

Part A (Concluding Arguments on the Zakia Jafri Protest Petition) Legal Aspects covered the following Key Aspects:

- (i) History of the Zakia Jafri Complaint dated 8.6.2002 & Its Distinction from Gulberg Society case
- (ii) History of the Investigation etc through a Perusal of SC Orders
- (iii) SC And Court's Views on Constitutional Mis-governance and Acts of the Gujarat Government in relation to Post-Godhra Carnage of 2002
- (iv) Scope of Magistrate's Power hearing Protest Petition
Threshold of Evidence with detailed Judgements
- (v) Conspiracy as Crime (Judgements and Law, Legal Interpretation Distinction between Conspiracy & Abetment)

Zakia Jafri Protest Petition

Written Arguments on Factual Aspects

Part B

1. Accused No. 1, Narendra Modi was Pracharak of RSS for nearly two decades. During the chief ministership of Keshubhai Patel, the RSS head had pushed the name of Modi as the chief minister of Gujarat around September 2001. He actually became CM on 7.10.2001. Thereafter, he fought an MLA bye-election from Rajkot and was declared as elected from the said constituency on 22.2.2002. Five days after his being declared as the elected MLA from Rajkot, the tragic Godhra incident took place on 27.2.2002. Narendra Modi was brought into Gujarat politics to vehemently push the aggressive supremacist Hindutva ideology. He was keen to establish himself within the BJP as a hardline supporter of Hindutva. He came into Gujarat politics with a pre-determined mindset. Therefore, when VHP/RSS/ Bajrang Dal and DurgaVahini wanted to have the 'Mahayagna' at Faizabad, Uttar Pradesh to commemorate the anniversary of the demolition of the Babri Masjid and ensure the building of a Ram Temple there, (which had taken place on 6.12.1992), inspite of repeated messages from the State Intelligence Bureau (PB Upadhyaya and Sanjiv Bhatt) from 7.2.2002 to 25.2.2002, warning the Government about this Mahayagna and its repercussions and also that 2,800 karsevaks had left Ahmedabad on 22.2.2002 and another batch of 1900 had left on 24.2.2002, no precautionary measures were taken by the

government and its home department headed by A-1 Modi. Conspiracy as Actually Committed by A-1 Modi, a supporter of the Babri Masjid Demolition deliberately was, as political head of the Gujarat Government's Home Ministry (Cabinet Minister for Home) to deliberately ignore the warnings of the blatant communal mobilisation evidence of which is available from the SIT Records (Faxes of the SIB etc) before 27.2.2002.

[A LOD describing events from 9 a.m. to 1 p.m. handed over to the Court along with a Note on the Communal and Criminal Mindset of A-1 Modi was submitted to the Court. In this LOD, the facts/incidents upto 1 p.m. on 27.2.2002 are covered. These facts have been covered at Paras 32 – 59 (Pages 30-41) of Volume I, Protest Petition; Paras 459-463 at Pages 205-207 of Volume I of the Protest Petition have been covered. All these SIB Messages are available @ at Annexure III, File XXXIV D-176 of the SIT Record and have been given separately to the Court annexed to the LOD. They have been detailed in the Annexure to this Note as well for convenience.] (Prelude from Tehelka Tapes @ Pages 120-126, Volume I, Protest Petition, Volume I

The A-1, therefore, supported the 'Mahayagna' as it was in commemoration of the act of the demolition of the Babri Masjid, which also he had supported. The A-28 ACS (Home), Ashok Narayan in his statement before the SIT dated 12.12.2009 has admitted these State Intelligence Bureau (SIB) messages.

2. In the ordinary course whenever there is a message by the State Intelligence, necessary instructions are issued by the Home Department/DGP to the concerned officers. But no such instructions were issued as this build-up of communal mobilization was allowed. In fact no actions were initiated though the State Government was also informed of the return of karsevaks from Faizabad and the apprehension of the breach of law and order. The Sabaramti Express which had left Faizabad (UP) on 26.2.2002 carrying a group of karsevaks had witnessed a violent incident at two railway stations, including Rudauli, (Uttar Pradesh). In particular incidents took place at two places including Rudali where stabbing and attacks also followed. Though the home department of the State headed by A-1 was aware of this fact and was also aware of the fact that the same provocative slogan shouting will

take place at other railway stations including Godhra, no action was taken.

3. Admittedly, when the Sabarmati Express reached Godhra (at about 7.15 am on 27.2.2002—it was five hours late), the kar sevaks were shouting provocative, anti-Muslim slogans. Thereafter the said incident took place resulting in burning of two coaches, of which S-6 was badly burnt. To complete the narration, the train reached Vadodara after leaving Godhra at 1-1.30 p.m. where karsevaks had assaulted three persons, one of them being Abdul Rashid who died. From Vadodara the train reached Anand around 2.20 p.m. where again violence took place and karsevaks indulged in violence, killing of one person and causing injury to two persons.—they were all Muslims. From Anand the train finally reached Ahmedabad railway station around 3 p.m. where the karsevaks were shouting bloodthirsty slogans (*"Khoon ka badla Khoon"*) threatening revenge against all Muslims. At Ahmedabad railway station, stabbing, stone pelting incidents etc. also took place. No preventive actions were taken at the highest levels of the state's political, administrative or police hierarchy and the communal temperature was deliberately allowed to escalate all over the state, especially Ahmedabad, on 27.2.2002. **(Paras 574-587 @ Pages 254-260, Volume I Protest Petition)**

4. The Fax message of the incident was sent by DM Smt. Jayanti Ravi to the CMO, Home Department and Revenue Department, which was received at 9 a.m. of 27.2.2002. In the said message, it was clearly mentioned that the karsevaks were shouting provocative, anti-Muslim slogans. In addition, Sanjiv Bhatt, State Intelligence had also sent a message to the CS, HS, CM, MOS Home and DGP Gandhinagar confirming the fact that kar sevaks were shouting provocative slogans **(Both messages are available in the SIT Records @ Annexure III, File XLI at Serial Nos 1 and Annexure IV, File IX, Serial Nos 241-in the SIT record)**

That the A-1 already having a mindset, indulged in act of Conspiracy and Abetment with other accused and other accused inter se which will be clear from the following:-

(i) After receiving the fax message from Jayanti Ravi, Collector/DM, two telephone calls were made by A-1 to

Jaideep Patel (A-21), General Secretary of the VHP from the Mobile: 09825037439 belonging to the PA of A-1 Modi, AP Patel. The PA's (A.P. Patel) statement is the only one that the SIT has conspicuously avoided recording though statements of five other officials from the Chief Minister's Office (CMO) have been recorded. A-1 issued instructions to Jaideep Patel, (A-21) who was at that time at Naroda, and who, thereafter, left for Godhra reaching there around 12 noon. The first manifestation of the Criminal Act of Conspiracy took place between A-1 and A-21 when A-1 as the Chief Minister and head of the Government, instead of instructing the police and bureaucratic machinery about the fall out and repercussions of the incident and directing precautionary and preventive steps, called the VHP General Secretary and plotted revenge. An agreement to indulge in acts of criminal nature was arrived at between them. What was done by A-21 after reaching Godhra is clear i.e. he mobilized the VHP cadres at Godhra, instigating them against ordinary Muslims. The Conspiracy, was, therefore clear, between A-1 and A-21, which was to instigate and mobilise the VHP cadres against ordinary Muslims. This was done by A-1 because of his pre-determined mindset of aggressive Hindutva and anti-Muslim prejudice/bias. **(Page 5-6,Annexure Volume IV to Protest Petition has AP Patel's Phone Records).** Also See Annexure IV, File V and VI in SIT Papers).

5. A-1, after receiving the fax, manifesting criminal intent and conspiracy, A-1 did four things:

- a) **A-1 Modi Conspiring with VHP (A-21) to Manipulate Godhra into Mass, Statewide Reprisal Killings** He called the VHP Gujarat general secretary to go to Godhra. What Jaideep Patel did in Godhra was to instigate other VHP men and Hindus against the Muslims. Therefore, Modi conspired with Jaideep Patel to instigate negative and aggressive feelings of RSS, VHP workers against Muslims. Otherwise, there was no need for him to inform the VHP man (and be in close contact with him) knowing fully well that after the Godhra incident, tensions may escalate and what was required was restraint and specific measures to strengthen the law and order situation. He,

therefore commits an omission in not discharging his duty; he in fact by his conduct allowed communal tension to escalate. (Jaideep Patel is now facing trial for his direct involvement in the Naroda Gaam carnage).

b) Suppressing Information about the Provocative

Sloganeering by Kar Sevaks. The other part of conspiracy is in suppressing the official intimation that karsevaks were shouting provocative slogans. In furtherance of this Conspiracy, A-1 called a meeting at his residence at Gandhinagar at 10.30 a.m. The persons who participated in the said meeting and became party to the conspiracy were Minister of State for Home, Gordhan Zadaphiya (A-5), Ashok Narayan, ACS Home, (A-28), K Chakaravarthi DGP, Gujarat (A-25) PC Pande, CP Ahmedabad (A-29), and K. Nityanandam, Home Secretary, (A-34) and other members of the Chief Minister's Secretariat. With the consent of all, it was decided to suppress the fact that the State Intelligence was constantly warning about the mobilisations by the VHP, BD and Durga Vahini in relation to 'Mahayagna' at Faizabad-Ayodhya and its repercussions. It was also decided to suppress the message received from Collector Godhra, Smt. Jayanti Ravi that karsevaks were shouting provocative, anti-Muslim slogans when the train reached Godhra. This Note (for the State Assembly) was prepared at the meeting to suppress the fact that anti-Muslim slogan shouting by kar sevaks was a provocation which led to the incident. A-5, Zadaphiya read out this statement in the assembly. The background of Zadaphiya is that he was also a VHP member. His statement to the SIT (24.9.2009) states that a VHP activist Ashwinbhai Patel who was on the train had informed Zadaphiya of the incident at 7.30 a.m. This is in fact even before the time of the actual train burning.

At 1 p.m. on 27.2.2002, as mentioned above, the correct facts were not put before the State Assembly. Mayabehn Kodnani, (A-16), MLA from Naroda Patiya became a part of the Conspiracy by not informing the Assembly of the correct facts and Gordhan Zadaphiya (A-5) who had already become part of the Conspiracy, read out the Note that was prepared at the residence of A-1, suppressing the fact of provocative slogan shouting by the kar sevaks. This was deliberately done because A-1 had already mobilized the VHP

cadres at Godhra by immediately sending Jaideep Patel (A-21) there. It may be noted that even the State Legislature/Vidhan Sabha was not informed about the fax message of the Collector and only the note prepared in the meeting at the residence of A-1 was read out in the Vidhan Sabha at 1 p.m. by Gordhan Zadaphiya (A-5).

**** Proof of Criminal Conspiratorial Mindset of A-1:** A very important fact that emerged in the investigation, is a direct statement under section 161 CrPC, given by Sureshbhai Mehta, then Minister for Industries (dated 15.8.2009). Mr Mehta categorically said to the SIT, "I was sitting by the side of Narendra Modi, chief minister who remarked that Hindus should wake up now." This direct statement of Mr Suresh Mehta completely supports the fact that A-1 had a pre-disposed mind-set which was biased against Muslims and he had acted in pursuance of the said mindset in hatching the Conspiracy that resulted in a Carnage of Muslims from 28.2.2002 until April/May 2002.

*Analyses of A-1 (Residential and Office) Phone Call records tell a strange tale that SIT has again, deliberately and conspicuously not investigated (**Annexed to the Protest Petition at Annexure Volume IV, Pages 93-100**). This Analysis carries startling details that show that from the seven landlines available to the chief minister at his office and residence, only a handful (barely six to seven calls are received on the fateful day) of which one is from VHP strongman Jaideep Patel, also a co-accused. How could a political head of state records such few phone calls? **(Para 106 @ Pages 61-62 of Protest Petition Volume I)**

c) Brazenly Supporting the Bandh Call and Allowing Streets to be Used for Mass Attacks and Violence. Further, the fact that, the VHP declared a bandh for 28.2.2002 –a fact that was known by 12 p.m. on 27.2.2002 (according to a Message of the SIB) **(Annexure IV, File XX, Serial Nos 374, Page Nos 8289 I the SIT Papers/ Record given to the Court)** which was supported by the ruling BJP, is sufficient evidence to prove that the mobilization of VHP cadre at Godhra was in furtherance of Conspiracy and A-1 Modi had completely caste aside his role as head of Government responsible for upholding law and order. The SIB Message that was sent out before 1 p.m. on 27.2.2002 warned of likely violent repercussions on the occasion of the bandh as well as communal mobilisation by the VHP, and therefore advises bandobast and

other strict precautionary measures. ***(This SIB Message was handed over as G Colly to the LOD on 26.6.2013 to the Court)***

Therefore, another crucial aspect that ought to have been probed deeply by the SIT but was completely and deliberately ignored is, that, when the statement was made in the State Assembly at 1 p.m., the VHP had already announced a Gujarat bandh by about 12 noon which was supported by the ruling BJP. The state government did not oppose it. No statement is made in the Assembly that the state government is opposing the Bandh. A-1 was, therefore, aware that the Bandh would give further opportunities for provocation and give a free hand to the RSS, VHP and Bajrang Dal to lead violent mobs and vent of their ire on innocent Muslims, yet officially, neither as Home Minister, nor as Chief Minister, did he make any statement to ensure that strict preventive action is taken, arrests of communal miscreants are made etc, in spite of the State Intelligence field reports and warnings.

A-1 by supporting the Bandh violated the law laid down against Bandhs by the Supreme Court (Communist Party(M) of India vs Bharat Kumar & Ors, Supreme Court, 1998 (1) SCC 201) and thus obstructed the lawful functioning of the state machinery. Rajendrasinh Rana (BJP) (A-18) has accepted the responsibility for giving the Bandh call. Nalin Bhatt (A-17) also was party to the decision as also Kaushik Mehta, VHP (A-19).

The Bandh Call was, therefore, part of the conspiracy as it served the following purposes:

- (i) It allowed the RSS/VHP/BD/BJP men to behave aggressively and indulge in unlawfully violent activities and
- (ii) The Bandh was used by the police machinery to clear public places and ordinary movement so that aggressive mobs of these organisations could target minority populations and establishments (thereby neutralizing ordinary peoples and movements);
- (iii) A-1 deliberately did not allow the police and other state machinery to take action i.e. omission from discharging their lawful and statutory duties.
- (iv) A-25, K Chakravarthi, DGP Gujarat, A-29 PC Pande, Commissioner of Police, Ahmedabad, and A- 38, Shivanand Jha, Additional Commissioner of Police Ahmedabad **(also Other Accused in Charge of Commissionerates and districts)** are criminally culpable for not following the law and

the Standard Operational procedure as, deliberately no Curfew is declared in Ahmedabad, Vadodara and many parts of the state despite clear-cut warning signals all through 27.2.2002 and no arrests are made.

No official communication was given to observe law and order and maintain peace and calm in Gujarat.

The Bandh call given by the Vishwa Hindu Parishad was known to officialdom by 12.30 p.m. openly supported by the ruling BJP and became an occasion to allow VHP-RSS mobs to roam the streets of Gujarat with impunity. The first ever message from the Home department headed by A-1 Modi to round up communal elements and act is given after 10 p.m. on 28.2.2002 when more than half of the pre-planned massacres have taken place. Desai gave copies of this message to the Judge from the SIT Papers (This message given to the SIT by Sanjay Bhavsar from the CMO is handed over to the Court. **(Annexure III, File XLI, D-196, Volume I, Serial Nos 15)**

(Statements of Rajendrasinh Rana, State BJP President and SIB Messages on the Bandh call are handed over to the Court)The Supreme Court Judgement on the Bandhs being illegal confirming the Kerala HC judgement handed over to the Court)

c) Allowing Post Mortems Illegally without Following procedures Out in the Open, Allowing Photographs of Gory Corpses and Allowing Violation of Curfew Orders @ Godhra.

In furtherance of the Conspiracy, A-1 also involved Ashok Bhatt (A-2) Minister of Health, who left Gandhinagar for Godhra on the instructions of A-1 and reached Godhra at 1 p.m. It is clear from the record of the telephonic conversations available with the SIT that, before A-2 reached Godhra, he had several telephonic conversations with A-1. That Ashok Bhatt was sent to Godhra as part of the Conspiracy is clear from the series of acts which took place at Godhra including the manner in which the post mortems were deliberately conducted. This will be dealt with a little later. But it is clear that A-1 Modi with his deeply entrenched anti-Muslim mindset was constantly subverting the state's responsibility of

upholding law and order and was allowing his political ideology to override it.

6. There were four phone calls between A-1 Modi and A-2 Bhatt at 13:53:44 hours, 14:50:44 hours, 15:05:09 and 15:38:10 hours all before A-1 Modi left for Godhra (Page 42, Protest Petition, Vol I). The Co-Conspirators, namely, Ashok Bhatt, Minister for Health (A-2) and Jaideep Patel, VHP, (A-21) and Gordhan Zadaphiya, Minister of State for Home (A-5) who reached Godhra around 4 p.m., in furtherance of what A-1 Modi had directed, decided to hold *en masse* post mortems of 58 dead bodies near the burnt Coach out in the open to further provoke the aggressive crowd of RSS-VHP workers present there. Before carrying out the post mortem, no identification of dead bodies was done, relatives were not called or were present which was in violation of existing laws and procedures.

7. The decision to conduct the post mortem in violation of law was a part of Conspiracy of which A-1 was the Chief Architect. By allowing the post mortem in the open, at the Railway Yard, as also allowing photographs to be taken and circulated widely, the RSS-VHP with these Conspirators had a clear design to escalate anti-Muslim feelings and provoke violence against Muslims. They became successful in their design which is clear from the brutal violence that started the same day and intensified from 28.2.2002, continuing for several months. In the Godhra Sessions Court Judgement (Sessions Case Nos 69/2009/ 86/2006. 204/2009 @ Page 105; This was handed over to the Court on 29.8.2012), the Special Judge PR Patel has pointed out the illegalities that were committed, in particular, that the autopsy was carried out illegally, post mortem was not carried out by panel of two doctors, no attempt was made by the Medical Officer to collect Blood Tissue Samples from dead bodies for being sent to FSL for examination and that no attempt was made to ascertain the presence of any inflammable liquid, petrol, diesel, kerosene acid etc on the dead bodies. Page 100 of the Sessions Court Judgement has a photograph showing the dead bodies lying out in the open at the Railway Yard Godhra.

8. The warning of SIB aside, this kind of aggressive mobilization at the site of the Burnt Railway Coach, out in the open, was allowed by A-1 and his Collaborators in violation of the Curfew Orders promulgated by 10.15-10.30 a.m. in Godhra city on 27.2.2002.

9. A-1 with Anil Mukhim, Additional Principal Secretary and OP Singh left for Ahmedabad airport from Gandhinagar on the afternoon of 27.2.2002. But instead of going directly, they deliberately took a detour and passed through Meghaninagar and Naroda areas. The fact that they were at Meghaninagar and Naroda is clear from the locational analysis of Anil Mukhim's Mobile Phone which showed that at 15:33:40 on 27.2.2002 he was there accompanied by A-1 and OP Singh. From Ahmedabad airport they left for Vadodara by plane and from Vadodara by helicopter to Godhra. They reached Godhra at about 1645 hours as per a SIB message. At the helipad they were received by Ashok Bhatt (A-2) and DM Jayanti Ravi. When they reached the spot at the railway yard where the burnt coaches were kept, a large crowd of RSS-VHP persons had already assembled and the post mortems were going on. In violation of the curfew, a large mob, consisting mostly of RSS and VHP cadres was allowed to assemble. **(Paras 61-63 @ Pages 41-43, Protest Petition, Volume I & Details @ Paras 472-487 @ Pages 210-216 of the Protest Petition)** A-1 entered inside the Burnt Coach (S-6), came out and spoke to the Media as well as VHP and RSS supporters. It is during this time that the postmortems on the dead bodies start. A-1 was therefore party to the decision to conduct postmortems (illegally in the open railway yard).

When he talks to the press there are several VHP workers present. Mr Jaideep Patel (A-21), Ashok Bhatt (A-2) and Zadaphiya (A-5) were present when A-1 visited the railway yard which is where the mutilated and burnt corpses have been allowed to have been kept in the open. It is at that point of time that a decision was taken to hand over the dead bodies to MrJaideep Patel (A-21) of the VHP for being taken by road to Ahmedabad.

A-1 Provocations and Encouragements given to aggressive leaders of the VHP/RSS can be evidences from the statements of RSS/VHP persons who were present at the time were recorded in a

Sting Operation by Tehelka (Operation Kalank). All of them spoke about what was stated by A-1 Narendra Modi at the spot.

“Tehelka Transcripts about Modi

RAJENDRA VYAS. VHP’s Ahmedabad city president. He was the one who was in-charge of the Sabarmati Express train.

T: mujhe jaanatha...narendra bhaikakya...unkekyashabd they? Kyabola unhone?

T: I wanted to know about Narendra Modi ...what were his words...what did he say?

R: bola to sahimaine...ki pahley ussne bataya ki bhai hum badla lenge... maine jo khud khule aam bola...aur maine us samay khana bhi nahi khaya tha...paani bhi nahi piya tha...aur main itna akrosh me tha...kiitne log mare they to meri aakh se aasu nikalte they...magar main dadagiri karta tha...galiya bolta tha...to wohh (Modi) bolte Rajendrabhai shaant raho sab ho jaayega ...matlab ho jaayega ka matlab kya hai...jo samajhne wale samajh saktehai...

R: I told you...first he said that we will take revenge...whatever I said publicly at that time...I hadn’t even eaten anything then...Didn’t even have a drop of water...and I was so furious...that so many people had died and hence tears were flowing in from my eyes...but when I started using my strength...started abusing... he asked me to keep silent, everything will be taken care of...What did he mean when he said that everything will be taken care of...the ones who had to understand, understood...

DHIMANT BHATT :

He is chief account officer of the MS University

D: After Godhra, there was this reaction and a climate was created in which the parivar, the top leaders, meaning the RSS, the VHP, the Bajrang Dal, the BJP and the Durga Vahini... and in that we had Narendra Modi’s support.. – let people say what they are saying – support in the sense that if Hindus are going to be burnt like this... if conspiracies are going to be hatched to burn Hindus... they wanted to burn the whole train (Sabarmati Express)... and now if we don’t do anything, if we don’t give an adequate reaction, another train will be set on fire.... This was the idea, the thought process that came from him (Modi)... I was present in the meeting...

T: Where, sir...

D: It was held in Baroda only... at a secret place...

T: After Godhra ...

D: Immediately. The same day as Godhra... there were two meetings, one at Ahmedabad and one at Baroda...to what action we have to take... to issme sab log nahi they...some of the very few members were there... BJP RSS Parishad ... it was decided that for how long are we going to

take this... if we have the guts, we should give a reaction ... so everyone felt, unanimously, that we don't want to be defensive so we should start tonight...

ANIL PATEL

This is the transcript of the meeting with Anil Patel. He is Vibhag Pramukh of Vishwa Hindu Parishad.

No, in Sabarkantha. Entire Sabarkantha. As for setting villages ablaze, even the smallest one was not spared

T: nahibachhaji..

Not spared

A: Not even one Muslim home was spared in the entire district. At nine in the morning on Feb 27 I got to know that the train had been burnt but when I saw it on TV, I realized it was a big incident and that there would be a big reaction... then a message came from the state office that the next day a bandh would be observed... Then I met a friend who asked me how we would respond

T: musalmanhai?

Was he a Muslim?

ARVIND PANDYA

Special Public Prosecutor

Pandya: nahi aisa nahi hai...Modi to pahley se apni line ke hai... wo baat chodo...lekin wohh post pe baithe hai to limitations jyada hai ...unke paas bhi kaafi....it is he who gave all signals in favor of hindus...agar ruler hard hota to thoda kucha hota...lekin apne log kya hai main aapko batao... Hindus don't know how to work with...jaisay Muslims hotehai ..

SURESH RICHARD

Accused in the Naroda Patiya massacre

SR: at about this time... at around seven thirty in the evening, apna Modibhai came.... Right here outside the house our sister garlanded him with roses

T: narendrabhai modi...

SR: Narendra Modi... He came with black commandos and came out of the ambassador car and walked up here Our sisters all garlanded him... a big man stays a big man

T: He came out on the road?

SR: Then he took a round... bola dhanya hai aapki jaatko bole ...apki ma kodhanyahai...

T: He came at about five o clock or at seven?

SR: Around seven, seven thirty.... At that time there was no electricity... no power.... Everything had been burnt to ashes in the riots...

Sessions on 29.8.2012 as strong corroborative evidence. [This has been dealt with @ Paras 111-125@ Pages 66-70, Volume I, Protest Petition & Pages 120-126, Volume I, Protest Petition, Volume I (Excerpts of Ramesh Dave, Rajendra Vyas, Haresh Bhatt, Anil Patel, Dhimant Bhatt, Dhawal Patel and Arvind Pandya from the Tehelka Transcripts available @ ...Annexure III, File XIII, D-129 in SIT Records as Also their Statements @ Annexure II, Volume II, Sr Nos 107 (Ramesh Dave), Annexure II, Volume II, Sr Nos 108 (Rajendra Vyas), Annexure I Volume II, Sr Nos 116 (Haresh Bhatt), Annexure II, Volume II, Sr Nos 113 (Anil Patel), Annexure II, Volume II, Sr Nos 98 (Dhimant Bhatt), Annexure II, Volume II, Sr Nos 114 (Dhawal Patel), Annexure I, Volume I, Sr Nos 46 (Arvind Pandya) were handed over to the Court on July 3-4, 2013).

Another Comprehensive List of Dates on the Tehelka Sting Operation dated 3.7.2013 was handed over to the Court. Since the filing of the Zakia Jafri Complaint on 8.6.2006, *Operation Kalank*, the Sting Operation by Tehelka (October 2007) had provided further evidence of Conspiracy were handed over to the Court). Ashish Khetan the journalist who recorded the extra judicial confessions, was made a prosecution witness in the Naroda Patiya Case, Gulberg case and Naroda Gaam case. The Naroda Patiya judgement delivered on 29.8.2012 (Pages 750-791, Chapter II, STING OPERATION, judgement in Naroda Patiya Case excerpts handed over to the Court) used the Tehelka Tapes authenticated by the CBI has strong and reliable corroboratory evidence. (The NHRC Order dated 5.3.2008 Ordering CBI to Authenticate the Tehelka Tapes, Pages 133-136--, Annexure Volume I, protest Petition was pointed out to the Court). The SIT, the investigating agency in both cases, the Naroda Patiya case and the Zakia Jafri Criminal Complaint dated 8.6.2006 had played a contradictory role. In the Naroda Patiya trial, it had used Tehelka's Sting Operation as reliable corroboratory evidence but when it came to Power accused like A-1 and Others in this case, valuable evidence through the Sting Operation had been ignored completely. All those persons who's extra-judicial confessions strongly indict A-1 have simply stated in their 161 statements before the SIT that they were "acting" for Ashish Khetan in the Sting Operation and the SIT, has simply accepted this defence at face value and refused to probe further. One of the persons against whom the Sting Operation had been

conducted by Tehelka, Arvind Pandya had filed an FIR against Dhimant Purohit of Aaj Tak, Television channel that had telecast the sting operation. The Gujarat High Court in Spl Crl appln Nos 2195/2007 had, on 9.5.2012 quashed the malicious FIR. (This judgement of the High Court was also handed over to the Court)

11. This evidence proves that A-1 after reaching Godhra showed the same mindset and added to the provocation against ordinary Muslims in front of a large aggressive RSS-VHP crowd which had illegally gathered at the spot. All other co-conspirators namely A-1, A-2, A-5, A-4 and A-13 were present at the time and, therefore, supported the stands taken by the A-1. The Conspiracy was furthered between 1330 hours and 2230 hours (Controversial meeting). Between 1330 – 1530 hours on 27.2.2002 after the assembly proceedings, A-5 Zadaphiya left for Godhra. Accused No. 1 gets four calls from A-2 Ashok Bhatt on the mobile number of his PA, OP Singh, informing A-1 about the situation in Godhra. A-2 Mr. Ashok Bhatt (now deceased) had admitted that it was he who had instructed local doctors through the Civil Surgeon at Godhra for the post-mortem. A-2 Mr Ashok Bhatt who was in regular touch with A-1 Mr. Modi left for Godhra at 9.30 a.m. according to his statement to SIT and reached around 12-12.30 p.m. As the inquest was over, a decision is taken by A-2 taking instructions from A-1 to conduct post-mortems in the railway yard itself where the dead bodies are lying. Decision was taken to start hasty post-mortems (Phone call records). SP Raju Bhargava (A-46) is directly responsible along with DM Jayanti Ravi for allowing these post-mortems in public in violation of law and in violation of Curfew Orders. Admittedly, according to DM Ravi and SP Bhargava, by 11 a.m. latest curfew had been declared in Godhra town; yet large crowds of the VHP were allowed to assemble at the railway yard where the burned corpses had been lined up and view the post mortem that, shockingly took place in public.

The calls made by Ashok Bhatt on the Mobile of Om Prakash Singh has again not been discussed by the SIT The call details show that A-1 (chief minister) was in touch with A-21 Jaideep Patel as well as with A-2 Ashok Bhatt. The making of calls by A-2 Ashok Bhatt to Accused No. 1 shows that the Inquest of dead bodies was done after taking instructions from A-1, the chief minister. The A-1 had

used the mobile of Om Prakash Singh. In the statement given to the SIT by Singh (9.11.2009), he accepted that A-1 spoke on his mobile when there was an extreme emergency. He only says that he did not see A-1 talking to anyone on his mobile phone. The SIT's conclusions that CM was not in touch with "controversial persons Maya Kodnani and MrJaideep Patel during riots" is contrary to the documents on record. A-1 was therefore in touch with both Maya Kodnani (A-16) and MrJaideep Patel (A-21).

12. Photographs and videos of the bodies too were allowed freely in violation of strict provisions of the Gujarat Police Manual in the presence of A-1 and a murderous crowd of the RSS-VHP workers at the Godhra Railway Yard. Illegal post mortems also took place in the presence of A-1, A-2, A-5 and A-21 in their presence. **(Section 223, 4(vi), Volume III of Gujarat Police Manual handed over separately to the Court)**. Under the criminal law, it is the inquesting authority that has to decide whether to send the dead bodies for post-mortem or not. But in the present case PM of almost all bodies were over by 18.45 hours, the time when inquest report was signed in the presence of A-1, A-2 and A-5 obviously following their directions. The question which the SIT has simply not bothered to ask is, under whose orders, the Post-mortem was being conducted in the Railway Yard itself without any facility and equipments and also by doctors who were not trained to do Post Mortem? The motive behind this was clear:

- (i) Bodies could be dispatched through a VHP strongman and co-accused (with whom A-1 is in touch since morning) A-21 Jaideep Patel to reach Ahmedabad by next morning for the proposed funeral processions and parading
- (ii) Public post-mortem and free use and distribution of photographs of the gory bodies was encouraged by A-1, A-2 and A-5 to inflame the anger of the funeralists, which could be converted into a violent communal reprisal against innocent sections of the minority. **(Statement before the SIT and Affidavit before Nanavati Commission of Jayanti Ravi, DM Godhra, Statement of SP, Godhra Raju Bhargava, A-2 Ashok Bhatt, A-5 Gordhan Zadaphiya and A-21 Jaideep Patel were given to the Court).**

13. Thereafter, A-1 went to Collectorate to meet press and the public. At the Collectorate besides Zadaphiya (A-5), Prabhatsingh Chauhan (A-4), Min for Civil aviation and Pilgrimage as well as local MLA (A-13) joined the Conspiracy. Besides them, Jaideep Pate A-21 was also present at the Collectorate according to DM Jayanti Ravi. A-1, A-4, A-5, A-21, and A-13 entered into a Conspiracy by taking a unanimous decision that unidentified bodies shall be sent to Ahmedabad (Sola Civil Hospital) and that dead bodies will be handed over to Jaideep Patel (A-21). Superintendent of Police, Raju Bhargava (A-46) agreed with the decision and in collusion with Conspirators allowed the subversion and violation of the law. Carrying dead bodies outside the territorial jurisdiction of a place where offence has been committed was totally illegal as the dead bodies of the Godhra victims were subject matter of the Railway police investigation. Further there was no question of handing over these dead bodies to Jaideep Patel (A-21), General Secretary VHP. There was gross interference in the investigational process which is the exclusive domain of the Police Authorities. The A-1, A-2, A-4, A-5, A-21 and A-46 thus acted against the law and subverted the legal process of investigation. These offences were committed as part of larger criminal conspiracy to take the Godhra tragedy, to the rest of Gujarat and exploit the aggressive communal feelings of the Hindus. Instead of containing the fallout of the Godhra tragedy, the conspiracy was hatched to ensure outbreak of widespread violence. It is on record that the dead bodies were brought and kept at Sola Civil Hospital Ahmedabad for facilitating the parading of dead bodies and funeral processions the next day which further triggered the aggressive communal feelings, resulting in the carnage.

14. Yet another material document that provides a link in the chain of conspiracy is the statement given by retired IAS officer Shankar Menon to the SIT on 12.12.2010 which reveals the mindset of Narendra Modi A-1 continuing to give effect to the conspiracy. In the statement, Shankar Menon has said that A-1 also addressed another meeting of political workers at Godhra where he assured aggressive RSS-VHP cadres that the police would not interfere in their thirst for revenge against innocent Muslims. (Annexure I Volume II, Sr Nos 179 in SIT Record given to the Court).

15. After ensuring escalation of violence from Godhra to other parts of Gujarat and taking decisions contrary to law, A-1 Modi left Godhra by road for Vadodara accompanied by Anil Mukhim, his Principal Secretary. From there he returned by airplane and reached Ahmedabad airport at 2153 hours. By this time in Ahmedabad city, several violent incidents had occurred, 19 FIRs had been lodged and yet only two Preventive Arrests were made, who belonged to the Muslim Community. This dereliction of duty took place in the jurisdiction where PC Pande (A-29) was Commissioner of Police. While returning to Gandhinagar again, they (A-1 plus others) took a diversion towards Naroda and Meghaninagar which were out of the way. Mukhim's Mobile phone location shows that at 22:01:18 hours they were in the vicinity of Meghaninagar.

It may be noted that of the major incidents that exploded in 14 districts of the State of Gujarat, among the worst was Naroda Patiya where 196 persons were massacred in broad daylight the next day; four were killed in Naroda Gaam and 69 at Meghaninagar on 28.2.2002. It can be safely inferred from these facts that A-1 in order to give effect to the Conspiracy, visited these areas to and fro on his visit to Godhra with a clear mind to instigate RSS-VHP workers to indulge in mass violence against Muslims. The fact that Babu Bajrangi, Maya Kodnani, Kishan Korani, Bipin Panchal, Ashok Sindhi, Atul Vaidya, Bharat Telli, Mangilal Jain, Bipin Patel, Jaideep Patel among other active members of the RSS-VHP-Bajrang Dal are accused in these three incidents prove that A-1 Modi, during his visit to these places, had instigated these persons from the VHP-RSS which resulted in violence the next day. In addition, it is critical to mention that Jaideep Patel (A-21) co-conspirator of A-1 is also an accused in Naroda Gaam. The said trial is still going on before the Special Court. Jaideep Patel A-21 belongs to Naroda and he reached back to Ahmedabad from Godhra to give effect to the Conspiracy that was hatched to indulge in mass violence against Muslims.

16. After reaching Ahmedabad, A-1 called an urgent meeting at his residence at Gandhinagar around 10.30-1045 p.m. This meeting was attended by Ministers in the Cabinet, DGP Chakravarti, ACS Home Ashok Narayan, Commissioner of Police, PC Pande, K Nityanandan, Home Secretary, PK Mishra, Principal

secretary, CM, Swarnakantha Verma (deputing for chief secretary Subha Rao) and Anil Mukhim from the CMO. (Two Volumes of Compilations of Statements related to the 27.2.2002 Meeting were handed over to the Court on 18.7.2013 and :- (a) Statements of Protagonists at the Meeting (All except two are Co-accused); (b) Statements of RB Sreekumar, Vithalbhai Pandya, IB Officers and Drivers related to Sanjiv Bhatt's movements etc)

17. The fact that A-1 made his statement is proved by the following:-

(i) Haren Pandya, sitting Minister in the A-1 Narendra Modi's government voluntarily appeared before the Concerned Citizens Tribunal on 13.5.2002 and gave information about the provocative instructions given by Accused No.1 Modi at this meeting. He was mysteriously killed on 26.11.2003. The Tribunal Report states that

“ 14. Modi played an active role along with at least three Cabinet colleagues, to instruct senior police personnel and civil administrators that a “Hindu reaction was to be expected and this must not be curtailed or controlled.” *Internal Page 76 of Volume II of the Concerned Citizens Tribunal Report @ Annexure III, File, I, D-2, D-3, D-4 of the SIT Record/Papers*“... 1.7. The Tribunal received direct information through a testimony from a highly placed source of a meeting where the chief minister, two or three senior cabinet colleagues, the CP of Ahmedabad, and an IG police of the state were present. This meeting took place on the late evening of February 27. The meeting had a singular purpose: the senior-most police officials were told that they should expect a “Hindu reaction” after Godhra. They were also told that they should not do anything to contain this reaction.

(Internal Page 82 Volume II of the Concerned Citizens Tribunal Report in section on State Complicity @ Annexure III, File, I, D-2, D-3, D-4 of the SIT Record/Papers. Report of the Concerned Citizens Tribunal was released on 21-22.11.2002.)

SIT is dismissive of this evidence. (12.5.2010, Malhotra Report, Page 19):“In the light of the aforesaid discussions, it can be concluded that a. Law & Order review meeting was in fact held by Narendra Modi, Chief Minister at his residence late in the evening

of 27-02-2002. However, the allegation that the Chief Minister instructed the Chief Secretary, DGP and other senior officials to allow the Hindu community to give vent to their anger on the minority Muslims in the wake of Godhra incident is not established.” How the SIT could enter into the area of appreciation of evidence, is beyond common understanding of the law.

A-1 Modi's criminal intent and statement of 27.2.2002 are further proved by the following:-

(ii) On **27.10.2005**, in the Fourth Affidavit, R.B. Sreekumar before the Nanavati Commission dated 27.10.2005 stated that K. Chakravarthi, DGP Gujarat (A-25) had given information of the same words being uttered by A-1 Modi at the meeting on 27.2.2002 and again on 28.2.2002 **(Annexure III File III , D-24 of the SIT Papers)**

(iii) On **30.10.2004** Mr. Rahul Sharma stated in his deposition on oath before the Nanavati Commission that when he spoke to his superior officer DGP, Gujarat, A-25 Chakravathi on 1.3.2002 at about 10:22 p.m. to request to make more force available for him at Bhavnagar, the DGP told him that he would be given one SRP company by the next morning and if possible he would make some Boarder Wing Home Guard and army columns available whenever they become available to him. Mr. Rahul Sharma states on oath that DGP Mr. K Chakravarti also told him that **“the bureaucracy had become completely neutralised”**. Mr. Rahul Sharma states on oath that he could not state what the DGP meant by stating that bureaucracy was completely neutralised. **(Para 773 at Page 344 of the Protest Petition)**

(iv) On 11.07.09 Statement of Shri R.B. Sreekumar, formerly Addl.DG (Int.), Gujarat to the SIT **(Annex I, Vol I Sr. No.5, SIT Papers/Record)** where he confirmed what the K Chakravarti (A-25) had told him on the morning of 28.2.2002 about the provocative words uttered by A-1, the night before.

(v) On **12.08.2009**, Statement of Shri Vitthalbhai Pandya, father of Late Haren Pandya, R/o, Paldi, Ahmedabad **(Annex I, Vol I Sr. No.12, SIT Papers/Record)** where he stated that his son Haren Pandya had told him about attending the meeting at the residence of A-1 on 27.2.2002

in the late evening as also of the provocative instructions given by A-1.

(vi) On **28.8. 2009**, Justices P.B. Sawant **and** Justice Hosbet Suresh gave two separate statements. Both eminent Judges, retired Supreme Court and High Court respectively, also stated that three serving IPS officers, Sami Ullah Ansari, Himanshu Bhatt and Vinod Mall also deposed before them in person requesting anonymity but confirming that such illegal instructions were issued. **(Annexure I Volume I Sr.Nos 16 & 17 of the SIT Record/Papers)**. SIT does not record the statements of these officers in this regard.

(vii) SIT does not record the statements of these officers except that of Vinod Mall on 9.12.2009. No question is put to Mall about his knowledge of illegal instructions being issued. **(Reference: Annexure I Volume I, Serial Nos 59 Pages 222-223 of the SIT Record/ Papers)**. Justice Sawant has stated that three other officers had met the Tribunal and stated that Instructions from Above 'not to act' had been given by A-1.

(viii) On **25/26.11.2009** the Statement of Sanjiv Bhatt before SIT **(Annexure I Volume I, Sr.No.51 and 52 of the SIT Record/Papers)** was recorded. Bhatt states that following a call from the control room that chief minister had called a situation review meeting at his residence and since his senior ADGP (Int) was on leave, the DGP had instructed him to attend the meeting to contribute with the IB's assessment of the situation. Bhatt mentioned that Ashok Narayan, ACS Home, K.Chakravarthi, DGP, P.C. Pande, CP and Anil Mukhim PS to the Chief Minister were present. Bhatt who stated that he had attended the meeting also stated that none of the cabinet ministers were present. He also stated that he had attended this meeting in his capacity as an Intelligence Officer representing the State IB and had put forward the State IB's assessment of the situation. He also stated that it may not be professionally appropriate on his part to divulge the exact nature of the discussions that took place but he would be duty bound to disclose the same to the best of his ability when he would be required to do so under a legal obligation.

(ix) On **14.04.2011** - Affidavit of Sanjiv Bhatt filed directly before the Hon'ble Supreme Court. **(Annexure IV File X**

Serial No. 302 of the SIT/Report Papers) in which it was stated that A-1, Chief Minister Narendra Modi, uttered the following controversial words: "that so far in communal riots police takes action on one to one basis and that this will not do now. Allow Hindus to give vent to their anger." **(Para 406 at Page 167 of the Protest Petition)**

18. The SIT has questioned the presence of Sanjiv Bhatt, whose statement is on record under 161 CrPC as also an Affidavit on oath before the Hon'ble Supreme Court, stating that he was present at this meeting, representing the SIB. In this meeting A-1 made the following statement: "that so far in communal riots police takes action on one to one basis and that this will not do now. Allow Hindus to give vent to their anger."

19. The SIT ignores the fact that none present at the meeting could have said that such a statement was made since it would amount to participating in offences above mentioned. Besides, SIT also ignores the fact that those who supported A-1 were favoured by the A-1 by granting plum posts and promotions.

20. Worst of all, SIT concludes at page 241 of its closure report that even if A-1 had made such a statement it does not amount to an offence though such a statement, if uttered, is a clear offence under Sections 107.120b, 153a, 153b and 166 of IPC, abetting the Conspiracy hatched with others to allow mass killings of Muslims to satisfy the thirst for revenge. PC Pande (A-29) has stated in his statement before the SIT that this meeting lasted past 1 a.m. Anil Mukhim and Swarnakantha Verma who were both present, mention the presence of cabinet ministers at the meeting, SIT completely ignores the fact that in the law and order meeting presence of intelligence officers was absolutely essential. Besides, Mr. Bhatt was, on the given day, in charge of Intelligence (Communal) and therefore it was natural that he was called for the meeting.

21. Most significantly of all, the SIT Ignores Completely the Independent Assessment of the Amicus Curiae

NOTE BY THE AMICUS CURIAE (dtd 20.1.2011)

“.....7. Though SIT has concluded that there is no material to indicate that Shri Narendra Modi, the Chief Minister had issued any instructions to the officers on 27.02.2002 to permit the Hindus to give vent to the anger of the majority community, there are a number of circumstances which *prima-facie* indicate that the matter requires a detailed investigation to examine the role of Shri Modi immediately after the Godhra incident to find out if there is any culpability to the extent that a message was conveyed that the State machinery would not step in to prevent the communal riots. Some of the circumstances which justify a more detailed investigation into this aspect have been separately enumerated in Chart-A enclosed herewith.

**“.....From CHART-A (INTERIM REPORT DATED 20.1.2011) entitled
'OBSERVATIONS ON FINDINGS OF THE SPECIAL INVESTIGATION
TEAM..CHART A**

“....Allegation that ‘ A Statement was made by Shri Narendra Modi on 27.2.2002 in a meeting at his residence instructing the senior officers to allow Hindus to give vent to their anger. This is also supported by the late Shri Haren Pandya.’

“....OBSERVATIONS OF THE AMICUS:-

“....3. It may not be correct to rule out the presence of Sanjiv Bhat, IPS, D.C. [Intelligence] since ADGP [Intelligence] Shri G.C. Raigar was not available. There is no reason for him to make a wrong statement. He was willing to make a statement if he was protected from legal repercussions of disclosing what transpired in the meeting.

“...4. It is difficult to believe that when the C.M. came back after the Godhra trip, no Minister was present at his residence. Hence, it may not be totally unbelievable that Shri Haren Pandya was present. Shri Haren Pandya is unfortunately dead, but the statements made by Late Shri Haren Pandya to Justice P.B. Sawant [Retd] and Justice H. Suresh [Retd] can be used, even if his statement is not been formally reproduced in the writing by the Citizen's Tribunal.

5. It has also been brought out that an enquiry was made from CM's office as to the identity of the Minister who had deposed before the Citizen's Tribunal and that the State Intelligence Bureau had verified the identity as that of Shri Haren Pandya. This also gives some corroboration to the fact that the CM's office was uncomfortable with the disclosure made by an unidentified Minister to the Citizen's Tribunal.

“.....6. The statement of Shri R.B. Sreekumar cannot be discarded as hearsay, in the light of Section 6 of the Evidence Act.

“.....7. Another aspect is the fact that VHP General Secretary Jaydeep Patel and Shri Modi were at Godhra on 27.02.2002. The statement of Jaydeep Patel that he did not meet Shri Narendra Modi at Godhra does not inspite confidence. This has to be examined as the Mamlatdar would not have handed over the dead bodies to a non-government person i.e. Jaydeep Patel until and unless somebody very high told him to do so.”

(Raju Ramachandran Sr. Advocate with Gaurav Agrawal Advocate, 20.01.2011 New Delhi (Annexure IV File X Serial No.306 of the SIT Record/Papers)).

22. The Final Report of the Amicus Curaie also clearly states that there is material to prosecute A-1 Narendra Modi and some others and put the evidence, including Bhatt's evidence, to Judicial scrutiny ".Paras 23-28 of the Final Report are relevant:-

"Para 23. In my opinion, despite the aforesaid background, it does not appear very likely that a serving police officer would make such a serious allegation against Shri Modi, the Chief Minister of the State, without some basis. There is no documentary material of any nature whatsoever which can establish that Shri Bhatt was not present in the meeting on 27.02.2002. In the absence of the minutes of the meeting, there is again no documentary material available as to the participants in the meeting and what transpired at the said meeting. Therefore, it is the word of Shri Bhatt against the word of other officers, senior to him. The SIT has chosen to believe the word of the senior officers, i.e. senior bureaucrats and police officers. However, I find that the SIT itself, in its Preliminary Report, has observed as follows [at p.13]:-

"...(3) Some of the public servants, who had retired long back, claimed loss of memory as they did not want to get involved in any controversy.

"..(4) The other category of public servants, who have recently retired and provided with good post-retirement assignments, felt obliged to the State Government and the present Chief Minister and therefore their testimony lacks credibility.

"...(5) The serving public servants, who have been empanelled for the higher posts, did not want to come into conflict with the politicians in power and incurred their wrath which affected their frank response."

"...24. I also find it difficult to accept the conclusion of the SIT that Shri Bhatt's statement is motivated, because he has an axe to grind with the State Government over issues concerning his career. Further, in my opinion, it may not be proper to disbelieve Shri Bhatt at this stage, only because the other officers have not supported his statement. Similarly, the delay in making the statement cannot be the sole ground to disbelieve the statement at this stage, especially in view of his explanation that as an Intelligence Officer who was privy to a lot of sensitive information, he would make a statement only when he was under a legal obligation to do so.

".....25.It may be recalled that, in the aftermath of the Godhra carnage, the law and order meeting in question was called by the

Chief Minister at about 11:00 P.M. It seems quite natural for an officer from the Intelligence to be called: The Chief Minister would, after all, have to be made aware of the intelligence gathered by the police till then. It is also an admitted position that Shri G.C. Raiger, the then ADGP (Intelligence) was on leave on that day. The DGP, Shri Chakravarthi does not state that he had gathered intelligence from the office of Shri Raiger. It is also on record that Shri P.C. Upadhyay, the DC (Political and Communal) was also on leave on 27.02.2002 and Shri Bhatt was looking after the work of DC (Political and Communal). Shri Raiger states in his statement under Section 161 Cr.P.C. that Shri Bhatt had accompanied him, in the past, to meetings called by the Chief Minister, though he says he used to wait outside with files or information. Thus, it is quite possible that Shri Bhatt was directed to attend the meeting on 27.02.2002 at the residence of the Chief Minister. The phone call records do not contradict the statement given by Shri Bhatt to the SIT. Considering the important and emergent nature of the meeting, the relative “juniority” of Shri Bhatt need not have come in the way of his attending the meeting, especially since the ADGP (Intelligence), Shri Raiger was not available. It is anybody’s guess as to why, in the absence of Shri Raiger, Shri O.P. Mathur [IGP (Security & Administration)], who was next in seniority, was not called for the meeting. This aspect, in my view, is of little significance in the context of an emergency meeting called at short notice in response to an escalating situation. Similarly, discrepancies about the exact language used or the time of the meeting at the Chief Minister’s residence at Gandhinagar on 28.02.2002 (because he was at Ahmedabad at 10:57 A.M.) are inevitable, considering the lapse of time. (Significantly, there is no material to suggest that Shri Bhatt was either at Ahmedabad or some place other than Gandhinagar at any time after 10:57 A.M. on 28.02.2002.) There could be a discrepancy about the time of the meeting on 28.02.2002. Hence, I disagree with the conclusion of the SIT that Shri Bhatt should be disbelieved at this stage itself. On the other hand, I am of the view that Shri Bhatt needs to be put through the test of cross-examination, as do the others who deny his presence.

“.....26. Though the SIT, as the investigating agency, has taken a view, the question whether Shri Bhatt was present at the meeting on 27.02.2002 and whether Shri Modi had indeed made such a statement (as spoken to by Shri Bhatt) can only be decided by a court of law. It would not be correct to disbelieve the version of Shri Bhatt, at this *prima facie* stage, on the various grounds set out by the SIT or because other participants in the meeting have denied (either categorically, or to the best of their memory) his presence and the

alleged statement made by Shri Modi. If Shri Bhatt stands the test of cross-examination, then regardless of the fact that other witnesses have not supported his statement, a court of law may return a finding that Shri Bhatt indeed was present at the meeting on 27.02.2002, and that Shri Modi did make a statement as is being alleged by Shri Bhatt.

“.....27. Under the Cr.P.C., if there is some material which supports the allegation being made by the Complainant, a case for proceeding further is made out against the accused. Section 204 Cr.P.C. uses the expression "sufficient ground for proceeding". This Hon'ble Court has held that the learned Magistrate can proceed further, if there is a *prima facie* case against the accused. [See *Dy. Chief Controller of Import & Export vs. Roshanlal Agrawal*, (2003) 4 SCC 139, *M.N. Damani vs. S.K. Sinha*, (2001) 5 SCC 156]

“.....28. The stage for believing or disbelieving a witness arises after trial i.e. once the entire evidence is placed before the court for its consideration. It would not be correct to conclude, at this stage, that Shri Bhatt should be completely disbelieved unless there is clinching material available to the contrary, for example, if there is indisputable material which proves that he was not present at the meeting, but somewhere else. No such material has been found. Hence, it cannot be said, at this stage, that Shri Bhatt should be disbelieved and no further proceedings should be taken against Shri Modi.”

Specifically Ramachandran recommends in his final report that :-

“.... Point.41. Hence, the question to be examined is whether the making of the statement by the Chief Minister in the meeting on 27.02.2002, by itself, is an offence under law. In my opinion, the offences which can be made out against Shri Modi, at this *prima facie* stage, are offences *inter alia* under **Sections 153A (1) (a) & (b), 153B (1) (c), 166 and 505 (2) of the IPC**. (For convenience of reference, these statutory provisions are set out in a Schedule annexed hereto.) However, it would be for the Court of competent jurisdiction to decide whether Shri Modi has to be summoned for any or all of these offences, or for any other offence(s).”

(Raju Ramachandran Final Report dated 25.07.2011 also in the SIT Record)

24. The SIT had conducted no further Investigation into the 27.2.2002 meeting except with an aim to belittle the evidence and Sanjiv Bhatt. Apart from the cavalier manner in which the statements of two retired Judges (Concerned Citizens Tribunal) Justice PB Sawant and Hosbet Suresh have been dealt with by the SIT, the SIT has deliberately belittled the two independent witnesses who were present at the meeting. Of the six persons present, four are co-accused in the complaint being conspirators and collaborators. Two of the six, Svarnakantha Verma, former ACS (deputing for chief secretary Subha Rao), and Anil Mukhim, OSD to the chief minister had clearly stated in their 161 statements before SIT that cabinet ministers were also present. SIT had not bothered to further investigate this aspect nor recorded their statements again. The Presence of Ministers at A-1 Modi's residence is accepted by Swarnakanta Verma (then ACS Home acting for chief secretary) as also by Anil Mukhim (then OSD to A-1) but the SIT Report totally ignores and falsely states in its final report dated 8.2.2012 that they denied presence of Ministers. SIT misrepresents its own evidence. Only those senior administrators and bureaucrats who are co-accused in the criminal complaint of Zakia Jafri (then DGP Chakravarthi – A 25, then CP Ahmedabad PC Pande A-29, then Home Secretary K Nityanandam A-34, then ACS Home Ashok Narayan, A -28, then Additional Principal Secretary to the chief minister PK Mishra had stated that no politicians were present had their statements recorded three-five times by the SIT.
25. The Inquiry, Investigation and Further Investigation into the Conspiracy before and after the infamous meeting has revealed the unprofessionalism and bias of the SIT. Its very functioning was partisan, senior officers failing to maintain a discreet distance from powerful accused in the government of Gujarat. This can be deduced from the following:-
- (i) SIT's unprofessionalism was clear in that highly confidential information about Sanjiv Bhatt's presence (that became known only after he deposed before SIT in November 2009) and was not known to anyone, was leaked to powerful accused in order to allow them to create a false and weak defence. A-1 Modi's statement was recorded on 27/28.3. 2010. It is in question-answer format as follows:-

“...Ques. 19:-When and where did the aforesaid meeting take place? Who all were present in the said meeting? Who were the ministers/MLAs present in the meeting?

“...Ans The meeting took place at my residence office for about half an hour. Smt Swarnakantha Verma, the acting chief secretary, Shri Ashok Narayan, the then ACS (home), Shri K Chakravarthi, the then DGP, Shri PC Pande, the then CP, Ahmedabad city, Shri K. Nityanandam, the then home secretary, Dr PK Mishra and my other PS, Shri Anil Mukhilm were present in the meeting. As far as I recollect, Shri GC Raigar, then then ADG (Int) was not present. Shri Sanjiv Bhatt, the then DC (Int) did not attend as this was a high level meeting. None of my cabinet colleagues were present in the said meeting.”

How did he know about Bhatt's presence except for the obvious leak from the SIT? A-1 Modi should not have been privy to this confidential information but in his over zealous bid to conceal his guilt he stated what revealed this lapse.

- (ii) From the SIT's own investigation and a variety of statements of witnesses and accused, the timing of the controversial meeting that took place at the residence of A-1 after the latter had returned from Godhra could have lasted from 30 minutes to 2 hours. The timing and structure of the meeting can be decided only after detailed examination of evidence in trial. Reading from PC Pande's statement before the SIT given on 14.01.2012, it is clear that the meeting could even have gone on till 1 a.m. on 28.2.2002.
- (iii) In the 161 statements of two drivers (Tarachand Yadav and Kishore Mali) of the State IB **(161 Statements @ Annexure II, File II, Sr Nos 123 & 126; Annexure II, Volume II, Serial Nos 127 of the SIT Papers/Record)** clearly state that an Official log Book recording Bhatt's movements on that day (27.2.2002) were available and submitted as per course to the IB, SIT's investigation papers makes available only a letter that states that no such record is available! The SIT has not made any observations

on the obvious disappearance or destruction of this Log Book of Vehicle movements of Sanjiv Bhatt that would have proved one way or another his movements and location. SIT has again failed miserably to investigate these disappearances, destructions and lapses.

- (iv) Legally the chief minister's secretariat is bound under Standard Operating Procedure to maintain minutes of meetings: that a meeting was held on 27.2.2002 is not being disputed, the fact minutes are missing puts onus under section 106 of the Evidence Act on the accused. The SIT has been extremely lax about ignoring the absence of written records, minutes and the crimino-legal liability regarding the same.
- (v) It was also argued that evidence of a person who is dead, evidence that would have gone against the pecuniary interest of the witness if alive, or make him liable for criminal prosecution (as Haren Pandya's testimony undoubtedly would have done) is valid evidence under Section 32(3) of the Indian Evidence Act. A judgement (TS give Citation) was handed over to the Court.
- (vi) Sections 461 and 462 of the Gujarat Police Manual (handed over to the Court) outline the duties of the State Intelligence Bureau, the Complainant Counsel has argued that such a meeting, if indeed it was a Law and Order meeting, should have the presence of an official of the IB. If Raigar was on leave, and the next in seniority OP Mathur was on leave, and Bhatt was deputing as DCP-Communal on 27.2.2002 as has been accepted and admitted by the SIT, he could well have been present at the meeting. The SIT final report is completely silent on this aspect. SIT completely ignores the fact that in the law and order meeting presence of intelligence officers was absolutely essential. Besides, Mr. Bhatt was, on the given day, in charge of Intelligence (Communal) and therefore it was natural that he was called for the meeting.
- (vii) No significance is attributed by SIT to the fact that Minutes of Meeting were not maintained though the

burden under Section 106 of Evidence Act would be on those who were required to maintain them. Standard Operating Procedure demands that the chief minister's secretariat maintain such Minutes.

- (viii) Moreover, SIT has ignored the evidence given by Haren Pandya's father, Vithalbhai Pandya has made a statement corroborating what Mr. Haren Pandya said but the father's statement is not even considered by SIT

27. The impact of the Conspiracy hatched from the morning of 27.2.2002 after the Godhra tragedy, consolidating into the criminal, inflammatory and unconstitutional instructions given by A-1 can and should be judged by the deliberate abdication of the rule of law from different districts where collaborator accused acquiesced and where Mobs were allowed to go on a violent rampage with targeted violence against the Minorities, VHP strongmen were collaborators in this. A-1 had first contacted Jaideep Patel, Gujarat secretary of the Vishwa Hindu Parishad after getting news of the Godhra tragedy. The Assembly that is in the midst of the Budget session too does not sit after 28.2.2002, inexplicably. The concentration of powers in the cabinet minister for Home Affairs has lain with A-1 since 2002, giving him sole control on the ACRs (confidential reports) of serving IAS/IPS officers and their postings (Rewards or Punishments). This concentration of power and use for furtherance of the Conspiracy to subvert the criminal justice system, rule of law and justice delivery has also been borne out by the statements of then MOS Home Govardhan Zadaphiya. This evidence has been ignored by the SIT. **(Powers of the chief minister and home minister are outlined in the Gujarat Government Rules of Business handed over to the Court).**

28. As already designed in the Conspiracy, the Motor Cavalcade carrying 54 dead bodies under the control of Jaideep Patel (A-21) along with the police force started from Godhra at about 10 p.m. and passed through Sevalia, Ambav, Thasra, Dakor, Umreth, Lingda, Allindra, Nadiad, Salun, Vanthwadi, New Maninagar, Ghodasar, Ishanpur, Juhapura, Thaltej, Gujarat High Court and finally reached Sola Civil Hospital at 3.34 hours (PCR Message, SIT Records). To cover a distance of 153 kms from Godhra the Cavalcade took six hours. It can be inferred that the cavalcade of

which Jaideep Patel and other leaders like Hasmukh Patel were a part were stopping on the way and instigating violence. Gordhan Zadaphiya (A-5) and Ashok Bhatt (A-2) as per their own statements before the SIT, also reached Ahmedabad around the same time from which it can be further inferred that they were accompanying the cavalcade. At Sola Civil Hospital the dead bodies were handed over to the Civil Surgeon, Dr Pushpa Belani by Jaideep Patel (A-21). Nadiad and Ghodasar apart from Sevalia recorded brute violence in the days that followed. (Page 49-50, Protest Petition, Vol. I)

29. The fact that the dead bodies were handed over to Jaideep Patel A-21 at Godhra and he handed over the dead bodies to Dr Belani at Sola Civil Hospital has also been mentioned in the SIT Report but yet it failed to draw any adverse inference from this important fact that totally contrary to law the dead bodies were transferred from the jurisdiction where offence was committed and were handed over to a private person when the dead bodies being part of the investigation cannot be so tinkered with. It is shocking that such a gross illegality has been brushed aside by SIT. The facts are clear: that the dead bodies were handed over to Jaideep Patel, (A-21) VHP General Secretary as part of Conspiracy on the instructions of A-1 Modi who was holding the highest position of Chief Minister.

As mentioned above the Amicus Curaie's Specific observations in Chart A Sub-Para 7 of the Interim Report dated 20.1.2011 is critical:

"...7, Another aspect is the fact that VHP General Secretary Jaydeep Patel and Shri Modi were at Godhra on 27.02.2002. The statement of Jaydeep Patel that he did not meet Shri Narendra Modi at Godhra does not inspire confidence. This has to be examined as the Mamlatdar would not have handed over the dead bodies to a non-government person i.e. Jaydeep Patel until and unless somebody very high told him to do so."

30. Of the 58 tragic deaths that took place in S-6 of the Sabarmati Express, four bodies that belonged to Dahod, Vadodara, Panchmahal, Anand districts were handed over to relatives there. In all, 54 dead bodies were sent to Ahmedabad. Of these, 19 of the unidentified dead bodies were cremated by the hospital authorities on 28.2.02 at Gota Cremation ground, near the Sola Civil Hospital

by the District Administration and police officers with the help of the *sarpanch* of Gota. The undue haste in carrying out these cremations while the city of Ahmedabad was on fire has not been explained by SIT. The failure to follow regular procedures related to unidentified bodies has also been left deliberately unexplored. Twelve of the brutally charred bodies were brought to Ramol, Ahmedabad since many of the persons belonged to Ramol (among them were ordinary worshippers who had joined the trip to Ayodhya wrongly dubbed *kar sevaks*) and another two of the dead belonged to Khokhra. These were cremated by about 2 p.m. at the Hatkeshwar cremation ground about 4 kms away from Ramol).

31. Within less than half an hour of the dead bodies reaching Sola Civil Hospital, in the early hours of the morning before dawn, 3,000 persons (according to PCR these were RSS workers) gathered at Sola Civil Hospital. This obviously shows that information had already reached them about the arrival of the Dead Bodies in the Motor Cavalcade. It is shocking that instead of the police being present on the spot and not permitting the public to assemble, 3,000 RSS workers were allowed to assemble, which happened because of conspiracy hatched by A-1 along with the other accused i.e. Ministers and Senior Police Officers and Bureaucrats. The Police did not reach despite the fact that a PCR message at 1:59 hours was sent by the Control asking for SRP deployment. There is no answer why in spite of prior information, 3,000 RSS workers were allowed to gather and sufficient bandobast was not provided. Not only was sufficient bandobast not given inspite of intimation that violence may erupt at any time, after 7 a.m. more crowds were allowed to gather, the traffic was blocked and the crowds started attacking the doctors and other medical staff and vandalizing the hospital property.
32. The investigation records tell a gory story. In anticipation of the procession of VHP activists, known for their rabid anti-minority speeches and mobilizations accompanying the bodies from Godhra, panic messages demanding *bandobast* and protection are sent from local police authorities anticipating trouble. But there is no response from either the DGP's office (responsible for law and order in the state) or the Commissioner of Police's office (responsible for the Ahmedabad Commissionerate).

These critical wireless messages reveal that from 1:51 hours of 28.2.2002, and again at 1:59 hours there was panic expressed by local vans demanding protection from SRP platoon immediately. That no such enforcements were sent by the higher-ups is apparent since the conspiracy hatched three hours before of letting mobs control the streets had been cynically hatched. By 2:44 hours on 28.2.2002, the motor cavalcade had reached Sola Civil Hospital and there is another confirmatory message at 4:00 hours of this fact. By 6:55 hours, i.e., within three hours an aggressive mob of swayamsevaks belonging to a sister organization of the ruling party, Rashtriya Swayamsevak Sangh (RSS) has already gathered at the Civil Sola Hospital **(Page No. 5794, Annexure IV, File XIV of the documents)**. Another message 20 minutes later at 7:14 hours informs the Police Control Room that is under the charge of Accused No. 29 (Commissioner of Police) that a large mob has gathered **(Page 5796 of Annexure IV, File XIV of the SIT documents)**. Again another message three minutes later at 7:17 hours **(Page 5797 of Annexure IV, File XIV of the SIT documents)** says that another mob of 500 was holding up the traffic. This message is received by Control and passed on to Sola 1. An hour later, at 8:10 hours, a message records that three SRP platoons were sent from Police Control to Sola Hospital for bandobast. **(Page 5826 of Annexure IV, File XIV of the SIT documents)**. Thereafter, through the day wireless messages record that there are aggressive and tense crowds at the Hospital, en route and both locations of the cremations.

The SIT kept the Hon'ble Supreme Court and the Amicus Curiae in the Dark about documents that point to Conspiracy. This voluminous documentary evidence was concealed by both IO AK Malhotra and late on Himanshu Shukla. The absence of any reference to these PCR messages in even the Final report reveals the sinister motive of the SIT behind this.

(Note: Incidentally these documents were made available to the SIT only after 15.3.2011, when former Ahmedabad CP, PC Pande, suddenly produced 3,500 pages of scanned messages on CDS that in this instance are described as "Wireless Message Book of Police Control Room, Ahmedabad City Control Room for date 28/2/2002". They had been concealed by him earlier. SIT has not thought to question or penalize him for this criminal omission in a

matter related to a matter of such grave importance. A letter from secretary CJP, Teesta Setalvad (April 21, 2011 **(Annexure IV, File VII, serial Nos 118 of the SIT Record/Papers)** to AK Malhotra, IO SIT about the sudden memory returning to A-29 former Commissioner of Police PC Pande when, *only after the Supreme Court orders further investigation on 15.3.2011 does he produced CDs with 3,500 pages of scanned Police Control Room messages of the Ahmedabad City.* Pande's memory lapse for nine years is ignored by the SIT. The role and motive of the SIT was and is clearly to not investigate serious charges thoroughly and protect powerful accused.

33. To show that the Government under A-1 as its head, abandoned its legal and Constitutional duties, is the glaring fact that in this tense situation Giriraj Kishore, Vice President of VHP arrived at the Ahmedabad airport and a message was given to provide police escort. The government headed by A-1 allowed Acharya Giriraj Kishore of VHP to come to the Sola Civil Hospital by providing him special escort knowing fully well that it will further inflame the atmosphere and result in violence. A-1 allowed this to happen as it facilitated the Conspiracy which he had hatched. Acharya Giriraj Kishore in fact came to Sola Civil Hospital before 11 a.m. where he spoke to media persons and was present there for 10-15 minutes. **(Pg 248 Protest Petition, Vol I).** In the statement he made the following provocative statement,
 “ I appeal to Muslim brethren to condemn the attack and asked them not to put Hindus patience to test. Hindus are maintaining restraint, but if such incidents do not stop there can be a counter reaction which may be uncontrollable;” (www.rediff.com). **(Annexure Volume II, Protest Petition).**

He further elaborated that “Do I have to say that for every action there is a reaction? It would be very difficult for the Hindus to maintain patience at such a heavy price.” **(Annexure Volume II, Protest Petition).**

Here is what Giriraj Kishore said to *Star News* on 27.2.2002. (Some words were censored out because they were deemed highly objectionable): Acharya Giriraj Kishore (Vice President, VHP): (Panel Discussion) (Incidents like this (Godhra) show the psyche of a community): “What is the reason for the pilgrims, they were attacked when they came from Amarnath? What was the reason?

That is the psyche, I say!"...."Communal violence can be checked only...why this incident happened, who did it, what is the psyche behind it? This should be studied." (Annexure Volume II, Protest Petition).

34. To further add to mob violence against Muslims, the Funeral Processions were taken to Gota Crematorium which is at a distance of three kilometres from Sola Civil Hospital and also Hatkeshwar Crematorium which is 18-20 kilometres away. These processions were taken through the city with aggressive crowds accompanying them shouting provocative slogans. In fact the procession that began at 10.30 hours concluded only at 1830 hours (Malhotra Report). It is also on record that Acharya Giriraj Kishore also accompanied the funeral procession upto Gota crematorium. The fact that A-1 as head of the government allowed the unidentified bodies to come to Ahmedabad for cremation, allowed RSS-VHP persons to gather at the hospital, allowed Acharya Giriraj Kishore to address the crowd and media and allowing the funeral processions to take place, speaks volumes about the conspiracy and abetment resulting in the daylight incidents of murder, rape and arson which took place throughout Ahmedabad and other parts of Gujarat. Shivanand Jha (A-38) Additional Commissioner of Police, K Srinivas Collector, Ahmedabad (A-30) and MK Tandon, Joint CP Ahmedabad (A-33), all became the active participants in the conspiracy and abetment at the Sola Civil Hospital and the subsequent violence that erupted thereafter.
35. The Sola Police station is at a one-two kilometre distance from the civil hospital. The cremation that began at 1030 hours concluded only at 1830 hours (Malhotra Report) though the distance was only three kilometres. (Incidentally, the same day while this huge procession was allowed, huge mobs accompanied by at least 15,000 RSS and VHP men, led the murderous attack on Gulberg Society, Naroda Patiya and Gaam). Deliberately, the top brass in the state police and city police administration did not respond to repeated pleas for security and help from the wireless vans of the police and the State IB. Detailed empirical evidence, deliberately ignored by the SIT shows how aggressive mobilization of mobs had taken place to ensure an aggressive parading of dead bodies as per the plan hatched at Godhra by accused No. 1 and other co-accused and subsequent targeted unleashing of violence. Yet, I.O.

Malhotra of the SIT ignores this wealth of evidence and states that though the processions were under heavy police escort they passed off peacefully! Malhotra's report also admits that 12 of the dead bodies brought by Accused No. 21 (Jaideep Patel) were allowed by high level police and administrative authorities (Accused No. 30, K. Srinivas, Collector, Ahmedabad; Accused No. 29, PC Pande; Accused No. 38, Shivanand Jha) to be taken to Ramol and thereafter cremated at Hatkeshwar cremation ground 18-20 kilometres away. (Accused No. 33 MK Tandon is also punishable for the offences connected with this illegal parading of dead bodies in breach of prohibitory orders and curfew.

36. The SIT Investigation reports both of IO Malhotra (12.5.2010) and Shukla (8.2.2012) conspicuously skip a careful analysis of these records collected by them and provided to the complainant after rigorous arguments under Section 173(2). SIT also ignores the spate of virulent speeches being made before after and during the Godhra incident on 27.2.2002 To recap, the bodies could reach Ahmedabad by next morning for the proposed funeral procession instead of being dispatched to respective districts in contravention of clear procedures laid down, in the "Gujarat Police Manual", in an all out bid to inflame the anger of the funeralists, which could be converted into a violent communal reprisal Ten dead bodies were taken to Ramol, and a massive funeral rally of thousands of aggressive slogan shouting "mourners" took the bodies to Hatkeshwar crematorium from 10 a.m. in the morning until evening. Around 10.30 a.m. or so, some crowds also went berserk and attacked a Muslim Hotel at Thakkarbapa Nagar, close to Naroda and also a High Court Judge belonging to the minority community. Finally the cremation took place at 1830 hours. According to the Malhotra Report under Allegation No. II: "The CM's decision to bring dead bodies of those killed in Godhra train fire in Ahmedabad and parade them in Ahmedabad city", 19 of the 54 dead bodies brought from Godhra which could not be identified were allowed to be cremated in a massive funeral procession, violating laws and regulations (of preserving unidentified dead bodies until claimed by relatives) at the Gota Cremation Ground, accompanied by VHP leaders like Acharya Giriraj Kishore, at a three kilometre distance from the Sola Civil Hospital. The procession encouraged by the powerful conspirators was also in violation of curfew orders that were imposed in Ahmedabad only around 1240 hours on

28.2.2002. SIT has in a clear display of utter negligence and bias misled the Hon'ble Supreme Court that no aggressive mobilisations took place around these acts of parading the dead bodies in funeral processions in such a calculated manner. A similar denial of the ground realities can be found in DCP Crime Branch, Himanshu Shukla's report (Allegation II, Parading of Dead Bodies) dated 8.2.2012. Both reports deliberately gloss over the systematic preparations and mobilizations of crowds by the conspirators.

37. **Illegality, Criminality and Subversion.** In another illegal instruction issued by A-1, A-2 and A-3, two ministers of the state cabinet were positioned in the City (Shahibaug, Ahmedabad) Control Rooms. They were positioned there to directly interfere with the functioning of the police and prevent the police from carrying out its statutory functions. Ministers in Control Room on 28.2.2002 were :- Ashok Bhatt Minister for Health (A-2) & IK Jadeja, Minister for Urban Development (A-3). The fallout of violence in 14 of Gujarat's districts systematically and in a similar pattern as has been argued at length during the regular arguments provides evidence of the fallout of this move.
38. **Conspiracy to Obstruct Lawful Preventive Measures.** Out of the persons present at the meeting, Ashok Narayan (A-28), Chakravarti and Nityanadan (A-34) were already part of the Conspiracy as they had attended the meeting at 10.30 convened by A-1 at his residence. The instructions given by A-1 as head of the government to DGP Chakravarti, A-25, Ashok Narayan A-28, PC Pande A-29, PK Mishra (A- 31) to subvert the rule of law in execution of the Conspiracy and Abetment, were carried out by these people as they failed to discharge their legal and mandatory duties. They in fact accepted the said instruction of A-1 and thus became a part of the Conspiracy and Abetment of crimes that took place from 28.2.2002 onwards. It is clear that though they were aware of incidents happening all over the State on 27.2.2002 itself with heavy communal mobilisations by RSS-VHP, no preventive arrests were made and no decision was taken to control the law and order problems as they has succumbed to and had accepted the command of the head of Government, who had allowed the VHP/RSS/Bajrang Dal to take over the State by neutralizing the law and order machinery. The Accused Nos Ashok Narayan (A-28, K Chakaravarti (A-25), K Nityanandam (A-34), PC Pande (A-29), PK

Mishra (A-31) by not doing their duties mandated by law, abetted and conspired in the crimes with A-1 and other co-Conspirators. The first message available in the SIT records **(Annexure III, File XLI, Sr Nos 15 SIT Papers/Records)** is a message dated 28.2.2002 of 2215 hours instructing round-up and arrests. This is referred to in the SIT report but SIT has deliberately and in a partisan manner not dealt with the criminal delay in preventive action and its impact as part of the pre-planned conspiracy. Moreover, this message has been sent after many of the massacres have been allowed and over 300 persons have been burned, raped and killed. Another message in the same file **(Annexure III, File XLI, Sr Nos 14 SIT Papers/Records)** has been clearly tampered with (this aspect has been ignored by the SIT and will be dealt with separately. Documents available in the SIT Record/Papers **(handed over in a Compilation to the Court on 22.8.2013 “ Official Statistics/Documents on Police Firing, Preventive Arrests, Curfew Orders etc”)** clearly point to the following:-

- (i) Only two Preventive Arrests in Ahmedabad on 27.2.2002 that two of persons belonging to the Minority Community; **(Annexure III, File I, D-2, Pages 254-255, SIT Record/Papers)**
- (ii) A total of 193 serious criminal cases against women and children were registered between February- May 2002; that the intra-Parliamentary Committee of Women had recommended special steps that were not taken;
- (iii) Curfew Orders from different locations in Gujarat including Ahmedabad, Gandhinagar, Mehsana, Godhra town, Panchmahals, Dahod, Anand, Vadodara, Sabarkantha provided from the SIT record and included in this compilation show that Violence continued unabated until early May 2002 when KPS Gill was sent by the Central government.
- (iv) Details of Army Deployment (except in Ahmedabad) show that Mehsana was not given any Army or Paramilitary assistance despite being the worst affected after Ahmedabad and Panchmahals; neither were Dahod, Sabarkantha nor Anand; Bhavnagar received deployment late; only Godhra town received

the deployment not rural Panchmahals where violence was widespread and targeted;

Senior echelons of the political, police and administrative hierarchy who have been named as Accused are responsible. **(Paras 828-924 @ Pages 373-416, Volume II, Protest Petition)**

39. The Protest Petition details at length the wide spread and gradation of violence, arguing that, in at least 11 districts (out of 25 in the state of Gujarat) where Superintendants of Police and Commissioners acted Constitutionally and legally, violence was contained. **(Paras 523-529@ Pages 230-233, Volume I Protest Petition)**. All such IPS and IAS officers who had behaved legally had been punished and sidelined and the SIT report(s) admit this. Attempts to foment violence from the higher echelons were resisted in some districts by upright police officers and administrators. This has been argued at length with the details of such districts, especially Mehsana and Bhavnagar being given to the Court. In terms of intensity of violence, Ahmedabad city with maximum police force and Army was ironically the worst with officially 326 persons admittedly killed; the second was Panchmahals with 93 deaths minus the 59 persons who died in the train; Mehsana District with 61 deaths; Vadodara City with 36 deaths, Ahmedabad Rural with 33 deaths and Sabarkantha with 32 lives being lost; Kheda 31 dead; Dahod 24 dead and Banaskantha 20 persons being killed; Anand 28 among others. (these are official figures; the total of charge sheets in individual cases show the figures to be higher). Official records provided by the SIT itself show that violence continued unabated until May 2002. **Compilation to the Court on 22.8.2013 “ Official Statistics/Documents on Police Firing, Preventive Arrests, Curfew Orders etc”**

Other and Continuing incidents of Violence in Ahmedabad including forcible closure of Relief Camps include-

Accused Culpable: Amit Shah (A-10), Nalin Bhatt (A-17). Kaushik Mehta (A-19), Kaushik Patel (A-7) ACP MT Rana (A-57), DCP Jebaliya (A-43) KK Mysorewala (A -56), KG Erda (A-55). The Violence in Mehsana (3rd worst affected district) was exacerbated by the actions of Niteen Patel, Minister for Finance (A-9) and Naran Laloo Patel, MLA and Minister for Transport (A-12) aided and abetted by Amrutlal Patel, Collector Mehsana (A-51) and AK Sharma, SP Mehsana (Subversion) (A-36).

The Violence in Anand district that recorded over 35 deaths for which Dilip Mani Patel MLA (A-14) and CD Patel, MOS Tourism and MLA, Petlad, Anand (A-8) were responsible. The violence in Kheda (Ghodasar and many other incidents) directly implicate Kuldeep Sharma (A-32) whereas Violence in Vadodara implicates DD Tuteja, then CP Vadodara, (A-48), Bhagyesh Jha, Collector, Vadodara (A-49). The continuing subversion including intimidating witnesses to turn hostile implicate Madhu Srivastava, MLA (A-15), a fact admitted in the SIT report. Sudhir Sinha, former CP Vadodara (A-41), Rakesh Ashthana, IG Vadodara (A-34), Deepak Swaroop, IG Vadodara (A-14) S. Kumaraswami, IGP (A-42) are also directly implicated in the subversion of justice process.

Violence in Bharuch/Forcible Closure of Relief Camps

Anju Sharma, Collector (A-47)

Violence in Sabarkantha

Ranjitsin Chavda, Minister for Cottage Industries (A-6)

Nitraj Solanki, SP Sabarkantha (A-50)

Rajkot

PN Patel, Collector (A-53); Upendra Singh, SP (A-52) (Pages 232-233 of the Protest Petition, Volume I)

40. The conspiracy committed by the A1 as head of the Home department included victimizing and punishing those officers and bureaucrats who had functioned legally and rewarding those who actively participated in the criminal act of conspiracy, abetment and other criminal offences. A detailed list of these has been provided to the Court.
41. Faced with a tragedy like the Godhra train burning that had claimed 58 lives, how would a government and administration respond, and equally critically how would an independent agency appointed to fairly and rationally evaluate the quality of this response go about its job, asked Counsel for Complainant making a powerful case for evaluating criminal culpability by top echelons of the police and administration. The only way an agency could have developed and evaluated whether or not the ingredients in a sinister chain of criminal conspiracy, abetment and criminal culpability by public

officials was actually made out was in evaluating the government, administration and police response, before, during and after the outbreak of such systemic widespread and persistent mob violence. For instance:-

- Could the government, administration and police have anticipated Godhra?
- Was there a systemic prelude or build up of communal atmosphere before the train burning?
- Once the incident took place was there an immediacy and seriousness in stemming any retaliation given the nature of communal violence and Gujarat's history in this regard, were hate speeches and hate writings curtailed and prosecuted when they occurred or were generated or were they encouraged, were perpetrators punished?
- On the issue of deployment of the army, the issue to be assessed in terms of impact on the ground was threefold:-: was the Army actually called in on time, in which districts was it deployed; and was it given adequate powers under the law (Sections 129/130 of the CRPC read with Rules of the Gujarat Police Manual) to function independently to save lives, property?

The SIT, that did not record Statements of Independent Witnesses like the NHRC (including former Chief Justices of India) and the Election Commission (including the CEC Lyngdoh, it did not record statements of independent witnesses Major Zameeruddin Shah of the 54th Infantry Division in charge of the Gujarat operation. Neither did the SIT seek independent data from the Army choosing in its all out bid to shield the accused, to believe the chief collaborators of the criminal conspiracy.

42. Ahmedabad, Panchmahals and Mehsana were the worst affected districts followed by Vadodara, Banaskantha, Dahod and Anand among others. The 161 statement of then SP, Mehsana, Anupam Gahlot who appeared before the SIT on 22.1.2010, revealed how this officer traversed the length and breadth of the district to save lives of the Minorities, ensuring he was a hand's on Policeman in Charge unlike the Commissioner of Police, Ahmedabad, PC Pande who sat mute spectator in his cabin at Shahibaug while Ahmedabad burned! Pande was rewarded for this by the chief conspirator, home minister A-1 Modi, retiring as Director General of

Police (DGP) for the state; thereafter still benefiting from post retirement postings! On the other hand, Gahlot who had ensured the safety of over 1,000 persons taking shelter in a Dargah that was sought to be mob attacked was transferred along with other officers like Rahul Sharma from Bhavnagar district that had similarly done a worthy and upright job.

These first round of transfers coming as they did around 24.3.2002 had also been objected to by then DGP K Chakravarthi.

43. Serious incidents of violence had taken place in Ahmedabad and rest of the state on 27.2.2002 itself with warnings of these coming in through the state intelligence (SIB) –all carefully documented in the protest petition, **(Para 450@ Pages 191-192 has a Table of Messages from SIT record, Volume I, Protest Petition; Paras 504-510 @ Pages 223-226, Volume I Protest Petition; Paras 596-598@ pages 263-264, Volume I, Protest Petition; Paras 810- 813 @ Pages 360-363, Volume II, Protest Petition)** yet Pande and other senior officers like Shivanand Jha and others made a mockery of laws around preventive detention. Special schemes within the Gujarat Police Manual and a Special Communal Riots Scheme (1997) demands that every commissionerate and district maintain not just a list of “communal goondas” who need to be arrested when there is threat of violence but also a list of fanatically minded persons who stoke the flames of communal violence. Yet in Ahmedabad, Vadodara, Sabarkantha, Vadodara, Panchmahals, Dahod, Banaskantha, Ahmedabad Rural, Vadodara Rural Patan and Kheda there was complete inaction in this regard. In Ahmedabad there were only 2 arrests made at Astodia on 27.2.2002 and that two of Muslims, Counsel for the Complainant pointed out.
44. The Protest Petition analyzing the Mobile Phone Call records that are a part of the SIT Papers/record **(Pages 268-276, Volume I & Pages 373-423, Volume II, Protest Petition)** has traced the chain of command responsibility from an analysis of the Phone Call records of Top Police Officials of Ahmedabad City and the Chief Minister’s Office (CMO). These analyses reveal that PC Pande did not move out of his office after returning from the Sola Civil Hospital on 28.2.2002; that at the height of the attacks of Naroda Patiya and Gulberg while he sat holed up in his office at Shahibaug, there was

a sustained contact between him and the CMO (Fifteen Calls between 11.40 am and the evening) suggesting that A-1 Modi was in the constant know of happenings on the ground). Why did he not budge out from the safety of his chamber? Unlike Rahul Sharma, SP Bhavnagar and Anupam Gehlot, SP Mehsana who risked their lives trying to save lives here was a Commissioner and a Chief Minister who were sitting in the safety of their cabins and offices!!! The criminally culpable conduct of Joint CP Tandon and DCP Gondia was also revealed in that every time they received serious messages to go towards Naroda or Meghaninagar (where Gulberg is located) they moved in opposite directions towards Rewadi Bazar.

45. A serving officer of the Gujarat government, then SP, Bhavnagar, Rahul Sharma who actually averted serious mass by putting his life at risk; and who functioned independently of his political masters (including then MOS Home and accused, Gordhan Zadaphiya) and arrested powerful BJP and VHP men and women for indulging in violence and other criminal acts; who preserved the mobile phone records that implicate powerful persons for conspiring and collaborating in violent mass crimes post Godhra in 2002; who disagreed with fabricated charges in the charge sheets in the Gulberg and Naroda Patiya cases prepared by the Crime Branch, Ahmedabad is charge sheeted for revealing this incriminating evidence to the Amicus Curiae Raju Ramachandran appointed by the Supreme Court. This is a crucial way in which the Home department under A-1 has abused its constitutional and legal obligations. It has been coercive and intimidatory to those who have performed their lawful duties, saved and protected lives, preserved evidence to prosecute those guilty of mass crimes.

The Central Administrative Tribunal (CAT) had stayed the operation of the charge sheet in 2012, making Rahul Sharma among the twelve officers severely punished by the Modi-led Gujarat government for upholding the rule of law and the Indian Constitution. Sharma had been suddenly transferred out of Bhavnagar on March 26, 2002 (just as was Anupam Gehlot, SP Mehsana) simply because he had prevented Bhavnagar, a stronghold of Zadaphiya led VHP and BJP from becoming a cauldron of communal violence despite provocative hate speeches and other violent attempts. Brought to the Ahmedabad Crime

Branch and assigned to assist the investigations into the Naroda Patiya and Gulberg massacres this officer had made his discomfiture known and official when the Crime Branch had tried to create a false line of argument in the first charge sheets filed in these cases. The Gujarat police come directly under A-1 Narendra Modi, holding cabinet rank as home minister. While holding the post of DCP Crime Branch, and while he and his superior AK Surolia had summoned Mobile Data records of all users in Ahmedabad city, the SIT had done nothing to analyse this data or put it to efficient use in their investigations. While testifying before the Nanavati-Shah-Mehta Commission in August 2004 Sharma had made copies of this mobile phone data public. In January 2010, it was Rahul Sharma who had provided this critical evidence to the Amicus Curiae Raju Ramachandran. His reward? A show cause notice by the vindictive Gujarat government!

(Details of these proceedings were provided to the Court in two separate compilations. **(Petition by Rahul Sharma before the CAT, dated 30.8.2011 & Order dated 3.4.2012 handed over to the Couer in a separate compilation on 27.8.2013)** In the proceedings before the CAT, Rahul Sharma had provided details to the SC-appointed SIT about the reluctance of mobile phone records to provide full user details; and despite the fact that the representative of one such company had stated that he was under pressure from both the Gujarat police and political bigwigs in the state, the SIT had chosen not to investigate this at all.

45. A-29 PC Pande, A-38 Shivanand Jha are criminally culpable for the Non Response of the Fire Brigade. Over 47 Distress Messages from the Police Control Room made on 28.2.2002 to the Fire Brigade Urgently demanding help at a time when Naroda Patiya, Naroda Gaam and Gulberg Society were under systemic Mob attack were met with a sinister and conspiratorial silence, revealed Desai reading from two tables in the protest petition that detailed this evidence. Pande as Commissioner of Police is answerable for this lapse, yet SIT chose to completely ignore this evidence from the SIT investigation own record. No statements of any of the Fire Brigade officials have been recorded, nor any attempts made to unearth the Fire Brigade register and analyse this. **(Para 810 @ Page 360 & paras 816-827 @ Pages 365-373, Volume II, Protest Petition)** references to PP) (Compilation "Evidence from SIT

Records (PCR) Reveal Non Response from Ahmedabad Fire Brigade submitted to the Court, 22.8.2013)

46. Intelligence reports were ignored. State IB Messages before Godhra were deliberately ignored; worse after the outbreak of violence post Godhra, IB Reports submitted by ADGP Sreekumar were deliberately ignored by A-1 since they suggested strong corrective measures to enable a return to normalcy. IB Reports dated 24.4.2002, 15.6.2002, 20.8.2002 and 28.8.2002. This whistleblower witness also maintained a 'Conscience Register' detailing all illegal instructions given by A-1 and other powerful collaborators. **(Annexure III, File III, D-40 of the SIT Record)** The SIT, instead of rationally and independently investigating the substance of the series of illegal instructions alleged to have been given by A-1 Narendra Modi to him and other senior echelons of the administration and police, the SIT had spent over 20 pages of its report in simply arguing that keeping such a conscience register was wrong.

Sreekumar was ADGP (Armed Units) until he was made ADGP-Int on April 9 2002 after which he was hurriedly shunted off on September 17-18 2002 for failing to be a compliant officer, Sreekumar had during his tenure as Intelligence chief, contemporaneously, documented not just the deliberate laxity of the chief minister and other cabinet colleagues to restore normalcy, ensure justice and reparation but had in fact in continuance of a diabolic conspiracy, deliberately sought to mislead the National Human Rights Commission (NHRC), Central Election Commission (CEC) but also actively instructed against officers acting lawfully. Four critical reports were filed by Sreekumar during his tenure as Intelligence chief, dated 24.4.2002, 15.6.2002, 20.8.2002 and 28.2.2002. In the first report he had stated that senior ministers of the government and MLAS were influencing Police Station Inspectors (over and above the authority of their seniors) to obey political masters and not arrest Hindu communal elements who had been named by Victims in the FIRs related to Mass Crimes; he had said that despite warnings of acute tension and violence being fomented on February 27, 2002 after the Godhra incident, only two preventive arrests had been made in Ahmedabad, that compliant public prosecutors were deliberately being appointed by the state government to ensure easy bail for powerful accused and a

subversion of the justice system. These reports had been sent by Sreekumar to the Home Department headed by A-1 Modi, Ashok Narayan, ACS Home but were completely ignored by the state government. Ashok Narayan states in his statement recorded by the SIT that though he had spoken in detail to A-1 Modi the chief minister about extortion and violence by BJP-VHP-Bajrang Dal activists as late as April 2002, the CM was dismissive of the same. The SIT in its closure report is deliberately silent on the substance of the evidence that Sreekumar has provided through these intelligence reports despite a 161 statement of Maniram a senior officer in Modi's government who had completely corroborated what Sreekumar had written. In his statement dated 18.12.2009, ADGP (Law and Order) till 2003 Maniram **(Annexure I Volume I Serial No 66 of SIT Papers)** stated that "The communal riots continued during the months of March and April, 2002 in the whole of Gujarat. It was sometime in the first week of May, 2002 that Shri K.P.S. Gill, former DGP of Punjab was appointed as an Adviser to the Chief Minister. Shri K.P.S. Gill held a meeting on 4-5-2002 at C.R.P.F. camp which was attended to by the DGP Shri K. Chakravarthi, Shri P.C. Pande, the then CP, Ahmedabad, Shri R.B. Sreekumar, the then Addl. DG (Int.), Shri M.K. Tandon, Jt. CP, Sector-II, Ahmedabad City and myself whose names, I do not recollect. In this meeting, Shri K.P.S. Gill reviewed Law & Order situation in the State. The DGP and the Commissioner of Police gave their assessments of the current situation as normal due to effective police action and painted a rosy picture about Law & Order situation in the State. I informed Shri Gill that the tension continued to prevail in Ahmedabad City amongst the Hindus and Muslims. I further pointed out to Shri Gill that officers who were responsible for not preventing the riots resulting in loss of life and property in their jurisdiction should be immediately transferred irrespective of their status and good officers posted back. I also mentioned it to Shri Gill that wherever effective officers had been posted, the Law & Order situation was under control like whole of Saurashtra, South Gujarat namely Surat City, Naysari, Bharuch, Valsad and Dang districts Shri R.B. Sreekumar, the then Addl. DG, (Int.) fully supported me and endorsed my views. Shortly thereafter, the concerned police officers at all the levels were transferred as a result of which the riots could be controlled in May 2002 itself. "This explodes the theory put forward by A-1 Modi and ardently supported by the SIT that within 72 hours all was normal in Gujarat.

A series of rank shocking and illegal instructions were given by A-1 Modi who instead of being concerned with establishing intra-community harmony and peace was instructing higher echelons of officers to tap the phones of MOS Revenue Haren Pandya (simply because he appeared before the Concerned Citizens Tribunal and deposed about the meeting of February 27, 2002, tapping the phones of political opponents and worst of all “instructions to eliminate Muslim ...extremists...” etc etc (List of Instructions are given below). Instead of questioning Modi about the content of the illegal instructions (statement recorded on 27-28.3.2010, argued Desai, SIT had been content to simply ask a formal question about the register. The SIT Closure Report is a cosmetic exercise The Conspiracy and Abetment hatched at the very highest levels of the political hierarchy in Gujarat was hatched by persons in power to ensure that the Conspiracy does not end in a day; that it continues for Months when the violence does not stop and Subversion occurs and this Conspiracy and Abetments by Collaborators Officials includes a refusal by Public Servants to follow the law and instead ensure that the Law is Violated. Even if Sreekumar had, instead of maintaining a Contemporaneous Conscience Register, deposed about a series of blatantly unlawful and illegal instructions by A-1 Modi to the SIT was not SIT obliged in law to test the facts in trial? Why then does the SIT file a closure report with such voluminous and critical evidence? The SIT had clearly manifest a mindset where it has believed only those powerful accused arraigned in the complaint alleged Desai ignoring upright and independent witnesses, including senior officers of the Gujarat government like Sreekumar. Sreekumar had warned the state government through a letter dated 3.11.2004 that he was in the possession of tapes and transcripts that exposed the coercive tactics being used against him even before he was denied legitimate promotion to the post of DGP Gujarat. In a significant judgement in Sreekumar's favour (September 2007), the Central administrative tribunal (CAT) had quashed the 9-point charge sheet against him said Desai but for the SIT Courts do not matter. SIT was clearly holding a brief for the powerful guilty accused. Among the nine points for which Sreekumar had been charge sheeted included revealing facts before the Nanavati Commission. In a detailed and well-reasoned judgement, the CAT, quoting Sardar Patel, India's first Home Minister and HM Seervai's India's Constitutional expert, had held

that senior officers were bound to the law and the Constitution and should not be servile to the illegal dictates of a section of the government who give malafide orders. In effect the CAT ratified completely the stance of RB Sreekumar while being ADGP-Intelligence maintained a Conscience Register recording illegal instructions and independently serving the interests of the Rule of Law and Constitutional Governance. The SIT had ignored all these facts and dismissed the valuable evidence provided by Sreekumar.

(Two Volumes of 161 Statements Related RB Sreekumar's Evidence given to the Court; Separate Compilations of the CAT Judgement Exonerating Sreekumar also given to the Court--Paras 283-242 @ Pages 134-185, Volume I, Protest Petition)

Instead of looking at the facts and contents of the IB Reports (dated 24.4.2002, May 2002, 15.6.2002, 20.8.2002 and 28.8.2002) the SIT had spent reams on trying to adjudge whether such a register ought to have been maintained. The Home department under A-1 Modi conspicuously did not maintain any minutes of any meetings nor record proceedings of meetings, possibly because of the dubious instructions given therein and the Conspiracy to subvert the lawful functioning of the police and administration.

The significance of the contemporaneous evidence provided by Sreekumar stemmed from the fact that he exploded the myth that violence was controlled within 72 hours, he stressed on the deliberate subversion of the criminal justice system --- illegal freedoms given to the BJP and sangh parivar criminals; gave independent assessments of lives lost in police firing and mob violence to the NHRC and CEC (the CEC accepted Sreekumar's version) and in fact dared to report the rank communal speech made at Becharaji by A-1 Narendra Modi. Soon after Gill was appointed as special advisor to the Gujarat government by the Centre in early May 2002 (because violence did not stop) Sreekumar had suggested that culpable and complicit officers like CP Ahmedabad PC Pande and others should be transferred. Gill had followed these suggestions and transfers did take place thereafter Desai said. Yet SIT deliberately chose not to record statements of officers of the CEC, KPS Gill nor esteemed former CJI and officers of the NHRC. Why ?

47. The critical evidence of the other whistleblower officer, former ADGP Intelligence RB Sreekumar lay in the fact that a) he had recorded that then DGP Chakravarti had told him about the criminal instructions issued by A-1 Modi at the meeting of 27.2.2002 (“Hindus should be allowed to vent their anger on the streets and the police should not be impartial”); b) he had filed five critical SIB reports recording the illegal functioning of the police and bureaucracy as also the subversion of the criminal justice system; c) he had urged prosecution of Sandesh newspaper and VHP hate pamphlets; d) he had recommended the transfer of criminally complicit officers, a recommendation that had been implemented by KPS Gill sent in by the Central government; e) he had given independent reports to the Chief election Commission (CEC) that had been relied upon and f) he had recorded the illegal instructions given by A-1 Modi to him in an unofficial register; g) he had sent the SIB reports on the virulent hate speech of A-1 Modi at Becharaji to the National Commission of Minorities despite his bosses illegally ordering that he not do so. He too like Sharma and Sanjiv Bhatt who were also charge sheeted was rewarded with a charge sheet and denied promotion. Bhatt’s criticality lay in that he had sent messages from the SIB on 27.2.2002 mentioning the provocative sloganeering by the kar sevaks that led to a crowd gathering near the Godhra railway station.

The SIT deliberately did not record any statements of as many as 17 Independent witnesses related to Sreekumar’s evidence and instead chose to rely on those who are listed as Co-Conspirators-Collaborators in the Complaint. **(A list of these was provided to the Court on 27.8.2013)**

48. **Subversion of Justice Accused included:-**
- (i) Misleading the Hon’ble Supreme Court, the National Human Rights Commission, the Chief Election Commissioner, the National Commission for Minorities, the Parliamentary Committee of Women and the Ministry for Home Affairs; This a continual chain in the crime of conspiracy that continues until today.
 - (ii) Doctoring FIRs, allowing powerful accused to go scot free. The very fact that SIT had to be appointed for further investigation is proof of the unreliability of the state’s commitment to honestly prosecute heinous offences.

- (iii) Appointing Partisan prosecutors with ideological bent towards the RSS/VHP were deliberately appointed to enable easy bail to those accused involved in the post-Godhra killings and to ensure that the guilty are not punished.
- (iv) Tampering with and Destruction of Records in Violation of the law as laid down in the Gujarat Police Manual and especially when and while the Hon'ble Supreme Court had been seized of the matters since 2.5.2002 and the SIT appointed on 26.3.2008. (Critical records were destroyed according to the SIT papers **(Paras 212-222 @ Pages 107-109, Volume I, Protest Petition & Para 510 @ Pages 225-226, Volume I, Protest Petition & Para 639 @ Pages-276-277, Volume I, Protest Petition; Para 647 @ Page 283, Volume I Protest Petition; Para 805 @ Page 356, Volume II, Protest Petition)** on 30.3.2008, five days after the SIT was appointed.
- (v) The Subversion of the Home Department under A-1 in which co-accused, Gordhan Zadaphiya, MOS Home, A-5, Ashok Narayan, ACS Home, A-28, and K Nityanandam, Secretary, Home, A-34 played an active part included deliberately misinforming the Ministry of Home Affairs of the Government of India about the extent and spread of violence. This correspondence reveals inaccurate statistics were being sent to the MHA, Delhi by the Home Ministry under Modi, A-1; how senior VHP and RSS men were being kept out of the FIRs and charge sheets related to serious massacres being filed by the Ahmedabad Crime Branch; how violence was recurrent and was being allowed with even ministers like Bharat Barot being mentioned in extortion related crimes by then CP, PC Pande. Evidence of this is available in the correspondence records from the Government of Gujarat Home department provided to the SIT and includes the following (April 2002) and yet has been completely ignored by the SIT:-
 - (a) Page 129, Compilation of Statistics handed over to Court on 22.8.2013 from Anenxure III, File XLI, D-196, Volume I, Sr Nos 34; SIT Records;
 - (b) Page 146, Compilation of Statistics handed over to Court on 22.8.2013 from Anenxure III, File XLI, D-196, Volume I, Sr Nos 59; SIT Records);

- (c) Pages 151-157, Compilation of Statistics handed over to Court on 22.8.2013 from Anenxure III, File XLI, D-196, Volume I, Sr Nos 114; SIT Records),
- (d) Page 158 a letter from Home Department to ADGP-Int that says that “the same statistics of de ad and injured sent daily to the government of India are becoming less” and that Joint Secretary Home has pointed out this discrepancy; Compilation of Statistics handed over to Court on 22.8.2013 from Anenxure III, File XLI, D-196, Volume I, Sr Nos 115; SIT Records),
- (e) Pages 165-168 (letter of Ashok Narayan A- to K Chakravarti A- , Compilation of Statistics handed over to Court on 22.8.2013 from Anenxure III, File XLI, D-196, Volume I, Sr Nos 128)

Accused Implicated:

Narendra Modi, chief minister and cabinet minister for home(A-1), Ashok Bhatt, former law minister, now deceased (A-2), IK Jadeja, Minister (A-3), Gordhan Zadaphiya, former MOS Home (A-5), Subha Rao, former Chief Secretary (A-27); K Chakravarti, former DGP, Gujarat, (A-25), PC Pande, former CP, Ahmedabad (A-29) AK Bhargava, DGP, Gujarat (A-26); GC Raigar, ADGP Int (A-60); VM Parghi, former DCP Ahmedabad (A-54); Tarun Barot, Crime Branch (A-58); KR Kaushik, former CP (A-61)Narendra Amin, DCP (A-59); Amitabh Pathak. Former IG (now deceased) and AK Sharma, former ADGP, DGP, Gujarat (A-36)

49. Despite repeated observations and findings from independent authorities like the NHRC (April-July 2002) and subsequent reports, CEC (August 2002), Gujarat High Court and Supreme Court that deliberate and systematic attempts were made by chief functionaries of the political executive to paint a false picture of normalcy, repeated indictments had documented how the ground level situation in Gujarat was otherwise. Violence and rioting continued even while the CEC visited the state in August 2002, Muslim students could not give their examinations in the state and as late as February 8, 2012, the Gujarat High Court indicted the government on its obdurate refusal to re-construct and repair shrines and places of worship belonging to the minority community.

Both SIT reports, the one submitted before the Supreme Court (Malhotra, 12.5.2010) and the final report (Shukla, 8.2.2012) deliberately made light of this serious allegation in the complaint, misrepresenting the findings of the CEC and believing instead A-37 former chief secretary Subha Rao over two officers former ADGP RB Sreekumar who had spoken up against the false representations by others before the CEC. Para 20 of the CEC Report in fact clearly chose to accept the State Intelligence Bureau's independent assessment of widespread disturbance in 20 districts of the state, continued violence in July-August 2002 and an all pervasive sense of insecurity and fear among the minority community. In fact the CEC also recorded how its team had found that powerful accused roamed free, having got bail from the courts and plaint prosecutors had made a farce of the criminal justice system in the state. Worst of all, the CEC while refusing to bow to the state's coercive demand to hold elections in August 2002 (the assembly had been dissolved on July 19, 2002) had remarked that when electoral rolls were in disarray, over a hundred thousand displaced from their villages and homes in cities, how could elections, if held be free or fair? **(CEC Report @ Annexure III, File II, Sr Nos D-39, SIT Papers; Ref @ Para 950 @ Pages 440-441, Volume II, Protest Petition, Para 986 @ Page 451; Para 1025 @ Page 464, Paras 1036-1039 @ Pages 470-471; Para 1042-1043 @ Pages 472, Volume II, Protest Petition)**

The SIT mocking this finding of an independent and statutory CEC that had relied upon two independent officers of the state government, chose to believe those top echelons of the state administration and bureaucracy who had connived and conspired with the chief executive to misrepresent the situation on the ground. What was the SIT's motives in accepting Subha Rao's statement at face value and ignoring the findings of the CEC?

50. Despite the fact that the criminal complaint dated 8.6.2006 specifically made allegations of the deliberate and callous destruction of 270 Dargahs and Masjids, and even quoted extensively from Justice Krishna Iyer, PB Sawant and Hosbet Suresh's Concerned Citizens Tribunal Report (Crimes Against Humanity 2002), the SIT had simply ignored this aspect of the mass crimes that were committed. The Gujarat High Court judgement dated 8.2.2012 had come down heavily on the Gujarat government for its attitude with regard to the destruction of minority

places of worship stressed that several independent, statutory and Constitutional body had found serious and grave complicity in the handling of the post Godhra carnage. The matter is pending before the Hon'ble Supreme Court. The SIT had adduced despite substantial and significant evidence that no wrongs had been committed by the powerful.

(Copies of the CEC Report and Subha Rao's statement dated 23.3.2010 recorded by AK Malhotra were given to the Court.)

Despite strong strictures by four or five statutory bodies commenting harshly on the complete breakdown of the rule of law in 2002, a breakdown that could be attributed not just to dereliction of duty but criminal negligence, the Special Investigation Team completely ignored contemporaneous investigations conducted by the National Human Rights Commission (NHRC) headed by former chief justice of India JS Verma in 2002. Worse, it did not take their detailed assessment after field visits to the state into consideration. The Zakia Jafri criminal complaint dated 8.6.2006 seeks to assign criminal culpability to this dereliction of duty.

The question before the Magistrate's Court is when, four to five Constitutional and Statutory bodies, the National Human Rights Commission (NHRC), Central Election Commission (CEC), Supreme Court of India and Gujarat High Court repeatedly, after field visits and detailed examination, say that there is a "comprehensive and systemic failure of the state government, its Home Department, Police and Bureaucracy to perform fundamental tasks, the crucial question arises now, with much greater rigour and when reams of evidence have been collected to substantiate and fortify these conclusions, *whether certain substantive and objective criteria exist for prosecuting responsible persons in office for these criminal lapses*. Seen in this overall context, this shows not just a dereliction of duty and criminal negligence but ass up to criminal acts of conspiracy and abetment. The reason for citing these critical observations of these bodies made in 2002, 2003, 2004 and 2012, Counsel forcefully argued, is to bring out a link and establish that when seen all together these failures amount to more than derelictions of duty and amount to criminal conspiracy and abetment to allow Gujarat to burn.

Significantly unlike the much touted “normalcy after 72 hours” mantra uttered by A-1 Modi and faithfully reproduced by not just co-accused, A-37 chief secretary Subha Rao, A- 25 then DGP Chakravarthi or then ACS (Home) A-28 Ashok Narayan and finally pliantly accepted by the Special Investigation Team (SIT), the NHRC report of March – July 2002 and August 2002 resoundingly establish otherwise. In its Preliminary Comments at 20 (x) the NHRC states at “20.(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 its report of August 16, 2002, the CEC is equally as dismissive of this cynical claim. It states at Para 31(iv) that “ Everywhere there were complaints of culprits of the violence still moving around scot-free including some prominent political persons and those on bail. These persons threaten the displaced affected persons to withdraw cases against them, failing which they would not be allowed to return to their homes.”...” The team has cited many other such cases from almost all the 12 districts covered by them. [In Ahmedabad, the Commission itself observed that a large group of Muslim families could not move to their houses because the culprits of the riots had blocked the accesses to their houses.]. Further it also states at Para 32 that whereas “...Before the Commission, the Chief Secretary and Director General of Police painted a similar picture of normalcy in Gujarat. But the Additional Director General of Police (Intelligence), Shri R.B. Sreekumar, whose views were supported by the new Commissioner of Police, Ahmedabad, Shri K.R. Kaushik, stated before the Commission that an undercurrent of tension and fear was prevailing beneath the apparent normalcy in the State. He further added that there was no interaction between the two communities even though moderates were trying their level best, as there were hawks in both the groups. He added

that additional forces would be required to ensure that there were no communal clashes. And the State Government have on the Commission's queries subsequently been avoiding giving a clear picture on the number and identity of persons complained against, similar details of persons included in the FIRs, similar details of persons who have been arrested, similar details of persons named in the FIRs who have been enlarged on bail, similar details of persons enlarged on bail as against whom appeals have been filed for cancellation of their bail bonds."

51. Both the NHRC and the CEC take strong note of the fact that in a cynical and disruptive form of governance those officers who were complicit in allowing violence to break out and spread, participative in the conspiracy to subvert justice by registering false or diluted FIRs were promoted and rewarded whereas those who did lawful and Constitutional work were roundly punished. At Para 31(vii), the CEC states that "A large number of IPS officers who did commendable work in preventing the spread of violence were soon replaced. A common complaint received was that these officers were punished for their impartiality."

Despite this overwhelming contemporaneous evidence, the SIT simply did try and arrive at an understanding of the ground level truth argued Counsel for the Complainant, the SIT did not bother to record statements of Justices Verma or Justice Anand or the rest of the NHRC or even try and collect evidence from them.

The NHRC had first issued notice; suo moto to the state of Gujarat on March 1, 2002, then after a formal hearing on March 6, 2002 actually conducted a field visit to the state of Gujarat between March 19-22, 2002. Thereafter it had sought a detailed response from the state government which was given in mid-April 2002 by then chief secretary Subha Rao (A-37 in the complaint). This response of the state government was strongly and adversely commented upon by the NHRC in its hearings in May 2002. A letter addressed by retired high court judge Justice Divecha to the NHRC (attached) which exposed the complete targeted violence against members of the Muslim minority in Ahmedabad right from the evening of February 27, 2002 was also read out. Finally Divecha's home was torched and destroyed the next day as a complaint machinery watched. Justice Kadri a sitting judge of the High Court

also had to flee and change homes for safety. **(Annexure III, File VI, Sr Nos D-88, SIT Papers).**

The NHRC had first recommended transfer of investigation of major cases to the CBI following which citizens of Gujarat and Mumbai including Professor DN Pathak and Teesta Setalvad had approached the Supreme Court (May 2002) for transfer of investigation. The NHRC itself had sought the transfer of trials out of Gujarat. It was on this writ petition filed by citizens that the Supreme Court, in May 2008 finally appointed a SIT, it was pointed out.

52. **Allowing hate speech unchecked and unprosecuted was also part of the Conspiracy hatched by A-1.** In furtherance of the pre-hatched conspiracy to ensure that a large body of armed and aggressive VHP-RSS-BJP supporters take to the streets with blood in their minds to seek revenge for the tragic killings at Godhra, Acharya Giriraj Kishore of the VHP was given VIP entry into the city of Ahmedabad so that poisonous and inflammatory speeches could be delivered during the cremation. A-1 He issued congratulatory letters to those newspapers that had published manipulated reports not based on fact. ADGP Sreekumar had on 16.4.2002 itself recommended the prosecution of hate filled Pamphlets being widely distributed by the Viswa Hindu Parishad (VHP) all over Gujarat that bore their official address and details of publication. Other police officers including SP Bhavnagar Rahul Sharma had strongly recommended the prosecution of Hate Speech. A-1 himself in February, 2002 and right up to September, 2002 himself indulged in hate speech. A transcript of the Hate Speech of A-1 made at Becharaji on 9.9.2002 was summoned by the National Commission of Minorities (NCM). ADGP-Int RB Sreekumar functioning legally had provided a transcript for which he was victimized; first transferred, denied promotion and also charge sheeted. Charkaravarti (A-25) had made an illegal and committed a subversive act by noting directing that a transcript should not be provided. This is clearly an illegal and subversive act. Substantive arguments on the deleterious impact of hate speech and hate writing at the time of heightened communal tension have been made in the context of mainstream Gujarati newspapers, television and the VHP's published pamphlets. The National Human Rights Commission (NHRC) had clearly recommended prosecution of

offenders. The power to prosecute lies with the Home Department under A-1. The Editor's Guild report also concurred with the NHRC recommendations

**(Paras 126-153 @ Pages 70-85 Volume I, Protest Petition;
Paras 233-238 @ Pages 112-117, Volume I Protest Petition;
Paras 588-590@ Pages 261-262, Volume I, Protest Petition)**

53. Most significant of all, Ashok Narayan had in his statement before the SIT dated 13.12.2009 (attached) clearly stated that chief minister and accused 1 was non committal about action on hate speech.

Ashok Narayan's statement to SIT dated 13.12.2009

Que (*by Malhotra*). Please see a letter dated 16-4-2002 addressed to the DGP with a copy to you regarding the two pamphlets in circulations in large number in Gujarat for which action was proposed u/s 153-A & 153-B IPC after taking legal opinion from the Law Department. What action was taken on this communication?

Ans. The issues raised by ADG (Int.) in this letter were discussed with the DGP. However, I don't recollect any action taken thereon. However, it may be added here that several such pamphlets were brought to the notice of DGP, myself and Chief Secretary but in such cases the name of the printer/publisher had not been mentioned. Accordingly, we had impressed upon the police to trace out the culprits responsible for these pamphlets but unfortunately no material could be collected in this regard, with the result no action would be taken in this regard.

Narendra Modi's statement to SIT dated 27 & 28.03.2010

Q.41(Malhotra for SIT). Please see a copy of the DO letter dated 22.04.2002 addressed by Shri P. C. Pande, the then CP Ahmedabad City with a copy to DGP and Addl. DG (Intelligence) about the undesirable activities of Sang Parivar activists. Was this letter brought to your notice? If so, what was the action taken by you in the matter?

Ans. In this connection, it is stated that I do not remember now, whether this issue was brought to my notice or not. But, it *has* been my and my Government's approach right from the first day that a

culprit is a culprit irrespective of his caste, creed, religion or socio political background, as nobody is above law. “

The Accused Nos 25 DGP Chakravarti was examined six times by SIT, on **24.3.2010, 7.5.2010, 5.10.2010, 23.11.2010, 23.3.2011, 14.1.2012**, yet SIT did not feel it imp to examine him on the criticality of the vicious hate speech and bartering of hatred indulged in by the VHP and allowed by the state police and administration, despite consistent recommendations to the contrary from its own Head of Intelligence, ADGP Intelligence (April 2002-September 2002) RB Sreekumar. It is no wonder that the administration allowed this criminality to go unchecked given the Home Minister was Accused Nos 1 Narendra Modi argued counsel for Complainant Zakia Jafri. Detailed tables in the Protest petition show how the PCR (Police Control Room Messages clearly reveal that crowds of 3,000 plus RSS workers aggressive and violent had gathered between 3-4 a.m. at the Sola Civil hospital in an aggressive and vengeful mobilisation before the parading of the dead bodies was cynically allowed. Violence breaks out as the mobs attack the hospital, attack leaders visiting there while the police stands by and does not act. Police bandobast to control crowds is not ordered by the Police finds it advisable to escort Acharya Giriraj Kishore here who makes an inflammatory speech and accompanies the procession.

The hate ridden speech made by A-1 Narendra Modi at Becharaji, Mehsana, on 9.9.2002 to launch the Gaurav Yatra and his election campaign was adjudged by field officers of the State Intelligence Bureau to be aimed at causing deep rift and communal divides, correspondence regarding which was sent by former ADGP-Intelligence RB Sreekumar to the National Commission for Minorities (NCM) on 16.9.2002 for which he was first transferred and then targeted and victimized. Despite the fact that the NCM had, through a letter dated 10.9.2002, requested a transcript of the speech, ACS Home Ashok Narayan (A-28) in the Zakia Jafri Complaint) and then DGP Chakravarthi (A-25) had instructed Sreekumar not to send the transcript to the statutory body. A handwritten noting of this illegal instruction signed by then DGP Chakravarthi is visible on this letter dated 13.9.2002 and yet the SIT made bold to give all accused a clean chit. Sreekumar, respecting the law and the Constitutional mandate had ignoring

these illegal directives sent a copy of the transcript to the NCM on 16.9.2002 for which he was severely victimized. He was first transferred out, and then denied legitimate promotion (for telling the truth to the Nanavati Commission in August 2004) and finally charge sheeted. He emerged victorious before the Central Administrative Tribunal (CAT) in two separate judgements.

Two final reports of the SIT, one to the Supreme Court (Malhotra, 12.5.2010 and the other before the Ld Magistrate, 8.2.2012) have serious serious contradictions in their assessment of the same hate speech spoken by A-1. The virulently anti-Islam and anti-Muslim speech made by Modi that falls foul of Section 153a, 153b and 505 of the Indian penal Code, was found by one officer of the SIT (AK Malhotra to the Supreme Court, 12.5.2010) to be communal but yet, with no further investigation, the Final report of the SIT (Himanshu Shukla, Crime Branch Ahmedabad, 8.2.2012) gives Modi a clean chit for such a speech.

Excerpt of what this speech contains:-“.....*Then what is paining them? Since, we (means BJP) are here, we brought water in Sabarmati during the month of Shravan, when you are there, you can bring it in the month of Ramdan (the holy month of Muslims). When, we brought water in the month of Shravan, you feel bad. When we spend money for the development of Becharaji also, you feel bad. What brother, should we run relief camps? (referring to relief camps for riot affected Muslims). Should I start children producing centers there, i.e., relief camps? We want to achieve progress by pursuing the policy of family planning with determination. We are 5 and our 25!!! (Amepanch, Amara panch, referring to Muslim polygamy). On whose name such a development is pursued? Can't Gujarat implement family planning? Whose inhibitions are coming in our way? Which religious sect is coming in the way?...*” are some of the divisive and inflammatory comments made by A-1 Modi in this speech (whole transcript attached). “

If it is a communal speech, a hate speech meant to generate ill feeling and hatred in 2010 then it attracts penal provisions of the law for which A-1 Modi must be prosecuted; how can SIT suddenly in 2012 find him not guilty without any further investigation,

especially when field level officers of the SIB have adjudged the speech to be criminal?

HATE SPEECH IN PRINT MEDIA

RB SREEKUMAR, RAHUL SHARMA, DD TUTEJA

A-1 Narendra Modi.(Editor's Guild report) had congratulated many of those newspapers that had played the role of inflaming passions through the publication of false and hate-driven material. **(A copy of the Editor's Guild Report was handed over to the Court).**

Several sections of the Gujarati print and television media had violated the law in 2002 publishing and telecasting completely fabricated or manipulated stories in a bid to inflame passions and provoke violence against the Minorities. This was an assessment made by then SP Bhavnagar who had recommended to K Chakravarti (A-25) that the newspaper Sandesh should be prosecuted, DD Tuteja, CP Vadodara had also made this recommendation (A-48) as had ADGP-Int RB Sreekumar. K Chakravarti, DGP Gujarat (A-25) failed by omission as did PC Pande, CP Ahmedabad (A-29). The decision to prosecute or allow, unchecked with impunity lay solely with the Home Department of Gujarat. Politically its head was A-1; Nityanandam, Home Secretary (A-34) and Ashok Narayan, ACS Home (A-28) are also culpable.

54. Two judgements of the Supreme Court, (1980 2 SCC 402) Baburao Patel vs State (Delhi Administration) and (2004) 4 SCC 684 State of Karnataka vs Praveen Togadia, lay down the parameters for judging what constitutes hate speech and how and when the administration needs to act. The hateful propaganda in various VHP Pamphlets attributed to the VHP, Paldi Ahmedabad (office bearers Chinnubhai Patel and Vankar) fell squarely within the Supreme Court's definition of hate speech under sections 153a, 153b, 505 of the Indian Penal Code. Yet A-1 Modi, chief minister and home minister of the state had reacted casually to serious recommendations to act that came from his own Intelligence Department (ADGP-Int RB Sreekumar's letter dated 16.4.2002 **(Annexure III, File III, D-27 of the SIT Records)**)

55. **Doctoring/Tampering with the Record**

A compilation of documents from the SIT Record submitted on 27.8.2013 along with a Note on Tampering and Destruction detailed

several points. A complicit and unprofessional SIT had not even looked into this serious criminal lapse though this was clearly visible from their own papers. The Gujarat home department under A-1 Modi had destroyed Vehicle Log Book records, Police Control Room Records and Wireless records on 30.3.2008 just five days after the Supreme Court had appointed the SIT on 26.3.2008 **(Pages 70-77 of the Compilation that consists of documents from the SIT Record; Annexure IV, File I Sr Nos 23)**; Ref: Paras 1030-1034 @ Pgs 466-469, Protest Petition, Volume II). This was submitted to the Court on 27.8.2013.

While indulging in this criminal act they had quoted an obsolete rule 262 of the Bombay Police Act when this had been replaced by the Gujarat Police Manual of 1975. The Inward register of the chief minister's office, **(Pages 37-67 of the Compilation that consists of documents from the SIT Record; Annexure IV, File X, Sr Nos 311)** the Minutes of the meeting of 28.2.2020 **(Pages 21-33 of the Compilation that consists of documents from the SIT Record; Annexure IV, File IX, Sr Nos 236)**, the daily Itinerary of the chief minister **(Pages 6-7 of the Compilation that consists of documents from the SIT Record; File IV, File IX, Sr Nos 249)** as also a letter of the Home department had been clearly tampered with. (This letter of 6.3.2002 was overwritten by hand to show it had been written on 28.2.2002). **(Pages 68-69 of the Compilation that consists of documents from the SIT Record; Annexure III, File XLI, Sr Nos 14, D-196, Vol I)**

Besides over four dozen SIB Messages in the SIT papers were in plain white blank paper without official format, an aspect that the SIT had chosen to turn a blind eye to. Desai argued that the SIT ignoring such brazen lapses was illustrative of its compromised functioning. **(Tables @ Pages 79-90 of the Compilation)**

56. Even while the Supreme Court was taking cognizance of the petition by the Legal Rights groups and victims filed before the Supreme Court on 2.5.2002, the Gujarat Government had no qualms about destroying records related to the critical period. Original Police Control Room & Vehicle Log Books of Senior Officials and Public Servants, Wireless Intercepted Messaged, Confidential Reports (all of which would have been critical to assess the *real time response of senior and ground level officials of*

the police and administration to the Orchestration of Violence among other critical documents were destroyed quoting the Government of Gujarat quotes Rule 262 @ Pages 198-199 of the Gujarat Police Manual, 1975 Volume III, which *has no reference at all to any procedure related to destruction*. According to the documents available and provided by the SIT one such batch (Ref: *Annexure IV, File I, Sr Nos 23 & Annexure III, File XV, Sr Nos D-156 SIT Papers/Record was destroyed on 31.3.2008*).

Is it a coincidence that these records were destroyed even though the Supreme Court of India had been seized of the Matter of Transfer of Investigation in Nine Major Trials since May 2002 and the Zakia Jafri & Citizens for Justice & Peace (CJP) Investigation since on or before 3.3.2008 when Notice was Issued?

On 17. 1. 2007, according to letter by Joint C.P. sector II, G.K. Parmar given in the course of the hearing of the Gulberg trial, on an application made for further investigation by the victims and witnesses, he states that “as the final date of preserving the copies of the control room... January 2000 to December 2005 has been destroyed on 17.1.2007”. The SIT has not investigated how such destruction could have taken place when the Supreme Court was seized of the matter from May 2002 onwards. Another letter also states that even the photographs taken of the Gulberg carnage site have been wilfully destroyed. This has happened before the trial has even begun! The SIT has not interrogated this issue at all

(Reference: Paras 1030-1034, Pgs 466-469 Vol. II of the Protest Petition). Copy of this Document from the SIT Record can be Seen at Pages 130-132, Annexure Volume I, Protest Petition;)

57. **Missing Documents from the SIT record.** On 29.1.2010 (Ref: **D-176 (Annexure III, File XXXIV in SIT Papers)**) there is a handwritten endorsement stating that the file has been received with the DGP's letter dated 29.1.2010. Another endorsement dated 9.2.2010 (Ref: **D-127 Nos (Annexure III File XII in SIT Papers)**) states there are 1-388 pages in file. File actually contains only 1-342 pages that clearly suggest that 46 pages are missing. The endorsement mentions a SIT letter that is not in the record. This assumes importance in wake of IO AK Malhotra's statement before the Hon'ble Supreme Court January 2010 (before his report was submitted) saying that Gujarat Government was not cooperating

and supplying all relevant documents). (Endorsement in File SBII/COM/100876/P+1/Special Team Home Department)

58. **Documents on Blank Pages** In the SIT record of Investigation Papers that can be seen at **Annexure IV, File XVIII & XIX** there are several Blank pages on which Fax messages have been sent in the Files of the State Intelligence Bureau (SIB) (**Ref: Protest Petition Annexures Volume I, Pages 292-304, Sr Nos 51:-**
Tables Listing How Many of the Documents in SIT Files are on an official format/letterhead how many on Plain paper Related to Blank Pages can be seen at Pages 79-90 in the Compilation 'Tampering With Record & Destruction of Documents'). The SIT has not looked into this aspect at all. Why are some faxes on official formatted letterheads and some on blank papers?
59. **Translation of Documents.** A large number of documents/ statements are in Gujarati. Admittedly they have not been translated. (**Affidavit of SIT before this Court**). A majority of the SIT members cannot read Gujarati. In order to decide the weight to be attributed to each of the statements/ document it was necessary that the SIT, as a collective applied its mind to these documents. In the absence of any translations it is not clear as to how the SIT has come to the conclusions it has arrived at. (**Ref: Page 28, Protest Petition, Volume I & Paras 944-945 @ Pgs 439-440, Protest Petition, Volume II.**
(Message at Annexure III, File XLI, D-196, Volume I, Serial Nos 14 has been clearly tampered with)

CONCLUSION

After a detailed assessment of the Arguments put forward and documented in the Protest Petition filed on 15.4.2013 with Annexures I, II, III and IV as also the detailed arguments and documents and judgements supplied to this Ld Court, the Court has to adjudicate upon whether the events after the Godhra carnage. that included mass reprisal attacks where thousands of innocents members of the minority were massacred, raped and killed were

- (a) spontaneous outpouring of people's anger;

- (b) which could not have been anticipated, prevented or controlled or it is likely that
- (a) they were part of a conspiracy which was hatched by certain people in power politically and administratively to create an environment whereby targeted violence was allowed to be unleashed on the minority community; Besides
- (b) in carrying out this conspiracy or otherwise certain public servants including Ministers, police, bureaucracy or other individuals aided and abated the events.

The Political head of the state, home ministry and administration were in full knowledge of and allowed the Build Up of Aggressive and Communal sentiments, Violent Mobilisations including carrying of Arms and a general outpouring against the Minority Community before 27.2.2002

During the course of our arguments from the documents generated by SIT, the Complainant has shown that

- (a) there was a Conspiracy amongst the persons named or some of them to generate hatred towards the minority community either by an active participation in this generation or by an omission to act against the perpetrators though they were legally bound to do so. In this connection, it has been established, that the persons named are not merely Constitutionally but also legally forbidden from acting or omitting to act in a manner they did;
- (b) There was a conspiracy not just to generate hatred towards the minority community but also to commit targeted violence against the person, property and religious places of the minority community and aiding and abetting this process by acts and omissions of persons liable under law to act otherwise.
- (c) We proved that the aiding abetting was being done prior to the Godhra incident of 27.2.2002 in terms of (i) hate speech being generated; (ii) no action being taken against the provocation

despite regular intelligence reports of communal mobilization and gathering of arms by the RSS/VHP;

(d) We proved that the conspiracy was generated immediately after the Godhra incident through (i) directly collaborating with the the Vishva Hindu Parishad/ RSS/BD (ii) Creating a situation of generating hatred against minority community through

- the manner of dealing with the dead bodies of Kar Sevaks
- The manner of conducting the post mortems
- Allowing the bodies to be photographed
- Handing over the bodies to a private individuals
- The manner in which bodies were brought to Ahmedabad
- The manner in which funeral processions were taken
- The infamous meeting in the evening of 27.2.2002 where certain instructions were given
- The declaration of Bandh on 28.2.2002 and the support given to it by the ruling party
- The complete lack of preventive arrests
- The deliberate delay in declaring Curfew and Violation of Curfew Orders willfully thereafter
- Speeches of the Chief Minister on 27.2.2002 and 28.2.2002 and speeches of other political figures
- The failure to take measures against hate speech
- Ministers occupying Police Control Rooms
- The manner in which fabricated FIRs were created
- The delay in deploying the army and selective deployment thereafter
- The manner of dealing with internal refugees and their relief camps

- The protection of police officers who participated or aided or abated in the conspiracy and victimization of those who did not so participate
- (e) We also established that the failures by the political and administrative machinery were not just departmental lapses but were criminal offences in respect of which each of the accused needs to be criminally prosecuted
- (f) We also established that the existing investigation carried out by the SIT is highly inadequate, at times misdirected and is by and large a cover up job.
- (g) Above all, we have established that despite this, the documents collected or sent to the SIT even at present make out a case for prosecution.

The NHRC, the CEC, the Supreme Court appointed Amicus Curiae all feel that there is ample evidence to put before a court for trial only the SIT wishes to close the case with no prosecution.

Annexure Note

26. IMPORTANT ISSUES CONCERNING 27.2.2002 MEETING

(A brief summary)

1. Sanjiv Bhatt (IPS) says in his 161 statement and affidavit before the Hon'ble Supreme Court, that he was present at the meeting and unconstitutional, inflammatory and statement constituting a criminal offence was made by Accused No.1.
2. Haren Pandya (then MOS Revenue) said that he was present at the meeting and unconstitutional, inflammatory and statement constituting a criminal offence was made by Accused No.1. He was killed soon thereafter.
3. RB Sreekumar (then ADGP-SRP) says in a 161 statement that Chakravarthi (then DGP Gujarat) told him on the next day about inflammatory, unconstitutional and

statement constituting a criminal offence was made by Accused No.1

4. Presence of Ministers at A-1 Modi's residence is accepted by Swarnakanta Verma (then ACS Home acting for chief secretary) as also by Anil Mukhim (then OSD to A-1) but the SIT Report totally ignores and falsely states that they denied presence of Ministers. SIT misrepresents its own evidence.
5. Mr. Haren Pandya's father, Vithalbhai Pandya has made a statement corroborating what Mr. Haren Pandya said but the father's statement is not even considered by SIT
6. No significance is attributed by SIT to the fact that Minutes of Meeting were not maintained though the burden under Section 106 of Evidence Act would be on those who were required to maintain them. Standard Operating Procedure demands that the chief minister's secretariat maintain such Minutes.
7. The timing and structure of the meeting can be decided only after detailed examination of evidence in trial.
8. Sanjiv Bhatt's past record is examined in detail by SIT to discredit him while there is no such attempt made to examine any other officers past or present record. In any event it is not the job of SIT to weigh the evidence.
9. Prakash Shah's, (joint secretary) presence in the meeting is confirmed without any verification though no one says he was present.
10. SIT shockingly states that even if Accused No.1 had made such a statement it does not amount to an offence by ignoring the fact that if the statement had been made it amounted to offences under Sections 107, 120 B, 153 A, 153 B and 166 of the Indian Penal Code.
11. The SIT ignores the fact that none present at the meeting could have said that such a statement was made since it would amount to participating in offences above mentioned.
12. Besides, SIT also ignores the fact that those who supported Accused No.1 were favoured by the Accused No.1 by granting plum posts and promotions.
13. Amicus Curiae report (25.7.2011) is completely ignored by SIT.

14. SIT completely ignores the fact that in the law and order meeting presence of intelligence officers was absolutely essential. Besides, Mr. Bhatt was, on the given day, in charge of Intelligence (Communal) and therefore it was natural that he was called for the meeting.
15. If on the other hand it is believed that intelligence officers who are required to even gather intelligence information about communal issues and law and order were not summoned, the purpose of the meeting was not to control law and order problem but to ensure that no steps are taken to control it.
16. Mr. Mal (S.P. Surendranagar), Himanshu Bhat (S.P.) and Samiuallah Ansari (DCP) who deposed before Justice Sawant and Justice Suresh concerning instructions by political bosses are not even examined on these statements made to the Tribunal (Concerned Citizens Tribunal, Gujarat, 2002). This report records the inflammatory, unconstitutional, criminal instructions given by A-1 to paralyse and neutralise the machinery and states that the meeting lasted about two hours.
17. Pradeep Sharma (IAS), Kuldeep Sharma (IPS) make specific allegations about similar criminal instructions being passed down by Arvind Sharma from the CMO but Arvind Sharma who's statement has been recorded earlier is also not examined concerning these allegations.
18. SIT has also ignored the evidence given by serving officer Rahul Sharma during his deposition before the Nanavati Commission (August 2004) where he states that while he was talking to his superior, DGP Chakravarthi regarding reinforcements of personnel, Chakravarthi had told him that the bureaucracy had been neutralised.
19. The impact of the Conspiracy hatched from the morning of 27.2.2002 after the Godhra tragedy, consolidating into the criminal, inflammatory and unconstitutional instructions given by A-1 can and should be judged by the deliberate abdication of the rule of law from different districts where collaborator accused acquiesced and where Mobs were allowed to go on a violent rampage with targeted violence against the Minorities, VHP strongmen were collaborators in this. A-1 had first contacted Jaideep Patel, Gujarat secretary of the Vishwa Hindu Parishad after getting news of the Godhra

tragedy. The Assembly that is in the midst of the Budget session too does not sit after 28.2.2002, inexplicably.

- 20.** The concentration of powers in the cabinet minister for Home Affairs has lain with A-1 since 2002, giving him sole control on the ACRs (confidential reports) of serving IAS/IPS officers and their postings (Rewards or Punishments). This concentration of power and use for furtherance of the Conspiracy to subvert the criminal justice system, rule of law and justice delivery has also been borne out by the statements of then MOS Home Govardhan Zadaphiya. This evidence has been ignored by the SIT. (Powers of the chief minister and home minister are outlined in the Gujarat Government Rules of Business handed over to the Court).