to the Nanavati Commission that he was telephonically informed at 2.00 pm that Ahsan Jafri was in mortal danger; - he apparently did nothing. Commissioner of Police P. C. Pandey had in fact visited Gulberg Society at 10.30 am and promised Ahsan Jafri adequate police protection/ assistance – no such protection was in fact made available. PC Pandey's call records indicate that from 2.30 pm to

9.00 pm on the 28th he was in touch with police officers in charge of these riot hit areas. The SIT does not appear to have questioned Pandey or Tandon or pursued the matter.

- iv. Moreover it is undisputed that two cabinet ministers Ashok Bhatt & I. K. Jadeja were sitting at the Police Control Rooms in Ahmedabad City & at Gandhinagar. Ahsan Jafri made almost 200 calls for assistance. PI Erda spoke regularly to the Police Control Room. The SIT has apparently not questioned either Bhatt or Jadeja as to their role, acts/ inaction in the Control Room or pursued this matter.
- v. In fact Mr. Shivanand Jha member SIT was the Asst. Commissioner of Police Ahmedabad and in charge of the Control Room – and would accordingly be able to depose as to the calls received from PI Erda, the role of the cabinet ministers who were present & P C Pandey.
- vi. The Concerned Citizens Tribunal had recorded the statement of a cabinet minister that on 27th evening a meeting was held by the Chief Minister, with the Home Minister, the Chief Secretary Subba Rao, the DG Police Chakravarty & Police Commissioner Pandey at which the Police were instructed not to do anything to contain the “Hindu reaction” after Godhra Mr. Sreekumar Addl. DGP R.B.

Sreekumar has on affidavit stated that he met DGP Chakravarty in the Chief Ministers antechamber and was informed by him that the Police had been instructed not to act. Despite all this material the SIT does not appear to have questioned either Chief Minister Modi, or Chief Secretary Subba Rao, or DGP Chakravarty or ADGP Sreekumar – or pursued this aspect.

6. Sardarpura Case: In this case also being tried at present in a special court, the role of the SIT has been superficial and designed with a view to ignore investigating substantive documentary evidence. Key witnesses (police) present at the district police stations and control rooms have not been examined as have not key witnesses (CRMP 19816 page 11-13)
7. British National Case: Two eyewitnesses have turned hostile (CRMP 19816 page 19-20) and when SIT was questioned about this by us DR RK Raghavan said, “what did you expect from Hindu Patel witnesses from Gujarat?” The Hon SC appears not to have been apprised of this circumstance of key witnesses turning hostile.
8. Godhra Trial: In the Godhra Trial the SIT has not conducted any further investigation or re-investigation at all but has completely accepted the previous investigations, under great cloud conducted by an interested Gujarat police. (CRMP 19816 page 9)

9. Failure to Interrogate Substantive Documentary Evidence of State Complicity

i. PC Pandey 's Role as Revealed After an Analysis of the CD

He was in his office till about 1:00 am on the night of 27.2.2002 that is the early morning of 28.2.2002. In normal times, he used to leave office at around 7 pm every evening. It was an apprehension and of trouble and a seasoned assessment that after the Godhra incident, some trouble may break out that on 28.02.2002 that made him stay so late. This clearly suggests that he was aware of the gravity of the situation following the Godhra carnage on 27.02.2002.

He arrived at his office in the morning at around 8:00 am. His normal schedule shows that he used to arrive at his office at about 10:30 am. His early arrival again shows that he was aware of the gravity of the situation.

Mr. Pandey left his office at around 9:45 am and went towards Gota. This is likely to be his visit to the Sola Civil Hospital, where the dead bodies of the Godhra Victims had been kept. He returned and reached office at around 10:50 am. He was confined to his office for the whole of the day and did not move out till about 19:10 hrs, when he probably went to Gulberg Society, Meghaninagar.

The important point to be noted is that during the peak period of the communal riots, he did not move out of his office. (It also appears that he did not issue any instructions to any of his officers and let things take their own course. However, this aspect would be discussed later.)

An Analysis of the phone records of Mr. P.C. Pandey presented by us to SIT shows that on 28.02.2002 shows that he had received/dialed a total of 302 calls on his mobile phone. He had dialed 39 numbers from his mobile phone. Out of these 39 calls, he had called up the DGP, Mr. K. Chakravarty, 6 times. He had dialed Mr. Shivanand Jha 8 times and his DCP's 8 times. He had called DCP, Zone IV, Mr. P.B. Gondia only twice (meaningful conversations) at 15:16:12 hrs and 15:54:39 hrs.

Analysis of calls made from his landline in office to mobiles of officers show that he connected to mobiles operating in Ahmedabad City only 13 times. Out of these 13, 12 were incoming calls on his landline phone. He made just one phone call from his landline number and that too was probably not to an officer. In addition, this single call was made at 20:10:56, when most of the action had already taken place. It can be concluded that he did not use the landline to pass orders or instructions to his field officers.

As has been reported in the newspapers, Mr. Pandey had claimed that he had no information of the happenings in Naroda Patiya or Gulberg Society. This is virtually impossible in field situations. Further, his knowledge of the two incidents gets support from call details, as has been explained above.

It must also be that since Mr. Pandey was not informed of the incidents, he would not have sent any message to the officers in the field.

Thus, it can be concluded that there was virtually no instruction from Mr. Pandey to take action against the violent mobs at different places. If we take into consideration the “admissions” made by Mr. Shivanand Jha to fellow officers, it raises strong suspicions that he (Mr. Pandey) acquiesced in the crime.

The statement of Mr. Pandey before a prominent television channel only speaks his mind and his deep involvement in the conspiracy. He had said, during the riots, *“Where the whole society has opted for a certain colour in a particular issue, it’s very difficult to expect the policemen to be totally isolated and unaffected.”*

Was Mr. Pandey speaking of his own state of mind when he said this? Did he also want this (the communal pogrom) to happen?

As had appeared in the newspapers, the SIT had concluded that Mr. Pandey was busy handling the dead bodies of the victims of Godhra Carnage. There are two aspects of this. Firstly, cell phone records show that he was sitting in his office all day long. He hardly seems to have done anything with respect to the dead bodies except paying a visit in the morning to the Sola Civil Hospital.

Secondly, is it a priority for a police officer to “handle” the dead bodies when the whole city is burning? Should he omit his basic duty to protect human life and property and, instead, go about “handling” the dead bodies? If he was so sensitive about the dead bodies, why did he allow the bodies to be brought all the way from Godhra by road through the streets of Ahmedabad? Did he also want the passions to flare up? The whole story of Mr. Pandey attending to the dead bodies of the Godhra

train carnage victims seems to be maliciously cooked up. It is felt that he has just thrown up an alibi and expects everyone to accept it.

The inaction on the part of Mr. Pandey is very apparent. The question that arises is regarding the cause of this inaction. Did he omit to take necessary measures out of his own volition? Or was he coerced into doing this? The first option is less likely because Mr. Pandey had nothing to gain from this. The second option is more likely. If this were so, who could have “pushed” Mr. Pandey into such gory acts of omission? It could only have been someone who was significantly more powerful than him. The needle of suspicion points towards the political leadership, which had everything to gain in view of the impending elections and the poor electoral fortunes of the BJP.

There is another viewpoint in this. On the evening/night of 27.02.2002, a meeting was held under the chairmanship of the CM, Mr. Narendra Modi. Mr. Pandey was one of the officers who attended the meeting. What instructions were issued by him in the meeting? Were the officers instructed to take firm action? If that was so, then would any officer have dared to disobey the CM over a legal order? And above all disobey the present CM? It is most unlikely.

The government, till this day, has also not taken any disciplinary action against any officer for not following its legal orders. This suggests that it has not agitated by the intentional lack of compliance of its legal orders. Hence, that such a thing would have happened is most unlikely – almost impossible.

The other possibility is that the officers were instructed to “let things happen”? This instruction seems to be consistent with the conduct of the officers and very much in the interest of the political party in power. It is also consistent with the conduct of the government to the whole issue –

officers who supported the 'mission' were suitably rewarded with important postings; officers, who stood up for their call of duty, were shifted to insignificant and difficult posts.

ii. M K Tandon's Role as Revealed by an Analysis of the CD

He, too, was in his office late in the night till about 1:15 am on 28.02.2002. In normal times, he also used to leave office at around 7:00 pm. Further, he arrived at his office at about 8:30 am on the morning of 28.02.2002. As in the case of Mr. P.C. Pandey, his being in his office till late hours and arriving early suggests that he, too, was aware of the gravity of the situation.

As had been mentioned earlier, Mr. Tandon had visited Gulberg society at around 11:25 am on the morning of 28.02.2002 but as police witness testimonies reveal before the trial court, despite coming with a striking force and a restive and violent mob met him, junior officers pleaded with him to send men and arms, he left with this well equipped force to another location. MK Tandon's phone calls records show that he was received many calls from both political bigwigs and some accused. Was his decision to leave Gulberg society unprotected a professional decision or governed by political pressure? At 00:00:32 on 28.2.2002 he received a call from Govardhan Zadaphia, MOS Home and later in the day around 5 p.m. a call from Kaushik Jamnadas Patel, state minister for power. Nimesh Patel, accused of killing eight people was also in touch with him at 22:28:34 on 28.2.2009.

While just outside Gulberg society, Mr. Tandon receives a call from Commissioner of Police PC Pandey and its is assumed that the two would have spoken about the violence and restiveness of the mob at Gulberg. Eases a bit. This means that when Mr. Tandon got a call from Mr. Pandey, police had either already resorted to firing or the mob surrounding the

Gulberg Society had become so restive that police firing was imminent. In such a situation, Mr. Tandon would certainly have mentioned to Mr. Pandey the grave environment prevailing at the Gulberg Society.

Inexplicably, after talking to Mr. Pandey, Mr. Tandon heads for Naroda Patiya. If this movement was on the instructions of Mr. Pandey, it shows that Mr. Pandey, who has reportedly pleaded ignorance of the incidents at Gulberg Society and Naroda Patiya before the Commission of Inquiry, was actually fully aware of the entire happenings. And that he lied before the Commission (may be also before the SIT).

Mr. Tandon reaches Naroda Patiya at around 12:15 pm, imposes curfew at 12:29 pm in Naroda Patiya (wireless message is available), and then leaves Naroda Patiya at about 12:33 pm – within 4 minutes of imposing the curfew! At this point a huge mob had already gathered at Naroda Patiya and its intentions to kill and plunder were apparent. It was for this reason that Mr. Tandon had to order the imposition of the curfew. However, Mr. Tandon made no effort to implement the curfew. He left the place leaving the hapless residents of Naroda Patiya undefended.

After leaving Naroda Patiya, Mr. Tandon goes to Dariapur & Revdi Bazaar areas where nothing is happening and all is quiet. Thus, Mr. Tandon is neither at Gulberg Society nor at Naroda Patiya despite having full knowledge of the prevailing situation at the two places. He is not present at the place where the crime is taking place despite having sufficient police force at his disposal. He, thus, intentionally abdicates his responsibility and abets the commission of the crime by the riotous mob.

Was this omission on the part of Mr. Tandon a mere act of cowardice or was it an intentional omission to leave the mob to kill, rape and loot? Given that he had earlier been instructed by Mr. P.C. Pandey to “let things

happen”, it is most likely that he fell in line and allowed the pre-planned pogrom to be executed without any obstruction or resistance.

iii. Analysis of Calls and Location of Mr. Shivanand Jha:

He, too, was in his office late in the night till about 1:15 am on 28.02.2002. Normally, he used to leave office at around 7:00 pm. Further, he arrived at his office at about 5:10 am on the morning of 28.02.2002. As in the case of Mr. P.C. Pandey, his being in his office till late hours and arriving very early suggests that he, too, was aware of the gravity of the situation.

It is seen that both the sector heads – Mr. M.K. Tandon and Mr. Shivanand Jha did not move out of their offices till about 11:00 am despite mounting tensions and reports of gathering mobs and skirmishes. Even Mr. P.C. Pandey, who had gone to Sola Civil Hospital, does not appear to have been involved in the control of riots. He probably was more concerned with his visit to the dead bodies at Sola Civil Hospital. As has been discussed earlier, all the three officers did not take early action to nip the riots in the bud, as has been provided for in the Gujarat Police Manual.

If this is true, then the acts of omission on the part of Mr. P.C. Pandey and Jha could be part of a larger conspiracy to allow the mobs to kill and plunder. Consequently, he would stand as an accused in all the major riot cases being investigated by the SIT, namely, the massacres at Gulberg Society, Naroda Patiya and Naroda Gam.

iv. Reluctance by SIT to Investigating the Chain of Command

DCP Zone IV PB Gondia is in touch with key accused, Mayabehn Kodnani, Jaideep Patel and Nimesh Patel seven times through the day.

Details:

The DCP Zone IV, P B Gondia (9825049197) receives a call from accused Jaideep Patel at 11:40:02, the again at 11:52:29 also from Jaideep Patel. Again Jaideep Patel and Gondia are in touch at 12:20:44.

At 13:53:59 another accuse d Nimesh Patel is in touch with this senior officer and then again at 14:13:47.

At 17:05:33 P B Gondia (9825049197) received a call from 792686136, the office landline of Maya Kodnani then MLA and now accused in both the Naroda Gam and Patiya cases.

In the morning of 28.2.2002 at 10:30:11, Gondia receives a call from Maya Kodnani's mobile (09825006729)

At 18:55:59 and then again at 21:43:23 P B Gondia (9825049197) received a call from Nimesh Patel (9824255788). It appears as if this officer was regularly reporting to these two as at 22:10:52 P B Gondia (9825049197) made a call to 09824255788 (Nimesh Patel) and then at 11:40:02 he (09825049197) received a call from Jaideep Patel (9825023887)

v. Failure of SIT to Investigate the Locational Details as Revealed by an Analysis of Five Lakh Phone Calls on the CD

Locational Details of the Powerful and the Accused

NAROL, NARODA

27.2.2002

At 05:10:53 Ashok Bhatt, cabinet minister for health accused of sitting in the city control room and preventing policemen from doing their duty was at Naroda-Narol At 09:55:24 on 28.2.2002 around the time the massacre began, Ashok Bhatt was at Narol, Naroda. He received three calls there.

Another key person from the coterie of the chief minister was at this location, Tanmay Mehta, PA to the Chief Minister who was there at Naroda at 16:02:OP Singh, PA to the chief minister was also there at 16:02:25 and they were in touch with each other. Ashok Narayan Additional Home secretary also accused in the Zakia Jafri Complaint was also present here at 5:41:32 (Narol, Naroda) as was IK Jadeja, minister at 17:35:25

Analysis of Location of Key Persons at Meghaninagar

MEGHANINAGR

27.2.2002

Close members of the chief minister's cabinet and coteries were at Meghaninagar on 27.2.2002. At 15:48:39 Ashok Bhatt (919825039877), minister for health was here and around the same time Anil Mukim, Additional Principal Secretary to the chief minister was also here. (15:33:40). Mukim was also here at 16:02:02 and then again that night at 22:01:18. Others present there at Meghaninagar which is the jurisdiction area where the Gulberg society is located the day the chief minister was in Godhra was OP Singh, PA to the chief minister at 15:48:16. PK Mishra, Personal Secretary to the chief minister is also present at Meghaninagar at 15:48:11 on 27.2.2002 and so also is Tanmay Mehta, PA to the chief minister (at 15:35:01)

Interestingly among policemen who are in the same area on 27.2.2002 are PB Gondia DCP Zone IV who is there at 00:36:26 that is on the early morning of that day.

28.2.2002

On the day of the massacres at Gulberg society and Naroda Patiya and Gam, IK Jadeja, cabinet minister for urban development was at the

Meghaninagar area at 15:56:40. MOS Home, Zadaphia was there at 17:02:38

- vi. A Thorough Professional and Independent Investigation into the Integrity of the CD and Its Contents needs to be undertaken. The phone call records of the chief of police, PC Pandey's need to be collated with wireless communications, control book records, message books and phone records. **This has been studiously avoided by the SIT.**
10. In fact the SIT has shown a singular lack of interest in inquiring/ investigating into the circumstances in which (i) the Police force either played an active role in the riots/ attacks/ offences at Gulberg & Naroda, or stood by and allowed the commission of the offences & failed & refused to provide protection to the hapless victims often stating that they were under instructions to refuse assistance/ protection (ii) senior officers at the Police Control Room failed to react to repeated calls for assistance and despite being in communication with the officers at the riot sites , stood by while a bloodbath / orgy of violence continued for 11 hours in the very heart of the city (iii) the evident involvement of two ministers of the Government in the control room , where information was received of these situations – but no steps taken to respond thereto (iv) the role of the chief minister, home minister, chief secretary , DGP Chakravarty & Police Commissioner P C Pandey in ensuring that no effective steps were taken to prevent or curtail the bloodbath/ orgy of rape and violence which continued for as much as 12 hours in the heart of the city.

An order for further investigation into not just the authenticity of *Tehelka's sting Operation Kalank* (already conducted by CBI under an order of the NHRC) but cross checking of phone numbers etc of the accused named therein was passed by the trial court on September 7, 2009. No efforts were made by SIT to list for DCP Control Room Rahul Sharma as witness in the Gulberg case though he was made a witness in the Naroda Patiya and Gam cases.

On November 14, 2009 witnesses applied to SIT for inclusion of Shri Rahul Sharma as witness in this case and also gave them detailed analysis of phone call records and location analysis carried out by us. Following this application, Shri Rahul Sharma's statement recorded but no attempt to entirely analyse the CD with the full implications on the Gulberg Society Case have yet been made and presented to the Court.

11. This refusal to scrutinize documentary records thoroughly, professionally and with probity has to be viewed in the context of the fact that an analysis of the phone call records reveal startling facts about not just *who was in touch with whom but also about location details of powerful politicians, accused and policemen are the scenes of the carnages the day before the occurred that is the date of the Godhra tragedy, 27th February 2002.*
12. This inaction/ singular lack of inquiry or investigation has to be viewed in the context of the facts that:
 - i. The main investigation officers: Geeta Johri, Shivanand Jha & Ashish Bhatia are all Gujarat officers who were their subordinate / answerable to DGP Pandey (who wrote their ACRs till a few months ago) & under the service & control of the State of Gujarat.

- ii. Shivanand Jha was in fact the Asst. Commissioner of Police Ahmedabad and in charge of the Control Room on 27th & 28th February 2002. In the investigation arising out of the SLP (Crl) 1088 of 2008, Shri. Shivanand Jha is also ought to be investigated as his name is mentioned in the list of those sought to be accused. Mr Jha had in fact deposed on behalf of the State before the Justice Nanavati Commission wherein he had supported the State's version of events. He has also served as the Home Secretary of the Gujarat government for nearly three years after 2002 when this matter was pending before the Hon'ble Supreme Court and he had consistently taken the stand that the investigations of these cases should not be handed over to the CBI or transferred out of the State and that the ongoing process of investigation was appropriate.
- ii. The second SIT member from Gujarat, Smt Geeta Johri did perform diligently in the initial stages of an investigation related to another case known as the "Sohrabuddin Encounter case". However, as has been argued before this Hon'ble Court in the said encounter case, she has been seriously indicted for her inactivity and complacency in the matter after the three IPS Officers were arrested by Shri Rajnish Kumar Rai in the Sohrabuddin matter. It also appears that this officer, was favoured by the State soon after she was assigned the responsibility of the investigation into the Sohrabuddin encounter, on July 1, 2006, just a week after she

started preliminary inquiry into the case, by acceding to an old request made by her for an alternate plot. The government gave her an alternate plot of land as requested by her measuring 330 sq meters in the same sector in Gandhinagar by waiving off the premium amount that has to be mandatory paid which, according to the rules, should have been 50 per cent of market value if the allotted wishes to change the plot. This along with the fact that her husband is facing corruption charges which are being inquired into by the Gujarat Government does cast doubt on her ability/ willingness to inquire/ investigate into the complicity / role of senior police officers, civil servants and ministers of the Gujarat Govt.

- iii. The third and last member from Gujarat Shri Ashish Bhatia, in charge of Ahmedabad's Crime Branch, was specifically put in charge of the Gulberg and Naroda investigations and has been set out above has failed to proceed against Police Officers (Mysorewala) & SRP Officers (Parekh), and failed to inquire / investigate the role of Officers like Pandey, Tandon & Gondia as also whether their acts/ inaction was attributable to decisions taken / instructions given by the Chief Minister, the DGP & the ministers manning the control room.