

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
SPECIAL LEAVE PETITION (CRIMINAL) DIARY NO. 34207 OF 2018**

IN THE MATTER OF:

Zakia Ahsan Jafri &Anr.

...PETITIONERS

VERSUS

State of Gujarat &Anr.

...RESPONDENTS

VOLUME VII

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ADVOCATE-ON-RECORD FOR THE PETITIONERS: MS. APARNA BHAT

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**ISSUES NOT DEALT WITH BY THE MAGISTRATE AND THE GUJARAT HIGH
COURT (CONTD.)**

- A. Crucial Issues raised in the Original Complaint and thereafter in the Protest Petition were not given due consideration by the SIT on its Investigation despite the existence of confessions/statements of the protagonists that indicated that gross anomalies in functioning did exist. From the onset of the Complaint dtd 8.6.2006, Petitioners have laid out that these crucial issues are also those that point to a considered Conspiracy and Abetment by Senior Political Functionaries, Supervisory Police Officers and Administrators in allowing Violence to break out post Godhra Mass arson on 27.02.2002. The Ld. Magistrate thereafter accepts the Pre-Determined Conclusions put forward by SIT, despite formidable evidence galvanised by the Petitioners in the Protest Petition without sending the matter to trial.
- B. These Crucial Issues that were, in the Petitioner's Opinion not given due consideration, inter alia, relate to:
- i) A Gujarat Bandh Call given by the Vishwa Hindu Parishad on 27.02.2002 which was then supported by the ruling party in

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government in the state. This Bandh (Closure) was then used to gather large mobs and launch attacks on the minority community across districts. The State Intelligence Bureau is warning of the violent implications of this development.

- ii) **Conduct of Illegal Post Mortems Out in the Open at the Godhra Railway Yard with ministers GordhanZadaphiya (Minister of State, Home), Ashok Bhatt (Health and Family Welfare) and leaders of the Vishwa Hindu Parishad like Jaideep Patel (facing trial in NarodaGaam trial) present. This was in complete violation of statutory provisions regarding the conduct of such post-mortems.**
- iii) **Handing over of the Dead Bodies of the unfortunate victims of the Godhra Train Burning incident to a non-governmental person, viz, Jaideep Patel, secretary of the state unit of the Vishwa Hindu Parishad on the instructions of the Collector/DM, Godhra , Jayanthi Ravi on the late evening of 27.02.2002.**
- iv) **The presence of two ministers, Ashok Bhatt (Health and Family Welfare at the time, 2006) and IK Jadeja (Urban Development) in the City (Ahmedabad) and State (Gandhinagar) Control Rooms, a practice that was not just unusual and unprecedented but was also clearly a manifestation of direct political interference in police functioning at a time and on a day (28.2.2002) when Violence was raging all over the state.**
- v) **Subversion of the Criminal Justice System that included a) Manipulation of Investigation from the start: doctoring of FIRs, by ensuring powerful accused were not named, the narrative was manipulated and twisted to show the victim minority community as aggressor and perpetrator; b) ensuring easy bail for those among the perpetrators who were arrested; c) appointing Public Prosecutors who had a dual identity ie those who were pro-active members of organisations like the Vishwa Hindu Parishad, Bajrang Dal and RashtriyaSwayamsevakSangh (RSS)**

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C. Various aspects of the Failure of the SIT Investigation into these and other Issues that were subject matter of the Complaint dtd 8.6.2006 and Protest Petition dtd 15.04.2013

I. Bandh Call Officially Supported

The Original Complaint dated 8.6.2006

1. The Complaint dtd 8.6.2006 details the fact that the Gujarat Bandh Call (28.2.2002) given by the Vishwa Hindu Parishad (VHP) was supported by the government of the day in Gujarat and moreover also that the State Intelligence Bureau (SIB) had through a series of Messages (including some quoted in the Complaint) alerted all Commissionerates and Superintendents of Police about the inherent dangers with the VHP-called Bandh on 28.2.2002. SIB Messages sent warnings of violent repercussions due to the Bandh call (*Para (32) at Pages 22-23, Para (55) at Pages 33, Para (62) at Page 37, Para 77 at Pages 46 of Volume III of the SC SLP Record refer specifically to this*). The fact that the SIB had alerted all jurisdictional officers about the distinct possibility of violent repercussions of the Bandh is further established by the time the Protest Petition is filed by the SIT's own Record/Documents that have detailed Messages supplied by then ADGP-Intelligence J.Mahapatra of the Call for the Bandh as also the possible violent repercussions. Besides, by 27.2.2002 violence had already broken out all over the state as is also established by the SIB Messages themselves. The SIT is dismissive of these indicators and evidence. Moreover specific information was sent to the C.P Ahmedabad on 27-02-2002 indicating that V.H.P had given a call for "Gujarat Bandh" on 28.02.2002 to protest against the burning of the train at Godhra and a meeting was also called by V.H.P at 16.00 hrs. on the same day in connection with the Bandh call.
2. The Complaint dtd 8.6.2006 relies on the Affidavits of then (2006) serving officers of the Gujarat police filed before the Nanavaty-Shah Commission, the Report of the Concerned Citizens Tribunal, Crimes Against Humanity, Gujarat

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2002 headed by Justices Krishna Iyer, PB Sawant and Hosbet Suresh. This report makes the following observations on the Bandh in its findings:

Concerned Citizens Tribunal Report, Volume II

“1.3. The VHP then gave a call for a Gujarat *Bandh* on February 28 and for a *Bharat Bandh* on March 1. The Gujarat BJP President RajendrasinhRana was quick to announce the state BJP’s support for both the bandh calls, giving clear signals to the administration that it need not take a hard line against those who enforce the *bandh*. The state government’s reluctance to take adequate steps in the wake of the proposed *bandhs* amounted to an abdication of all its responsibilities and an open invitation to anarchy.

“5.7. The state *bandh* on February 28, and the Bharat *bandh* on March 1 — both called by the VHP/BD and supported by the state BJP — helped in the killing, loot and destruction. The fear created by aggressive sloganeering and posturing, the deathly silence and empty streets helped the trained militia to carry out their jobs with ease, unhindered by the state police.”

“56. Given the widespread reports and allegations of groups of well-organised persons, armed with mobile telephones and addresses, singling out certain homes and properties for death and destruction in certain districts – the further question arises as to what the factors were, and who the players were in the situations that went out of control”. (NHRC Report,2002).*(Para 56, Pg 223 of Volume III of the SC SLP Record.*

Protest Petition dated 15.04.2013

3. The Protest Petition also details at length the implications of a Bandh called by the VHP and moreover supported by the ruling party of the state. Rajendra Singh Rana, official spokesperson of the ruling party and its Vice President admits to this and states in his statement to the SIT dated 15.03.2010 that it had been decided to support the VHP-called Bandh. This fact is not disputed. The SIT does not deal with this overt or covert support for the Bandh by the government satisfactorily. Besides the official Press Release of the VHP (*Convenience Compilation, Pages 92-93 of Convenience Volume II*) and Statement of DGP Chakravarthi also states this: “VHP had given a call for Gujarat Bandh on

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28-02-2002, which was supported by BJP”.

4. Rajendra Singh Rana, President, BJP admits to the ruling party/government support to the Bandh in his statement to the SIT dtd 15.3.2010(**PAGE NO. 1-3**)(*Protest Petition, Paras 56-60 at Pages 233-235 of Volume III of the SC SLP Compilation*).The Protest Petition, illustrating the Petitioner’s case of Wider Conspiracy shows from an SIB Message sent out at around 12.20 p.m. on 27.2.2002 which was communicating the fact that there was a Declaration of Bandh by the VHP and that this had been supported by the ruling party in the state. The Protest Petition also refers to a series of messages of the State Intelligence Bureau (**PAGE NO. 62-76**) which warn of the repercussions of the bandh. One has been sent out as early as 12.20 p.m., another at 3.10 p.m. on 27.2.2002. This message already says that funeral processions are likely wherever the bodies are sent. In fact in the SIT Record there are as many as ten messages in Gujarati and another two dozen in English that reflect this. The Messages in English are annexed in this Compilation(**PAGE NO. 4-61**); Petitioners crave leave to produce a Translation of the Gujarati messages (SIB) from the SIT Records at the time of hearing of the matter.(*Protest Petition, Paragraph No.442, Page 376-377, Volume IV of the SC SLP Record*)
5. The Protest Petition lays down in detail how, the VHP, Bajrang Dal and their fraternal bodies had given a call on 27.2.2002 for observing a state-wide bandh on 28.2.2002 and this was supported by the Government. This had created an atmosphere conducive for mobilisation of Hindu mobs, particularly in communally sensitive areas of the State. (*Para 438-441, Pages 375-376, Volume IV of the SC Record*)
6. At *Paras 438-443 of the Protest Petition at Pages 376-381 of Volume IV of the SC SLP Record*, the Petitioners, point out, using documents from the SIT’s own record that several such messages were being sent out by the SIB (**PAGE NO. 62-76**).The Protest Petition also has a detailed Table indicating these messages. Incidentally, these messages had all been annexed to the First Affidavit of Mr. RB Sreekumar dated 6.7.2002 before the Nanavati Commission.

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7. Hence, it can be seen that the Bandh Calls by the Vishwa Hindu Parishad (VHP), first a Gujarat Bandh on 28.2.2002 and thereafter a Bharat Bandh on 1.3.2002, both of which were supported by the ruling party laid the stage for mass mob mobilisation and attacks. Worse, while the state's own intelligence bureau was clearly warning jurisdictional officers about the possibility of pre-meditated violence and frenzy against the minority community breaking out, jurisdictional officers in supervisory and other positions had a mixed response. While many (as has been detailed in *Volume VI of the Convenience Compilation* functioned as per Law keeping the mandate of not just the Indian Constitution but their statutory duties, obligations and guidelines in mind, a significant other section (several of whom were named in the Original Complaint dtd 8.6.2006) because of the positions they held at the time, did not. The failures were grave, the inaction implicit and complicit and needed to be investigation as such. The fact that the SIT simply refused to do so is testimony to a superfluous and perfunctory investigation. *Para 442 ay Pages 376-377 of the Protest Petition, Volume IV of the SC SLP Record* is relevant:

442. The State Intelligence Bureau had inputs about the likely repercussions of the Godhra incident on 27.2.2002. Accordingly, the SIB had sufficiently alerted all the Police Commissioners and Supdts. of Police of all Districts for taking precautionary steps to prevent likely communal clashes in their jurisdiction. Which means that police officers in all and sensitive jurisdictions were supposed to:

- a. Strict and effective implementation of the law.
- b. Arrest communal goondas and anti social elements who thrive in such a climate
- c. Take strict and prompt action to prevent any kind of fallouts; avoid delay, inaction, and negligence.
- d. Police stations should continue mobile patrolling and arrange bandobast to their sensitive areas.
- e. Arms, Ammunition and Tear Gas should come in handy.
- f. Keep anti-riot drill kit.
- g. Keep a tab on the leaders, workers and office bearers of the Vishwa Hindu Parishad to obtain the

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necessary information regarding the movement of persons, etc.

- h. Incident at Godhra communal incident should have alerted all Police Commissioner, Police Officers and coercion against all attempts to instigate communal flames, especially control provocations and hate speech.

443. However, no preventive arrests had been made and the relevant instructions contained in the Gujarat Police Manual, compilation of the circulars in a booklet known as 'Communal Peace' and a compilation called 'Instruction to deal with Communal Riots (Strategy and Approach)' issued by Mr. KV Joseph, the then DGP in 1997, had not been complied with and further, the Communal Riot Scheme was also not implemented in Ahmedabad. Even subsequently, no action was taken in this regard.

8. The Petitioners from the outset have been invoking these Statutory Provisions laid down in the Gujarat Police Manual (a voluminous document) and in a booklet specific to the state, instruction to deal with Communal Riots (Strategy and Approach)' issued by Mr. KV Joseph, the then DGP in 1997 (annexed at *Volume VI of the Convenience Compilation*) which had been supplied to the SIT and is part of their record. The reason is this, the menace of such outbreaks of lawlessness and targeted violence have solutions in the effective and strict implementation of preventive measures, non-partisan functioning, independent investigation and swift and fair prosecution of the guilty. If these fail, or as the case of the Petitioners is, are made deliberately to fail, this bodes ill for the Rule of Law and the Constitutional Mandate of equality and non-discrimination. As has been illustrated in *Volume III, Pages 110-114 (Selective Preventive Arrests and Police Firing)*, *Pages 115-166 (Intensity and Spread of Violence)*, *Delay in Declaring Curfew (Pages 208-241)* and *Non-Response of the Ahmedabad Fire Brigade (Pgs 28-109)* something was seriously wrong and all these failures, implicit and complicit formed part of the Conspiracy post the Godhra incident on 27.2.2002. In fact, of the two arrests made on February 27, 2002 in Ahmedabad city, both were from the minority community. These were Mr. Mohammed Ismail Jalaluddin and Mr. Fateh Mohammed, who were picked up at Astodia that night, for shouting slogans. The Special Sessions

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Court judgement in fact has a Photograph of the bodies of the Godhra Victims lined up at the railway yard(**PAGE NO. 98**).

9. The Inquiry Report presented to this Hon'ble Court in May 2010 admits that this allegation in the Complaint was substantiated. No consequences follow however:

“Allegation No.XIII:No direction was given by the State Govt to Hindu organisations against the observance of Bandh on 28-02-2002. Bandhs had been declared illegal by Kerala High Court. This allegation is substantiated.”

Pg 362, Volume XI (11) of the SC SLP Record)

- 10.By the time the SIT Closure Report is filed on 08.-2.2012, the conclusions it reaches on the issue are frivolous and in a sense, problematic as they amount to pre-judging the issue:

“BJP's Vijay Badekha, Under Secretary to Home Department has stated before the SIT that both Gujarat bandh on 28-02-2002 and Bharat bandh on 01-03-2002, were supported by BJP. He added that keeping in view the fundamental Rights of the Citizens of India, the bandhs were not banned by the Govt.”

(Pg 1391-1392 of Volume VIII of the SC SLP Record)

“The Kerala High Court ruling is applicable to whole of the Country unless overruled by the Supreme Court of India. But this by itself does not make the State Govt. a co-conspirator to the riots. In view of this though this allegation is proved to be correct, yet it cannot be construed as evidence to bring, Home, a charge of conspiracy”.

(Pg 392 of Volume VIII of the SC SLP Record)

- 11.The Ld. Magistrate similarly does not take the implications of the Bandh seriously:

“Based on the statements of officers of the Home Department, the support of BJP to the bandh call could not be equated with the government's support to the bandh call because during the riots the government had done relief work and tried to maintain law and order.”

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(Pages 283, Volume II of the SLP Record)

“State Government’s failure to take necessary action to counteract the bandh call does not amount to conspiracy at best it amounts to carelessness”

(Pages 306, Volume II of the SLP Record)

Based on the statements of Sanjay Bhavsar and Mr.Badheka it is out of question to consider the support of BJP in ‘Bandh Call’ is to be construed as the support of the Government. The Government also did considerable work to maintain law and order and relief work, thus the court agrees with the finding of the SIT.”

(Page No.226, Volume I of the Impugned Order in the SC SLP Compilation)

“Government did not endorse the Bandh or placed any prohibition against the said declaration, but arranged for special ‘Bandobast’. It is proved that the Government was negligent in not prohibiting the Band.”

12. Case law relied upon:

- i. ***Communist Party of India (M) v. Bharat Kumar and Ors.***
(1998) 1 SCC 201
- ii. ***Destruction of Public and Pvt. Properties, in Re. v. State of Andhra Pradesh and Ors.*** (2009) 5 SCC 212

II. Post Mortems Illegally Conducted Out in the Open at the Godhra Railway Station

13. The Post Mortems were conducted out in the Railway Yard in the presence of senior political leaders and Govt Functionaries. MOS Home, GordhanZadaphiya in his statement to the SIT dated 24.09.2009 (**PAGE NO. 77-80**) admit that bodies of the Victims of the Godhra arson were lying in a terrible condition out in the Railway yard when he reaches; that there was an aggressive and agitated mob of VHP and RSS persons there who were annoyed with the political class and blaming them; admits to another Minister Ashok Bhatt having arrived in Godhra before him as also Jaideep Patel,

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Gujarat General Secretary of the VHP. Yet the SIT is conspicuous in not asking obvious questions to any of these protagonists who took the decision to hold these post mortems out in the public in full view of an already agitated mob. In his statement dated 24.03.2010 (**PAGE NO. 93-95**), Ashok Bhatt (Minister for Health and Family Welfare at the time) the Minister admits to the fact that doctors were conducting the Post Mortems out in the open in the Railway Yard. Yet the SIT does not see it fit to question him on law, ethic or procedure on this extremely unusable and provocative act. Even the District Magistrate/Collector Jayanti Ravi and the SP Raju Bhargav are not questioned on this at all. (*Para 61, Page 235-236, Volume III of the Protest Petition in the SC SLP Record*) (*Pges 115-139, Volume II of the Convenience Compilation*)

14. The Gujarat Police Manual (1975) at Section VII has specially laid down Rules and Procedures when it comes to 'Accidental Deaths and Railway and Other Accidents' (**PAGE NO. 96-97**). Section 223 is particularly relevant because it specifies, at 223 (b) (ii) "Photographs should not be taken if bodies are badly mutilated" and 223 (b) (vi) "Revolting images/photographs of bodies which are "useless for identification" should not be sent for publication except under explicit orders of the Superintendent of Police of Sub-Divisional Officer".

It is not disputed that the bodies were in terrible condition enough to make matters worse, inflame passions, urge mobs and ordinary people to vendetta and vengeance against innocents. It is not disputed that these were out in the open when an aggressive mob was allowed to assemble which meant that dozens if not hundreds of persons took or could take photographs on their mobile phones. It is also not disputed that post-mortems, a procedure that is not conducive to calm, were also allowed to be conducted out in the open. An SIT with senior officers with fair amount of experience just did not see it fit to examine and investigate this crucial aspect of the Conspiracy. None of the Ministers present at Godhra, nor VHP functionaries like Jaideep Patel nor the Collector/DM nor the SP are questioned on this. There appears a desire by the Investigating Agency, SIT, to completely whitewash the Investigation. (*Protest Petition, Violation of Law and Procedure, Paras 479, 480, 481 at Pages 408-*

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409, Volume IV of the SC SLP Record). Sample Photo of the Bodies of the Godhra Victims lined up at the Railway Yard(**PAGE NO. 98**).

III. **Handing over the Bodies to a Non-Govt functionary, Jaideep Patel, Gujarat General Secretary of the VHP.**

15. The action of the district administration and elected officials physically present at Godhrai handing over large numbers of the bodies of the Godhra arson victims to Jaideep Patel, VHP is not disputed. Jaideep Patel takes these bodies in a motor cavalcade to Ahmedabad where by next morning (4 am, 28.2.2002) an aggressive mob has gathered as is evident from the SIT Investigation Papers Police Control Room Records-PCR) (Pgs 3-24, Convenience Volume III). MOS Home GordhanZadaphiya sees Jaideep Patel at the Godhra Railway Yard, District Magistrate/Collector, Jayanti Ravi says Jaideep Patel is present at an Official meeting at the Collectorate on the afternoon of 27.2.2002. Jaideep Patel himself not only does not dispute that he took the bodies and also gives details in his statement to the SIT on all his activities at Godhra. Jaideep Patel's statement dated 15.02.2010 admit to this. In his second statement dated 27.08.2010 it is interesting as in the space of a few months he suffers from a lapse in memory. By then the SIT, clearly not interested in interrogating the evidence but in exonerating the accused makes nothing of this. This is an example of, and symptomatic of how the entire SIT Inquiry and Investigation were conducted. Statements of MOS Home GordhanZadaphiyadtd 24.09.2009 (**PAGE NO. 77-80**) and 28.10.2009(**PAGE NO. 81-84**) are categorical that Jaideep Patel was the one in whose charge the bodies were taken to Ahmedabad but denies having any hand in this decision.

This issue is brought up from the Original Complaint dated 8.6.2006 (*Protest Petition: Page 64, Volume III of the SC SLP Record; Para 207-209 at Pages 297-298, Volume IV of the SC SLP Record; Para 210 at Pages 299-300, Volume IV of the SC SLP Record*). Collector, Godhra (2002), Jayanti Ravi's statements to SIT dtd 15.09.009 & 25.10.2009, 3.11.2009 are at Pages 74-78 of the Convenience Compilation II. SP, Godhra, Raju Bhargava's statements before SIT dated 26.10.2009 and 3.11.2009 are at Pages 79-83 of the

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Convenience Compilation II. Raju Bhargava first statement dtd 27.10.2009
(PAGE NO. 120-121).

Clearly the decision to hand over the bodies to Jaideep Patel was an official one for which administratively a senior officer had to be held accountable. However the blame is cast on a junior public servant, Mamlatdar, ML Nalvaya. ML Nalvaya records his statement before the SIT twice and despite repeated clarifications is clear that it was the oral instructions of Jayanti Ravi that he took and followed through the decision to hand over the bodies of the Godhra Victims to Jaideep Patel. ML Nalvaya's statements are dated 28.10.2009 and 3.4.2011. In the first statement he clearly states that while the requisition letter to hand over the bodies to Jaideep Patel was signed by him, he followed instructions of the Collector and ADM Damor. Therefore 54 bodies were despatched to Ahmedabad under the escort of a VHP man, who was also given police escort for the same. Mamlatdar ML Nalvaya is made to sign a letter officially to Jaideep Patel and this letter is available with the SIT and on the records of the Nanavaty-Shah Commission. The SIT while accepting this charge in the Complaint dismisses this gross misdemeanour lightly **(PAGE NO. 99-100 & 101-102)** *(Jayanti Ravi's statement to SIT dtd 15.09.2009 at Pages 74-75, Convenience Compilation II)*.

(Volume IV, Paras 486-493, Volume IV of the SC SLP Record).

It is submitted that even the learned AC appointed by this Hon'ble Court also finds this limited investigation lacking and opines that this needs further investigation.

16. The issue of how this matter has been improperly investigated is dealt with in the Protest Petition. *(Protest Petition, Paras 518-522 at Pages 422-424, Volume IV of the SC SLP Record)* *(See also Pages 159-163, Volume XI of SC SLP record, annexed here again as there is a legibility issue)*. In the Inquiry, SIT recommends departmental action against Mamlatdar ML Nalvaya. SIT states that a letter was addressed by then Mamlatdar and Executive Magistrate to Jaideep Patel, VHP in which it is specifically mentioned that 54 dead bodies were being sent through five trucks. Details of the truck numbers

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are given. The SIT observes that the legal guardians of these bodies is the Railway Police/District Administration) but strangely concludes *at Pages 1361, Volume VIII:*

“Shri Hasmukh T. Patel of VHP had acknowledged the receipt of dead bodies. It may be mentioned here that the handing over of the dead bodies to their legal heirs/guardians was the duty of the railway police, which had registered a case in connection with this incident.

On his further examination Shri Nalvaya has stated that these dead bodies were handed over officially to Shri Jaydeep Patel and Shri Hasmukh T. Patel of VHP as per the instructions given by Smt. Jayanti S. Ravi, District Magistrate, Godhra and Late B.M. Damor, ADM, Godhra. Shri M.L. Nalvaya has filed an affidavit, before Nanavati Commission of Inquiry to this effect on 05-09-2002. However, Smt. Jayanti Ravi has stated that no such instructions were given to Shri Nalvaya to hand over the dead bodies to Shri Jaydeep Patel or Shri Hasmukh T. Patel of VHP and that Shri Jaydeep Patel was merely to accompany the dead bodies to Ahmedabad.”

Finally SIT concludes:

“...Nalvaya, Mamlatdar acted in an irresponsible manner by issuing a letter in the name of Patel in token of handing over the dead bodies which were case property and therefore, the government of Gujarat is being requested to initiate departmental proceedings against him”.

(Page No.1362, Volume VIII of the SC SLP Record Final Report, SIT 8.2.2012)

18. Ld. Magistrate dismisses the serious charge in the Complaint and Protest Petition by observing that the decision to hand over bodies to Jaydeep Patel was unanimous and the authorities made sufficient effort. Ld. Magistrate further finds that he cannot consider the findings about the post-mortems in the judgement of Sessions Case No. 69 of 2009 as Appeals were pending. No untoward incidents happened during the identification and funeral of the bodies and state government made all efforts to maintain law and order. It cannot be believed that

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the decision taken by the authorities to hand over bodies to Jaydeep Patel is beyond the law. (*Pages 232-234, Volume I of the SLP Record*)

IV. Presence of two Ministers Ashok Bhatt (Health and Family Welfare at the time, 2006) and IK Jadeja (Urban Development) in the City (Ahmedabad) and State (Gandhinagar) Control Rooms, a practice that the SIT itself found problematic. It was in the Petitioners' view a clear manifestation of direct political interference in police functioning at a time and on a day (28.2.2002) when Violence was raging all over the state.

19. From the outset when the Original Complaint was filed on 8.6.2006, Petitioners have alleged political interference in police functioning. (*Para (10), Para 13-14, Volume III of the SC SLP Record; Para (50), Page 31, Pages 60-61, Volume III of the SC SLP Record*).

20. Minister for Urban Development (at the time) I.K.Jadeja in his statement to SIT dtd09.11.2009 (**PAGE NO. 110-111**) said that Mr. GordhanZadaphiya had told him to remain present in the Police Bhavan (Gandhinagar, Police HQ) to receive information and if extra police force is required to pass on the same to the Home Department. I.K.Jadeja was present in State control room at Gandhinagar. The SIT does not say that even the very presence of the minister at the police control room was illegal and questionable. (*Protest Petition, At Para 639, Page 470-471, Volume IV of the SC Record*)

21. Ashok Bhatt stated before the SIT that he might have visited Ahmedabad City Control Room for about 5-10 minutes on 28-02-2002. However, he has denied to have interfered with the police work, as being a senior minister he had to maintain his dignity and status. Again on 01-03-2002, he admitted to have visited the Shahibaug Control Room for about 10 minutes to meet Mr. George Fernandes, who had gone to CP's office (*Protest Petition at Paras 815, 816 at Pages 559-561 Volume V of the SC Record*).

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22. Director General of Police (DGP), K Chakravarthi (in 2002) recorded his statement before the SIT on 17.12.2009, 30.01.2011 and 24.03.2011. (*Pages 172-196 of Convenience Volume IV*). The DGP is the senior most police official in the state. He states clearly (*See Page 177, Volume IV of the Convenience Compilation*) that when he was told by ACS (Home) Ashok Narayan of the decision to have Ministers in the State and City Control Rooms, he had objected. His objection was overruled. The SIT has overlooked this completely.

23. SIT accepts in its Inquiry report presented to this Hon'ble Court (2010) that this was a controversial decision:

“Allegation V: This was a very controversial decision taken by the Govt. to place two of its Ministers in the State Police Control Room as well Ahmedabad City Police Control Room. Though evidence is available to establish that both the Ministers visited the respective Control Rooms, yet there is no evidence to establish that they passed on instructions to the police officers to deal with the riots in a particular manner. In view of this, the allegation is only partially proved.” (*Pg 171, Volume XI (11) of the SIT SLP Record*)

24. In fact, Chairman SIT RK Raghavan in his Comments made to this Hon'ble Court (*Pages 592, Volume XIII of the SCSLP record*) specially acknowledges this allegation/charge in the Complaint dtd 8.6.2006. This has been quoted by Amicus Curiae in his Final Report dtd 25.07.2011.

25. The Amicus Curiae in his Final Report before this Hon'ble Court makes special mention of the fact that the SIT too found this phenomenon irregular and illegal. (*Final Report dtd 25.07.2011 at Pages 159-189, See Page 179-180*)

“36. The Chairman, SIT in his earlier comments dated 14/05/2010, found as follows [at p. 5]:

“It has been conclusively established that the two Ministers were indeed operating from the two Control Rooms for a few days from 28.02.02 onwards. There is however no information to establish that they interfered with police operations during the time they were there.It is quite possible that DGP Chakravarthi was unhappy with this arrangement. He has, however, denied that he ever gave expression to his resentment, as suggested by Shri R.B. Sreekumar, the then ADGP in

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his Affidavit before the Nanavati Commission and statement made before the SIT. (*Vide pages 28-32 of the enquiry report*)”

37. However, in the present forwarding remarks to the Further Investigation Report, the Chairman, SIT has taken the view that [at p. 5]:

“It is true that two Ministers, Shri I.K. Jadeja and Late Ashok Bhatt, were positioned reportedly to monitor the law and order situation. One of them, viz., I.K. Jadeja remained at the Police Headquarters for about two to three hours on 28.02.2002. The presence of a second Minister, viz., Ashok Bhatt, supposed to be stationed at Ahmedabad City Police Control Room on 28.02.2002 was not established. No evidence is available to suggest that they ever interfered with the Police operations to bring the situation under control, or that they conspired in the perpetration of the riots.”

38. Thus, it would appear that – in respect of Shri Ashok Bhatt – the Further Investigation Report is at variance with the Preliminary Report. It is pertinent to point out that the Preliminary Report had relied on Shri Ashok Bhatt’s own statement that he visited the Control Room on 28.02.2002 for about 10 minutes, and concluded that “the allegation about the positioning of Shri Ashok Bhatt, the then Health Minister, in the Control Room, Ahmedabad City appears to be correct, but there is no evidence to prove his interference in the Police work.” In light of this admission, the doubt expressed by the SIT in the Further Investigation Report about the presence of Shri Ashok Bhatt in the Control Room on 28.02.2002 is without basis. Thus, it stands established, as per the SIT’s Preliminary Report, that the 2 Ministers were present in the Police Control Rooms at Gandhinagar and Ahmedabad respectively.”

26. Despite this observation by the Amicus Curiae, the SIT simply brushes away the serious implications of the charge. The manner in which political interference in functioning could have been established by the SIT, a high profile team appointed by this Hon’ble Court, would be to investigate thoroughly whether or not the presence of these Ministers actually affected/impeded police functioning. It is clear from so many different factors such as non-response of Supervisory

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Officers to distress calls, non-response of the Fire Brigade to save lives and destruction of property that in fact Police Functioning had been serious obstructed. The SIT however leaves this crucial element of the Conspiracy consciously un-investigated. For example it was crucial for the SIT to relate this aspect, political interference with specific instances of serious non-functioning by the authorities:

- (i) Inaction by Jurisdictional and Supervisory Officers/Authorities on Build-Up of Communal Mobilisation prior to the Godhra tragedy on 27.2.2002 as revealed by SIB Messages, Tehelka Transcripts (*Convenience Volumes I and IV*);
- (ii) Mob Mobilisations from the early Morning at Sola Civil Hospital where Jaideep Patel reaches with the Dead Bodies and a Mob has gathered as early as 4 a.m. (*Pages 3-24, Convenience Volume III*). Provocative speeches were also made.
- (iii) Non –Response of Fire Brigade, (*Pages 28-109 of Volume III of the Convenience Compilation*);
- (iv) Lapses/Delay in Army Deployment and Declaration of Curfew (*Pages 208-341, Convenience Volume III, Convenience Compilation*), (*Pages 315-325, Convenience Volume III, Convenience Compilation*);
- (v) Hate Speech/Provocative Speeches soon after the Godhra Incident which neither the Govt spoke up against nor the Authorities prosecuted (*Volume IV, Convenience Compilation*). despite recommendations of the jurisdictional officers and the Addl-DG Intelligence.

27. SIT Final Closure Report at *Pages 1438-1440, Volume VIII of the SC SLP Record, See Page 1440* concludes:

“I. K. Jadeja and Ashok Bhatt were positioned in the DGP office and Ahmedabad City Control Room respectively

“It may thus be seen that both the Ministers did visit the respective Control Rooms, but there is no evidence to prove that

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they interfered with the law & order situation. Nor is there any evidence to indicate that they visited the two control rooms at the direct instance and evidence of a Conspiracy. Since there is nothing to prove that these Ministers interfered or gave any direction in maintenance of law and order, no offence is made out. Further, in the absence of documentary / oral evidence of any directions by those two Ministers to police officials, it cannot be said at this stage that they conspired in the perpetration of riots or took any action for controlling the riots.”

V. Subversion of the Criminal Justice System that included a) Manipulation of Investigation from the start: doctoring of FIRs, ensuring powerful accused were not named, the narrative was manipulated and twisted to show the victim minority community as aggressor and perpetrator; b) ensuring easy bail for those among the perpetrators who were arrested; c) appointing Public Prosecutors who had a dual identity ie those who were pro-active members of organisations like the Vishwa Hindu Parishad, Bajrang Dal and RashtriyaSwayamsevakSangh (RSS)

28. The Complaint of Zakia Jafri dtd 8.6.2006 and Protest Petition dtd 15.04.2013 make a strong case that the Subversion of the Justice Process included condoning illegal acts of the police, doctoring FIRs and Investigations, appointing Public Prosecutors with an ideological bent not to deliver justice and securing easy and early bail for the accused. At least three major Judgements of this Hon'ble Court Bear this out.

“Prosecutors in Gujarat who are handling the riot cases are either members of or supporters and sympathizers of the organizations widely believed to be involved in the carnage. It is also widely believed that there is a deliberate attempt to scuttle most of these cases. In Gujarat there has been a tendency to appoint public prosecutors who are either card holders or sympathizers of the ruling party or it's SanghParivar.”

(Paras (4) at Page 54, Zakia Jafri Complaint at Volume III of the SC SLP Record)

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29. No action taken or any enquiry held against police officers for their alleged failure to record FIRs and provide proper response to the complaints of riot victims, mostly minorities, though this matter was reported graphically and repeatedly by ADGP (Int.), R.B.Sreekumar, in his reports to Govt. dtd. (1) 24.4.2002, (2) 15.6.2002, (3) 20.8.2002 and (4) 28.8.2002 (Para 86(u)) (Original Complaint Pages 53-55, Volume III of the SC SLP Record)

30. The Inquiry report of SIT is dismissive again though it finds the allegation to be true:

ALLEGATION XV:

“On overall examination of these allegations, it appears that the political affiliation of the advocates did weigh with the Govt. for the appointment of the Public Prosecutors. However, no specific allegation of showing favour by them to any of the accused persons involved in the riots either in grant of bail or during the trial has come to light.”(Pg 208-212, Volume XI (11) of the SC SLP record)

“Enquiries revealed that political consideration and affiliation of the advocates heavily weighed with the Govt. for the appointment of the Public Prosecutor, but no specific allegation of professional misconduct on the part of any of the PPs has come to light.”(Pg 285-286, Volume XI (11) of the SC SLP record)

The Enquiry is dismissive of this Allegation despite speaking Orders of this Hon'ble Court in at least three cases.

31. The SIT Closure/Final Report dated 8.12.2012:

“Pro-VHP advocates were appointed as Public Prosecutors in riot cases: Chetan Shah (as District Government Pleader), V.P. Atre (as Special PP in the Gulberg case), Raghuvir Pandya (as Special PP in the Best Bakery case), Dilip Trivedi (as Special PP in the Sardarpura case), RajendraDarji (as Special PP in the DipdaDarwaja case), Piyush Gandhi (PP in Panchmahal District).

The government had usual practice of appointment of government pleaders, the political affiliation of the advocates did weigh with the Govt. for the appointment of the Public Prosecutors. However, no specific allegation of showing favour by them to any of the accused persons involved in the riots either in grant of bail or during the trial has come to light.

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ALLEGATION XV:

Pro VHP Advocates/ Irregularities in Bail being easily granted

On overall examination of these allegations, it appears that government had usual practice of appointment of government pleaders, the political affiliation of the advocates did weigh with the Govt. for the appointment of the Public Prosecutors. However, no specific allegation of showing favour by them to any of the accused persons involved in the riots either in grant of bail or during the trial has come to light.

(Pgs 1393-1396, Volume VIII SC SLP Record)

Questionable Appointment of Public Prosecutors

Though it appears that political consideration and affiliation of the advocates often weighed with the Govt. for the appointment of the Public Prosecutors, yet no specific allegation of professional misconduct on the part of any of the PPs has come to light. In view of this the allegation is not established.

(Pgs 1447-1448, Volume VIII of the SC SLP Record)

C. Failure of SIT Investigation (Submissions to the Ld Magistrate and the Hon'ble Gujarat High Court)

32. **Absence of Independent Witnesses in Investigation:** The SIT did not record Statements of Independent Witnesses like 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.

- No statements of any of the Fire Brigade officials have been recorded, nor any attempts made to unearth the Fire Brigade register and analyze this.
- Here too the SIT does something unusual that raises serious questions. The statement of at least 33 policemen with the Control Room Ahmedabad are questioned by SIT. None of them is asked

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about the Police Control Room Messages (PCR) of the early morning of 28.2.2002 that indicate large mobs gathering at Sola Civil Hospital nor is any of them questioned about the urgent and despairing messages made to the Fire Brigade by the Ahmedabad Police Control to which there was a deafening silence in response. It becomes more and more clear and evident that wherever there is proof or evidence, including hard documentary evidence of Police Complicity or Inaction or Complicity by the Fire Brigade the SIT wants to simply brush it away. The Petitioners crave leave to refer to these statements at the time of the hearing of the Petition.

33. The Petitioners had pointed out first and foremost that crucial witnesses were deliberately not examined by the SIT:
- 1) KPS Gill Advisor sent by Central Government to Quell Continuing Violence (sent in May 2002) vis a vis entries dated 04.05.2002, 08.05.2002 10.05.2002, and 11.07.2002
 - 2) Officers of the Central Election Commission (CEC);
 - 3) The NHRC team which included the former Chief Justice of India;
 - 4) Major Zameeruddin Shah (Lt General, Indian Army)
 - 5) The Fire Brigade in Charge Ahmedabad City not examined despite a slew of Police Control Room Messages that recorded that there was consistently no response for distress calls from the Fire Brigade
 - 6) Journalists who reported at the time for Indian Express, Hindustan Times, Times of India and Television Channels AAJ Tak, Zee News, Star News including Rediff.com
 - 7) Editors of Newspapers Sandesh, Gujarat Samachar, Gujarat Today, Kutch Mitra, Jansatta all mentioned either critically or otherwise in the Editor's Guild report
34. Not only were the State Intelligence Reports ignored, SIT failed to examine the following Witnesses in connection with Four Intelligence Reports submitted by RB Sreekumar while occupying Position of ADGP-Int between 9.4.2002 and 17-18.9.2002:

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- 1) KPS Gill Advsiior sent by Central Government to Quell Continuing Violence (sent in May 2002)
 - 2) Officers of the Central Election Commission (CEC) including chief Lyngdoh
 - 3) E Radhakrishna DYIGP (P & C) for ADGP-Int while Sreekumar on leave sent 20-8-2002 Report
 - 4) MO Khimani with relation to PC Pande before and after the 27.2.2002 meet
35. SIT failed to examine the following Persons in Connection with the Illegal instructions Contained in RB Sreekumar's Conscience Register annexed to third affidavit before the Nanavati Shah Mehta Commission dated 9.4.2005. This includes the intimidation by GC Murmu, Dinesh Kapadia and Arvind Pandya(Annexure III, File III, D-23 in SIT Papers).

Allegations related to illegal Instructions can be broadly divided into:

- a) submission of report regarding alleged involvement of an opposition party in fomenting communal trouble in Ahmedabad City, without any basis,
 - b) illegal direction to tap telephone of a senior leader,
 - c) not closely cover activities of the ruling party and its sister bodies,
 - d) consider even elimination of anyone who tries to disturb RathaYatra etc.
36. **SIT's manner of Preferential Investigation:** Large sections of the Protest Petition deals in detail at the breakdown of the Rule of Law and Constitutional Machinery and the preferential treatment of Public Officials in SIT Investigation while dealing with evidence of Rahul Sharma (IPS) and RB Sreekumaras against the has been dealt withevidence PC Pande, Shivanand JHA, K Chakravarthi has been dealt with.
37. The Complaint dtd 8.6.2006 and the Protest Petition dtd 15.4.2013 rely on Affidavits filed by Police Officers and Administrators before the Nanavati Shah Commission from 2002 onwards. These are detailed and contemporary records. SIT had access to all of these. Yet it can be seen that the Affidavits of over two

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dozen officers, some of whom are examined by SIT because they stand charged in the Complaint and Protest Petition are not taken into account at by SIT to a) examine details; b) look at omissions; c) contradictions. SIT clearly has functioned in a perfunctory manner.

38. The entire Investigation of the SIT, as revealed in the Closure Report dated 8.2.2012, (*Volume VIII of the SC SLP*) appears to have been geared to have self-limiting the investigation to one or two nuggets of the conspiracy. For example, the role of the State IB in sending warning to jurisdictional officers of the state police is evidenced from a slew of messages available in the SIT's own records. Not only does the SIT not look into the issue of mob mobilisation and build-Up of Violence at all, or the issue of impending Violence on the day of the Bandh on 28.2.2002 but when it does examine three police officers, one senior and two field officers, the questions are restricted to just one or two aspects.
39. For example, P.Upadhaya whose name figures on several SIB messages is not asked about the messages at all. He had a senior rank in the State Intelligence, DCP-Communal. His perfunctory statements are recorded on 10.4.2011 (**PAGE NO. 115-117**) and 15.01.2012(**PAGE NO. 118-119**) and no relevant questions are put to him at all. Thereafter two junior officer stationed at the State IB in Gandhinagar are questioned – ShaileshchandraRawal on 4.4.2011 and NandkishoreGohil on 25.01.2010. Neither is asked any thorough or probing questions on the multiple messages being sent out by the IB. The Petitioners crave leave to produce these statements at the time of hearing of the petition.

D.Failure of the SIT Investigation (submitted to the Ld.Magistrate and the Hon'ble Gujarat High Court)

- Deliberate Failure to Investigate Overall Conspiracy, Criminal Liability of Public Servants and Command Responsibility- purposefully SIT has dealt with Allegations in a Piecemeal Manner

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- SIT has deliberately ignored its own Documents related to Build Up of Violence and Communal Mobilisation.
(Paras 426-440, Pages 373-377, Volume IV in the SC SLP Record)
- **SIT Failed to Investigate the Conspiracy to Obstruct Lawful Preventive Measures.** SIT Fails to Examine the SIB messages before 27.2.2002 and thereafter that show clear communal mobilisation by the RSS-VHP.(574-587 @ Pages 448-455, Volume IV of the Protest Petition in the SC SLP Record)
- **SIT Failure to Investigate the Build Up of Arms Gathering and Mobilisation prior to 27.2.2002**
 - KarSevaks on board the train were armed with Trishuls and swords and attacking minorities as evidences from the February 22, 2002 message received by the Gujarat intelligence department received a fax message (of the same date) from the UP state intelligence department, informing them of the criminal behaviour of *karsevaks* travelling on the Sabarmati Express S-6 special bogie. This is in all likelihood the same bogie that caught fire a few days later. The message from the UP intelligence department states that when some local people tried to enter the bogie at the Rudauli station near Faizabad the *karsevaks* attacked them with *trishuls* and daggers and injured some of them. An FIR was also registered for the crime. Haresh Bhatt, who had gone to Faizabad, was one of the many persons who were caught off guard by *Tehelka's* sting 'Operation Kalank', telecast on October 25, 2007. Yet the SIT ignores this completely.
 - *Arms distribution before the execution of mass crimes from Tehelka's 'Operation Kalank':* Dhawal Patel (RSS-VHP), Anil Patel, Ramesh Dave and Haresh Bhatt, the then BJP MLA from Godhra, to *Tehelka*:Bhatt says a well-planned conspiracy was hatched to import large quantities of ammunition from outside Gujarat and also to manufacture weapons within the state. He names one Rohitbhai (VHP treasurer) as being a core member of the planning team. He

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says the plan to import arms, swords and other ammunition into Gujarat from Punjab and elsewhere was a long-standing one and that he brought swords and countrymade guns into Gujarat and distributed them all over. He says that a large number of bombs, including diesel bombs and pipe bombs, were manufactured at his factory while rocket launchers were manufactured both at his factory and elsewhere. These rocket launchers, with stands, were made using thick pipes and filled with gunpowder and then sealed and blast using locally made '598 bombs'. The weapons were then distributed across Gujarat. Haresh Bhatt also said he previously owned a firecracker factory in Ahmedabad, one that was fully operational on February 27, 2002.

Serious Questions related to the arms gathering by these persons have been deliberately ignored by the SIT. These issues have been detailed @ Paras 245-260 @ Pages 314-320, Volume IV of the Protest Petition in the SC SLP Record.

- Deliberate lacunae by the Special Investigating Team in probing the illegal post mortems that were held in wide public view at the Godhra railway yard as part of the high-level Ministers Ashok Bhatt, now deceased, GordhanZadaphiya and others, with the active participation of Jaideep Patel and other VHP men who were deliberately galvanized to use the fact and sight of the tragically burnt corpses to build up and spill venom against innocent members of the minority. Worst of all, the SIT has not bothered to even look at the required legal procedures necessary to be observed in the wake of the Godhra tragedy. There are strict laws against allowing such hasty post-mortems to happen without proper procedures of identification and without family members being present; there is a strict prohibition against allowing photographs of corpses in a gory or mutilated condition from being taken, shot or telecast. By not even dealing with this grave offence, the SIT has shown its unprofessionalism and distinct bias.

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- SIT has deliberately left un-investigated the whole question of the illegal and hasty post-mortems conducted in the open in the rail yard, with large and aggressive crowds of the VHP, RSS and BD present, despite the fact that these facts are made known to them in the statements. SIT has not investigated how gory photographs were allowed to be taken, telecast and broadcast not just by newspapers like the *Sandesh* but also publications brought out by the VHP. SIT obviously did not consider investigating such serious facts as emerged in the Investigation that too in such a sensitive case.

(Paras 61-63 @ Pages 235-237, Protest Petition, Volume III in the SC SLP Record & Details @ Paras 472-487 @ Pages 210-216 of the Protest Petition)

This is a critical aspect of the detailed and independent investigation was expected of the SIT. The issues need to be probed in further investigation.

- Unruly Mobs at 4 a.m. at Sola Civil Hospital when Jaideep Patel Arrives at 4 a.m. on 28.2.2002 and violence breaks out in Ahmedabad; Non response of Fire Brigade: SIT deliberately fails to make a thorough investigation by failing to record statements of senior jurisdictional officers of Ahmedabad and other districts listed by the Complainant with Specific Aspects that need to be looked at in further investigation in a Table *Para 618-630, @ Pages 466-467, Volume IV of the Protest Petition in the SC Record.*
- 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 not relied on at all and as a result concealed from this Hon'ble Court. The absence of any reference to these PCR messages in even the Final report reveals the sinister motive of the SIT behind this.

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- 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 not been produced by him earlier though the SIT had been appointed by this Hon’ble Court. 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 was sent by Petitioner on April 21, 2011 to AK Malhotra, IO SIT about the sudden memory returning to A-29 former Commissioner of Police PC Pande when, only after this Hon’ble Court ordered further investigation on 15.3.2011 does he produce CDs with 3,500 pages of scanned Police Control Room messages of the Ahmedabad City. The role and motive of the SIT was and is clearly to not investigate serious charges thoroughly and protect powerful accused.
- The Complainant has detailed aspects of the investigation which are deliberately Ignored by the SIT with Specific Aspects that need to be looked at in Further Investigation @ *Paras 925 – 945 @ Pages 619-626 , Volume V of the Protest Petition in the SC SLP Record.*
- This include suggestions of what would have needed to be done to authenticate and analyse the CD of Phone Call records made public by Rahul Sharma, IPS @ *Para 925-927 (36) at Pages 625-627, Volume V, Protest Petition in the SC Record.*Annexed hereis also an analysis of the CD Records as produced by Rahul Sharma in the Nanavaty-Shah Commission(**PAGE NO. 122-135**).Relevant also at*Pages 115-139 of Convenience CompilationII which contain some other analysis of Phone Call records.*

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- The Complainant has further exhaustively detailed the lacunae in the SIT Investigation through an 'Allegation by Allegation Rebuttal.' This can be read @ *Paras 950-1021 @ Pages 635-657, Volume V of the Protest Petition in the SC SLP Record*
- A chart outlining applicable Legal Sections Against All Accused named in the Criminal Complaint dated 8.6.2006 is available (*Para 1092 @ Pages 689-702, Volume IV of the Protest Petition in SC SLP Record*) along with an averment that new accused that emerge should also be arraigned.
- SIT did investigate the Absence of Application of Standard Operational Procedure, Recording of Minutes, Preventive Action etc.
- SIT has not Investigated the Organised Violence in play before and after 27.02.2002. This is a misrepresentation to this Hon'ble Court by the SIT by indicating and even explicitly stating that the funeral processions of the Karsevaks and others who had died at Godhra were 'peaceful'. This is belied by the PCR records that are part of the SIT Investigation. The PCR Messages reveal that in the early hours of 28.2.2002, over 3,000 members of the, RashtriyaSwayamsevakSangh (RSS) had already gathered at the Civil Sola Hospital; again another message three minutes later at 7:17 hours says that another mob of 500 was holding up the traffic. This message is received by the Control room 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.. 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. All this is wilfully ignored by the SIT.

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- The SIT has simply not examined the criminal offences of Hate Speech and Hate Writing, seriously. Whether it is anonymous publications, newspapers like Sandesh or the provocative speeches of prominent leaders, SIT has turned a blind eye to the impact of Hate speech in provoking Violence against vulnerable sections. There is also evidence of Aggressive mobilisations with Funeral Processions. *(Paras 562-564 at Pgs 442-443, Para 571 at Page 446, Para 574 at Pages 448-449, Protest Petition, Vol IV of the SC SLP Record).*
- The SIT has not investigated how hate speech was allowed unchecked and unprosecuted was also part of the Conspiracy. 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 inflammatory speeches could be delivered during the cremation. ADGP Sreekumar had on 16.4.2002 itself recommended the prosecution of hate filled Pamphlets being widely distributed by the Vishwa 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. 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. *(Paras 233-238 @ Pages 306-311, Volume IV Protest Petition; Paras 588-590 @ Pages 455-456, Volume IV, Protest Petition in the SC SLP Record)*
- Police and Administrative Complicity Deliberately Ignored by the SIT *(Paras 607-639 @ Pages 462- 471, Volume IV of the Protest Petition of*

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the SC SLP Record) with Specific Aspects that need to be looked at in Further Investigation.

- Trivialising and dismissing evidence provided by Rahul Sharma in his detailed Affidavit before the Nanavati-Shah Commission(*Paras 748-792 @ 526-548 of Volume IV of the Protest Petition in the SC SLP Record*)with specific aspects that need to be looked at in further investigation.
- Deliberately Ignoring the Explosive Evidence from State Intelligence and the Ahmedabad Police Control Room Records @ *Paras 793-798 @ Pages 548-378 in Volume IV and Volume V of the Protest Petition in the SC SLP Record and Paras 547 (continued) to Para 841 @ Pages 550-572 of Volume V of the Protest Petition in the SC SLP Record*with Specific Aspects that need to be looked at in Further Investigation.
- Deliberately ignoring the Chain of Command Responsibility connecting senior police officers and administrators through a scrutiny & analysis of the Mobile Phone Records which have been exhaustively detailed @ *Paras 842- 878 @ Pages 573-584, Volume V of the Protest Petition in the SC SLP Record* with Specific Aspects that need to be looked at in further investigation.
- There are no inconvenient questions on transfers of officers who did a good job and the fact that the Ahmedabad transfers especially that of A-29 (then Commissioner of Police PC Pande) who was only transferred after KPS Gill was sent to Gujarat;
- On 15.4.2002, A-29 (Mr. Pande) writes a revealing letter to A-28, (Mr. Ashok Narayan) and A-25 (then DGP, Mr. K Chakravarti), both co-accused in the present complaint, informing them of the criminal and provocative behaviour of a minister, Bharat Barot. No investigation into allegations of extortion by SIT

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- ✓ By June 2002, direct interference in the investigations of key 2002 carnage cases can be seen, the NHRC passes strictures as does the Chief Election Commission (CEC); powerful accused are being openly and brazenly saved but yet the SIT has not investigated the issue. A-25 (then DGP Mr. K Chakravarti) admits during his statements to the SIT that then ADGP, Mr. RB Sreekumar's transfer was a punitive one. SIT however sees no reason to draw any conclusions from the motivated actions of the government.

The first message available in the SIT 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. 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

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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;

❖ The SIT has treated the Subversion of Justice lightly. This 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 who were colluding with the accused 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 on 30.3.2008, five days after the SIT was appointed. *(Para 1034 at Page 664, Volume V of the SC record)*)

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- ❖ **Doctoring/Tampering with the Record-** 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 Messages, 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 was destroyed on 31.03.2008(Ref: Annexure IV, File I, SrNos 23 & Annexure III, File XV, SrNos D-156 SIT Papers/Record).The Petitioners are annexing an 8-page extract of this 45-page Document that is in English which consists of a letter dtd 17.11.2009 (**PAGE NO. 136-143**)from the state home department to SIT intimating them of this destruction. It consists of a letter by DhananjayDwivedi, Additional Sec of the State Home department. The Petitioners crave leave to refer to the entire Document at the time of hearing of the Petition.
- ❖ 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.
- ❖ **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

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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)

- ❖ **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, SrNos 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.
- ❖ **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 634-635, Protest Petition, Volume V of the Protest Petition in the SC SLP Record*).

Among the Documents available in the SIT records are CDs from contemporaneous coverage in television channels.A thorough investigation would have gone through the leads provided in these. For example:

- (i) Commissioner Surat, VK Gupta arrests 18 persons with arms in Surat. Why was the issue not investigated and this officer not examined?
- (ii) Visuals of Sola Civil Hospital and the Godhra Railway yard also provide pointers. These were not Investigated.



- (iii) Elected Officials, Govt representatives keep dismissing accounts of death, rape and destruction despite media reports. Should the SIT not have independently verified this ?
- (iv) One CD has Minister Bharat Barot (Gujarat) making spurious and wild statements of what is going on in Gujarat's Relief Camps. Why does the SIT not question him on this?
- (v) There is widespread coverage on the NHRC strictures against the Gujarat Govt (April and July 2002). MOS GordhanZadaphiya publicly contradicts NHRC Findings. Why does SIT not question him on this?
- (vi) SIT has not dealt with the increasing violence all through April until October 2002 with any thoroughness.
- (vii) All this contemporaneous evidence ought to have been scrutinised as is done in a criminal investigation.

Some of the Case Law relied upon by Petitioners laying down parametres on fair Investigation laid down by the Constitutional Courts:

1. Siddhartha Vashisht @ Manu Sharma v state (NCT of Delhi) (2010) 6 SCC 1, (Paras 82, 83, 84, 85, 86, 87 & 90);
2. Kashmeri Devi v. Delhi Administration and Anrs, (1988) Supp SCC 482
3. Kari Choudhary vs Mst. Sita Devi &Ors (2002) 1 SCC 714
4. Khatri &Ords vs State of Bihar &Ors (1981) 2 SCC 493

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EVIDENCE IN DOCUMENTS

SrNos	Document	Content	Reference
1.	<p>Controversial Bandh Call</p> <p>A.Gujarat Bandh Call given by the Vishwa Hindu Parishad on 27.2.2002 which was then supported by the ruling party in government in the state. This Bandh (Closure) was then used to gather large mobs and launch attacks on the minority community across districts. The State Intelligence Bureau is warning of the violent implications of this development.</p>	<p>Para 5.7, Pages 23-37, Concerned Citizens Tribunal, Volume II</p> <p>(PAGE NO. D)</p>	<p>References:</p> <p>1. CCT, in SIT Papers: relevant paras at Para 5.7, Pages 23-37, Page 30, Annexure III, File I of the SIT papers)</p> <p>2.Original Complaint at Para (32) at Pages 22-23, Para (55) at Pages 33, Para (62) at Page 37, Para 77 at Pages 46 of Volume III of the SC SLP Record)</p> <p>3. Protest Petition, Paras 56-60 at Pages 233-235 of Volume III of the SC SLP Compilation.</p> <p>4. (Protest Petition, Paragraph No.442, Page 376-377, Volume IV of the SC SLP Record)</p>

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2.	<p>Statement of RajendrasinhRanadtd 15.03.2010, then President of the BJP, Gujarat</p>	<p>Admits to official support to the Bandh</p> <p>(PAGE NO. 1-3)</p> <p>SIB Messages in English (Compilation) from Documents in the SIT Record supplied by J. Mahapatra, ADGP-Intelligence to the Nanavaty Shah Commission show that there were ample warnings about the implications of a statewideVHP called Bandh</p> <p>(PAGE NO. 4-61)</p> <p>Table of SIB Messages at Paras 438-443 of the Protest Petition at Pages 376-381 of Volume IV of the SC SLP Record</p> <p>(PAGE NO. 62-76)</p>	<p>Reference: Rajendra Singh Rana, President, BJP said that BJP statement to the SIT dtd 15.3.2010 (Annexure I Volume I1, SrNos 99 in SIT papers</p> <p>Reference: ANNEXURE – III, LIST OF THE DOCUMENTS COLLECTED DURING INQUIRY File – IV, D-43 to D-55 (D-54) is “English translation of Messages attached to Addl. DGP Shri J. Mahapatra's affidavit submitted to Hon'bleNanavati-Shah Commission of Inquiry.</p>
3.	<p>Post Mortems Conducted Illegally out in the Open in the Godhra Railway Yard</p>	<p>MOS Home, GordhanZadaphiya statements to the SIT</p>	<p>References: Annexure II, Volume I, SrNos</p>

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		<p>dated 24.09.2009(<u>PAGE NO. 77-80</u>)& 28.10.2009(<u>PAGE NO. 81-84</u>)</p> <p>Statement of Jaideep Patel, gen sec Gujarat VHP dated 15.02.2010(<u>PAGE NO. 85-89</u>)and 27.08.2010(<u>PAGE NO. 90-92</u>)</p> <p>Ashok Bhatt (Minister for Health and Family Welfare at the time) statement to the SIT dated 24.03.2010(<u>PAGE NO. 93-95</u>)</p> <p>Gujarat Police Manual (1975) at Section VII has specially laid down Rules and Procedures when it comes to 'Accidental Deaths and Railway and Other Accidents' (<u>PAGE NO. 96-97</u>)</p> <p>Sample Photo of the Bodies of the Godhra Victims lined up at the Railway Yard (<u>PAGE NO. 98</u>)</p>	<p>25 and 31 of the SIT Papers</p> <p>Annexure I, Volume 11, SrNos 81 and Annexure II, Volume 1, SrNos 18 in SIT papers</p> <p>Annexure I, Volume II, SrNos 108 in SIT Papers</p> <p>D-I91, Annexure II, File XL, GPM Submitted by TeestaSetalvado SIT</p> <p>Black and White Photo from the Godhr Sessions Court Judgement</p>
4.	Handing over Bodies of the Godhra Victims to a VHP Man Jaideep Patel	ML Nalvaya's statements to SIT dated 28.10.2009(<u>PAGE NO.</u>	References: Annexure I,

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		<p>99-100) and 03.04.2011(PAGE NO. 101-102).</p> <p>Jayanti Ravi statement to SIT dtd 15.09.2009(PAGE NO. 103-105)</p> <p>Extracts from AK Malhotra, SIT Report to Hon'ble Supreme Court at Pages 159-163, Volume XI of the SC SLP Record (PAGE NO. 106-109)</p>	<p>Volume 1, SrNos 27 in SIT papers</p> <p>Annexure I, Volume 1, SrNos 19</p> <p>Volume XI, SC SLP Record</p>
5.	Ministers Sitting in the State and City Control Rooms on 28.2.2002	<p>Statement of IK Jadeja, former Urban development Minister to SIT dtd 09.11.2009(PAGE NO. 110-111) and 01.04.2011 (PAGE NO. 112-114)</p> <p>Statement of former Minister Ashok Bhat (Health) dtd 24.03.2010 (PAGE NO. 93-95)</p>	<p>References:</p> <p>Annexure I, Volume 1, SrNos 42 and Annex II, Volume 2, SrNos 92 in Sit Record</p> <p>Annexure I, Volume II, SrNos 108 in SIT Papers</p>
6.	<p>Destruction of Records:</p> <p>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.</p>	<p>Official Letter from Home Dept on Destruction of Records By Addl. Sec, Home Dept to SIT is in English (PAGE NO. 136-143)</p>	<p>(Ref: Annexure IV, File I, SrNos 23 & Annexure III, File XV, SrNos D-156 SIT Papers/Record was destroyed on 31.3.2008).</p>

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	<p>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 <i>real time response of senior and ground level officials of the police and administration to the Orchestration of Violence</i> 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 <i>has no reference at all to any procedure related to destruction</i>. According to the documents available and provided by the SIT one such batch</p>		
7.	Lacunae in SIT Investigation	Statements of then DCP-Int-Communal P.Upadhayay dated 10.04.2011 (<u>PAGE NO. 115-117</u>)&15.01.2012(<u>PAGE NO. 118-119</u>)	References; Annexure II, Volume II, SrNos 106 and 133 in SIT Papers