

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

**IN THE MATTER OF:**

Zakia Ahsan Jafri & Anr.

PETITIONERS

**VERSUS**

State of Gujarat & Anr.

RESPONDENTS

**CONVENIENCE COMPILATION ON BEHALF OF THE PETITIONERS**

**VOLUME IV**

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

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**A**  
**IN THE SUPREME COURT OF INDIA**  
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**ISSUES NOT DEALT WITH BY THE MAGISTRATE AND THE GUJARAT**  
**HIGH COURT (CONTD.)**

**A. Hate speech as part and parcel of incitement to targeted violence and a systemic conspiracy**

1. The Original Complaint by Zakia Ahsan Jafri dated 08.06.2002 and subsequently the Protest Petition dated 15.04.2013 before the Learned Magistrate had highlighted instances of widespread hate speeches and hate writings by prominent persons and their organisations and how the State Government's Home Department turned a blind eye towards various State Intelligence Bureau (SIB) reports for prosecuting certain office bearers of the Vishwa Hindu Parishad (VHP) and publishing houses for propagating an incendiary rhetoric [*Complaint dated 08.06.2008 @ Pages 6 - 73 of Volume III of the SC Record*].
2. Allowing hate speech unchecked and unprosecuted was also part of the furtherance of a pre-hatched conspiracy to ensure that a large body of armed and aggressive groups of people supporters take to the streets with blood in their minds to seek revenge for the tragic killings at Godhra.

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Messages of the SIB on 27.02.2002 also record sloganeering by members after the tragic Godhra mass arson took place. Records of the special investigation carried out of this complaint reveal a serious concern at top levels of the police administration that such instances of inciteful speech need to be prosecuted under the law. *(These have been annexed and analysed in Volume II of the Convenience Compilation at E-Q in the Note and at Pages 1-2, 3-4, 5-6, 16-17)*

3. However, it appears clear that the State Government abandoned its legal and constitutional duties in this regard. The deleterious impact of hate speech in Gujarat has been adversely commented upon in the following:
  - a. Report (Interim) and Final of the National Human Rights Commission dated 01.04.2002 & July 2002 respectively [*@ Volume X of the SC Record*]
  - b. Report of the National Minorities Commission
  - c. Report of the Editors Guild of India
  - d. Report of the Concerned Citizens Tribunal, Gujarat 2002 (Role of the Media)
  - e. Report of the State Intelligence Bureau, Gujarat, April 2002
4. Hate speech in the present case falls under the following heads:
  - a. Statements of prominent political leaders on before and after 27.02.2002
  - b. Regional (vernacular) media / press published in Gujarat
  - c. Pamphlets with incendiary content, identified / known and anonymous both issued by right wing organisations obtained from all over the state of Gujarat

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5. The widespread hate speech has been restrictedly investigated as an independent head by the Special Investigation Team (SIT) and has been summarily brushed off in the Closure Report.
6. Similarly, the Magistrate's order dated 26.12.2013 does not address the detailed submissions in the Original Complaint and Protest Petition on the incendiary instances of widespread hate speech as part and parcel of a conspiracy to unleash targeted violence against a section of Indians.
7. The impugned order of both the Learned Magistrate and the Hon'ble Gujarat High Court do not deal with the various hate speeches mentioned in the Protest Petition. The Petitioners state that the SIT investigation also failed to consider the aforesaid aspects of hate speech [*Original Complaint @ Page 65 Volume III of the SC Record*].
8. This shows total non-application of mind and failure to exercise jurisdiction, as the contents (which are not disputed) do constitute hate speech.
9. **On and before 27.02.2002:**
  - a. It is not a coincidence that the National Human Rights Commission, the Editors Guild of India and the State Intelligence Bureau, Gujarat's SIB Messages, ADGP (Int.) R.B. Sreekumar's reports and messages of several other SIB officials record the existence of incendiary pamphlets in their multiplicities all over the State of Gujarat in all probability even before the Godhra incident on 27.02.2002. Though a few of these pamphlets were anonymous, several were authored and published officially by the Vishwa Hindu Parishad (VHP). Similar or the same pamphlets have been flagged by the Concerned Citizens Tribunal as well [*@ Page 779 Volume XIII of the SC Record*]. The Concerned Citizens Tribunal-Gujarat 2002 was headed by Justice V.R. Krishna Iyer (former Supreme Court Judge), Justice PB Sawant (former

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Supreme Court Judge) and Justice Hosbet Suresh (former Bombay High Court Judge).

- b. It is not a coincidence but an essential ingredient of the same conspiracy that the same organization i.e. VHP, authored and distributed the pamphlets and the leaders of the same organization made incendiary and provocative speeches, even “claiming credit” for the post-Godhra reprisal violence. There were also media reports of swords, *trishuls* and arms distribution being claimed by members of the VHP as late as April 2002. What is shocking is that despite specific recommendations and sanctions for prosecution, such prosecution did not take place.
- c. Specifically, the National Human Rights Commission (NHRC) headed by a former Chief Justice of this Hon ble Court, J.S. Verma had, in its Interim Report of April 2002 recommended inter alia that not only such instances be firmly dealt with in accordance with the law but that the burden of proof be shifted on such persons to explain or contradict such statements [*@ Page 21 Volume X of the SC Record*].
- d. Similarly, the Editor s Guild of India had come down heavily on the widespread hate in the media. This body of recognised media professionals in its section on Recommendations of the Gujarat 2002 report (Rights and Wrongs) observes the need for greater circumspection by the media in blindly reporting speeches of persons out to exploit the reach of mass media through the use of provocative and inciteful speech in an image building exercise while breaking the law. The Editor s Guild of India in its report also comments on certain Gujarati newspapers as being serial offenders during this critical period in February - May 2002 and urged that a high level judicial officer be appointed by the government to examine the writings of those sections

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of the media that are prima facie in flagrant violation of the law and recommend action to be taken. The report comments on the fact that D.D. Tuteja, then Commissioner of Police, Vadodara did, in fact, seek penal action against a leading Gujarati daily. However, D.D. Tuteja's superiors did nothing. The Editor's Guild also concurs with the NHRC's recommendation.

## 10. **Hate speech around the Godhra incident**

- a. On 28.02.2002, the Ahmedabad police and administration, despite the volatile situation in the city and State after the tragic Godhra mass arson the day before, and when violence had broken out all over the State of Gujarat already, not only permitted (Acharya) Giriraj Kishore, Vice President of the Vishwa Hindu Parishad (VHP) entry into the city after he arrived at the Ahmedabad airport, but gave him police escort too. This VHP functionary then proceeded and accompanied crowds which had assembled at the Sola Civil Hospital before 11:00 A.M. from where he was allowed to move to the funeral processions where he reportedly spoke to media persons and was present there for 10-15 minutes. He made provocative statements there that are extensively narrated in the Protest Petition and also reported by media portals. The fact that this VHP functionary had been giving such provocative statements from the day after the Godhra incident and was still allowed entry into Ahmedabad and to address an already agitated and mobilised crowd during the cremations speaks poorly of the city police administration. The comments by Giriraj Kishore wherein he makes provocative remarks of the psyche of the community that attacked the kar sevaks at Godhra were clearly designed to condone reprisal violence. *[Protest Petition @ Para 168 - 173, Page 283 - 284, Vol IV of the SC Record]*

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- b. Other senior functionaries of the Vishwa Hindu Parishad like its International General Secretary Dr. Praveen Togadia (A-20) named in the Original Complaint dated 08.06.2002 [*@ Page 64 Volume III of the SC Record*] too have been on record during this period making a series of hate speeches that constitute criminal offences [*@ Para 169 of the Protest Petition - Volume IV of the SC Record*]. Praveen Togadia, quoting from journalist Vir Sanghvi states that it is clear there are Muslim mob murders on ... and that Hindus must react to this “Jihadi” activity since Hindus are unarmed.
- c. Then Minister of State (MOS) for Home, Gujarat, Gordhan Zadaphiya, also named in the Original Complaint dated 08.06.2002 makes a similarly incendiary speech reported extensively in the electronic media [*@ Para 172 of the Protest Petition - Volume IV of the SC Record*]. He describes the Godhra arson as a pre-planned and sinister inhuman act. Coming from an elected official holding a constitutional position, this had an impact down the line on the law and order machinery.
- d. In a similar, organised and coordinated vein, Dr. Jaideep Patel, Joint Secretary of the Vishwa Hindu Parishad (Gujarat) and also named in the Original Complaint dated 08.06.2002 justified the mob violence post Godhra (27.02.2002) stating that in every police station area mobs of 10,000 - 15,000 persons did come out and defied the police to arrest them [*Para 173 @ Page 285-286 of the Protest Petition - Volume IV Of the SC Record*].
- e. Another evidence or ingredient of Conspiracy is that soon after the tragedy at Godhra not only were the bodies of the victims were handed over to a VHP functionary, Jaideep Patel and mobs allow to



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gather at 4 a.m. at Sola Civil Hospital creating a volatile situation which warrants heavy arrangements of the law and order machinery, a message was given to provide police escort to Giriraj Kishore, Vice President of VHP who arrived at the Ahmedabad airport. The police apparently were not in a position to maintain basic law and order in the state and this action reflects abandonment of all legal and Constitutional duties by the government and its functionaries. Statements made by Acharya Giriraj Kishore are at *Para 171 at Page 284, Volume IV of the SLP paper book*. 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.

## 11. **Vernacular Press (Sandesh Newspaper etc)**

- a. While the incendiary and inciteful speeches made by leaders largely belonging to organisations like the Vishwa Hindu Parishad did widespread damage in terms of promoting an atmosphere that was threatening for the minorities, and some elected officials of the Gujarat government also joined in, what made matters worse in a sense was how sections of the mass circulating newspapers also broke all Press Council of India Codes and Media Ethics to indulge in their own brand of brazenly untruthful and provocative coverage. The Protest Petition details these headlines in the Sandesh newspaper over several days and weeks [*Para 233-238 @ Pages 306 - 311, Volume IV of the SC Record*].

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- b. These include blatantly false reporting on 28.02.2002 of the kind that claimed that 15 Hindu women dragged away from the railway compartment by a fanatic mob” at Godhra to selective reporting of attacks only on the majority community. The Gujarat police denied that any such incident took place. Worse still, when mob attacks were reported at all, this newspaper did not mention the identity when the victim belonged to the minority community.
- c. On 01.03.2002, Sandesh falsely reported again with a front page prominent heading that dead bodies of the kidnapped young women from Sabarmati Express, have been recovered with their breasts chopped off when in fact no such incident took place. The police denial of any such incident finds no mention in the report.
- d. Sandesh newspaper stated that Gujarat is aflame because of Muslim fundamentalists taking its lies and canards to the extent of falsely reporting about former parliamentarian Ahsan Jafri and the Gulberg incident. An exhaustive list of such newspaper headlines is mentioned in the Protest Petition *[List of Sandesh's inflammatory articles are listed in Para 233 - 238 of Protest Petition]*.
- e. Incidentally, the Editor's Guild Report, extensively relied upon by the Petitioner both before the Learned Magistrate and before the Hon'ble Gujarat High Court, has been simply not dealt with when it comes to widespread hate speech.
- f. Then Commissioner of Police, D.D. Tuteja, had recommended action against Sandesh newspaper in 2002.

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- g. IPS officer Rahul Sharma, then SP, Bhavnagar had, in March 2002, sought permission to register a criminal case against the Sandesh under the provisions of Rule 53(10) of the Gujarat Police Manual Volume III.
  - h. State Intelligence Bureau (SIB), Gujarat, had through DCP (Int.), P. Upadhaya (communication dated 01.04.2002) recommended grant of sanction for the prosecution of Sandesh as recommended by Rahul Sharma.
  - i. The State Intelligence Bureau (SIB), Gujarat in 2002 took note of inflammatory pamphlets distributed by VHP in Gujarat and in Vadodara city. This logically should have led to action by the administration and government since senior level officers on the field and in the SIB were recommending action. This, however, did not happen.
  - j. Instead of taking action against Sandesh newspaper, Editor's Guild Report of 2002 reveals that the high functionaries in the Gujarat government wrote congratulatory letters to Sandesh and other newspapers for certain inflammatory writing.

**12. VHP pamphlets:**

- a. There is widespread concern and note of the distribution of pamphlets, authored / published and anonymous that have incendiary and provocative content. Some or many of these have been authored and published by the Vishwa Hindu Parishad (VHP).
- b. ADGP (Int.), R.B. Sreekumar, on 16.04.2002, wrote a letter to DGP (Copy to ACS - Home) recommending legal action against VHP

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office bearers for publishing pamphlets containing elements of communal instigation. He recommended 45 pages of incendiary pamphlets sourced by the SIB from different parts of the state for prosecution of the organisation for violation of the law and incitement to violence. Sreekumar's Statement before SIT details this and his register shows that the DGP advised against taking any action against vernacular media but the SIT did not investigate these pamphlets.

- c. The Concerned Citizens Tribunal, Crimes Against Humanity, Gujarat 2002 headed by Justices V.R. Krishna Iyer, P.B. Sawant and Hosbet Suresh makes specific mention of some of these pamphlets and has published translations of these in English..

d. In view of the systemic outbreak of violence, the Petitioners argue that allowing widespread hate speech and writing to spread unchecked was part of the conspiracy in Gujarat in 2002. For example, one such Pamphlet published by one Chinubhai Patel, Vishwa Hindu Parishad state leader with address Vishwa Hindu Parishad Office, Vanikar Smarak Bhavan, 11, Mahalakshmi Society, Mahalakshmi Cross Roads, Paldi, Karnavati is specifically vilifying towards Islam and Muslims and calls for a social and economic boycott of Muslims. Chinubhai Patel was conspicuously not examined by the Special Investigation team (SIT) despite evidence available on record for the widespread distribution of such pamphlets and statements of several persons being recorded that specifically referred to these incendiary pamphlets. The Learned Magistrate and the Gujarat High Court have also not dealt with these offences.

- e. The Petitioners in the Protest Petition not only flagged the Extensive documents of such Incendiary Pamphlets from the

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Investigation Record, but found that the existence and widespread distribution of such pamphlets all over Gujarat were mentioned in detail in the Report of the Editor s Guild of India, wherein one Chinubhai Patel, Treasurer of the Vishwa Hindu Parishad (VHP) has been quoted as having admitted authorship of one of these to the Indian Express. The SIT has simply not investigated the issue and the Magistrate has ignored this lapse as well. Conspicuously hate speech and writing acknowledged to provoke violence from the majority and minority was completely ignored by the Ld Magistrate and the High Court.

In the extract from its report, annexed here, the Editor s Guild states that

- (i) A pernicious piece of hate propaganda, officially disseminated by the VHP, calls for the economic boycott of Muslims. This was admitted to the Indian Express by Mr Chinubhai Patel, the Parishad's Gujarat treasurer. (See Annexure 18). A more recent four page pamphlet circulating in Ahmedabad by this same organisation carries an appeal for funds to provide security for Hindus. It reads: Your life is in danger, you can be murdered any time... We are collecting funds for securing the interests of the Hindus...there are thousands of more Godhra carnages being planned". Mr Chinubhai Patel has confirmed that these pamphlets are in circulation. (Times of India, April 26, 2002).
- (ii) The Express, March 24 (Delhi edition) reports the police seizure of a pamphlet urging Hindus

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to create a "jagrut Hindu rashtra", allegedly circulated by the Bajrang Dal president. Hastimal, who is said to have been arrested. The theme: "Don't purchase anything from Muslim shops, don't travel in their vehicles or visit their garages; don't watch films which feature Muslim stars. In this way we can break their financial backbone". The same news item says that the police seized a pamphlet in tribal-dominated Banswara, exhorting Hindus to hang a saffron flag outside their homes to help identification during Moharram.

- (iii) A Hindi leaflet attributed to the Bharat Bachao Sangh, Allahabad and said to have been found in Coach No S-6 of the Sabarmati Express was also given to us. (Annexure 20).
- (iv) Gruesome coloured photographs depicting the charred and mutilated remains of Sabarmati Express victims are reportedly being circulated at meetings, accompanied by fiery speeches. (Hindustan Times, April 9). The Guild Team was officially given a set of such photographs with provocative captions at the VHP office. This evoked extreme horror and disgust.
- (v) In Ahmedabad we were told of the seizure a booklet titled "In Defence of Hindus" purporting to be a "riot manual" from Nagpur containing a list of do-it-yourself brutalities.
- (vi) Corresponding reports have appeared of pamphlets allegedly circulated by Muslims. One of these, titled "Give Challenge to Open

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Terrorism by Covert Terrorism", is said to have been distributed at the Shah Alam refugee camp in Ahmedabad, a charge denied by organisers of the camp.

13. In his statement before the SIT, Ashok Narayan said that the government was non-committal in taking action against hate speech:

**“Question (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?”

**“Answer:** 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.

14. The Magistrate in his order finds that the entries in Mr. Sreekumar's register are mala fide as a result of his supersession. But the contents of Mr. Sreekumar's affidavits are partly corroborated by affidavits of Ashok Narayan. Further, the Magistrate errs in brushing aside the aforesaid

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allegations of Mr. Sreekumar as mala fide at the stage of cognizance. The statements of Mr. Sreekumar prima facie reveal offences as stated by the Petitioner in the Original Complaint and the Protest Petition.

15. Then DGP Chakravarthi (named in the Original Complaint as Accused No. 25) was examined three times by the SIT (on 16/17.12.2009, 24.03.2011 and 30.01.2012). DGP Chakravarthi gave the following perfunctory response on why VHP s widespread incendiary pamphlets were not pursued in investigation.

“As regard the undesirable activities of VHP and BD in indulging in extortion of money and publishing/distributing pamphlets containing the elements of communal instigation, a report was sent earlier in point of time by CP, Ahmedabad and I had discussed with ACS (Home) who said that he would bring it to the notice of the Govt.

16. Despite above said references to the CP, Ahmedabad, P.C. Pande (Accused No. 29 in the Original Complaint dated 08.06.2006) being made by DGP Chakravarti in his statement before the SIT, the SIT does not pursue this line of investigation at all. Pande s statements were recorded no less than six times before the SIT yet the SIT did not consider it important to examine him on the criticality of the vicious hate speech 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 (Int.) R.B. Sreekumar.

17. Hate speech and inflammatory writing have been part of the ingredients of the conspiracy that was evolved pre and post Godhra in Gujarat in 2002. There has been sufficient evidence listed by Petitioner no. 1 herein in her Original Complaint dated 08.06.2006 but much more evidence has now



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come to the fore through records made available by SIT. However, just like different aspects and ingredients of the conspiracy have been deliberately left unaccepted by the SIT, the SIT has refused investigation into serious offenses of hate speech and communal writing. They have confined their assessment to one or two speeches of prominent politicians rather than systematically looking at the speeches made by the co-accused in the complaint, office bearers and members of the ruling BJP, VHP, RSS and Bajrang Dal. What makes this matter even more scandalous is the fact that the Gujarat State Intelligence Bureau records contain ample such examples of incendiary speeches that were used as a tool and part of the conspiracy to generate heated mobs to commit violence against innocent members of the minority community in different districts of the state.

## 18. **Post facto claims by VHP leaders**

- a. Leading member, now deceased, of the Gujarat Unit of the Vishwa Hindu Parishad had on 12.03.2002 in an interview to senior journalist Sheela Bhatt, then with Rediff.com, detailed how the VHP executed well-laid out plans, including being armed with government data and lists of electoral rolls, to target minority lives, households and business establishments all over the State. This has been completely ignored by the Magistrate and the Gujarat High Court. The SIT did not even examine Sheela Bhatt, senior journalist. The text of this interview has been published as part of the Concerned Citizens Tribunal report and has also been specifically mentioned and argued in the Protest Petition [*Protest Petition @ Para 150 153, Page 278 279, Volume IV of the SC Record*].
- b. Barely three months after the Gujarat riots, the VHP continued with its hate speech in different parts of the country with one of its

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leaders Ashok Singhal threatening to repeat the Gujarat experiment and further that the Gujarat experiment would be repeated all over the country. The SIT did not even examine VHP leader Ashok Singhal who is now deceased.

## 19. Conclusion:

- a. The hate speech investigated as an independent head by the SIT are only the statements and speeches of the former Chief Minister of Gujarat whereas the plethora of hate writings and speeches of prominent personalities especially those belonging to the Vishwa Hindu Parishad are conspicuously simply not dealt with. In fact it is the SIT who has self-limited its investigation when the Original Complaint dated 8.6.2006 and the Protest Petition dated 15.04.2013 both went far beyond this into the Wider Conspiracy.
- b. The glaring deficiencies of the SIT investigation with respect to hate speech have been extensively highlighted in the Protest Petition. Unfortunately, both the Learned Magistrate and the Gujarat High Court have ignored this evidence despite it being presented as documentary evidence and detailed written and oral submissions.
- c. The SIT, in its Closure Report dated 8.12. 2012 examines in no great depth the impact of such incendiary speech circulating widely in print form all over the state. The findings of SIT in the form of an admission by the State of Gujarat that no action had been taken against the print media leads the SIT to dismiss this grave allegation. **(Page 1425, Volume VIII of the SLP paper books)** Surprisingly this is not further investigated into by the SIT.

## Q

During the course of enquiries by SIT, Govt. of Gujarat has intimated in writing that no action had been taken on the recommendations of Shri R.B. Sreekumar against the print media. This allegation, therefore, stands established (Pg 212, Volume XI (11) of the SC SLP record)

### 20. Case law on hate speech:

- a. The instances of hate speech and writing identified by the Petitioners are offences inter alia under Sections 153A (1) (a) & (b), 153B (1) (c), 166 and 505 (2) of the Indian Penal Code, 1860.
- b. The following judgments lay down the parameters for judging what constitutes hate speech and how and when the state administration needs to act:
  - i. ***Babu Rao Patel v. State (Delhi Administration)*** (1980) 2 SCC 402
  - ii. ***State of Karnataka v. Dr. Praveen Bhai Togadia*** (2004) 4 SCC 684
  - iii. ***Amish Devgan v. Union of India*** 2020 SCC OnLine SC 994
- c. In ***Amish Devgan v. Union of India*** 2020 SCC OnLine SC 994, this Hon ble Court elaborated on the concept of hate speech by identifying three elements: content-based (open use of words and phrases generally considered to be offensive to a particular community and objectively offensive to the society), intent-based (speaker's message to intend only to promote hatred, violence or resentment against a particular class or group) and harm-based/impact-based (harm to the victim which can be violent or such as loss of self-esteem, economic or social subordination, physical and mental stress, silencing of the victim and effective exclusion from the political arena).

# R

## Evidence in Documents

1.	Report (Interim) and Final of the National Human Rights Commission dated 01.04.2002 & July 2002 respectively	Strong recommendations of penal action against hate offenders in print and electronic media	<b>Page 21</b> - Volume X of the SC Record (NHRC Report)
2.	Report of the Editors Guild of India	Strong findings, data, documentation & recommendations  <b>[PAGE NO. 1 30]</b>	<b>Reference:</b> Page Nos. 5359-5360 Annexure III, File II, Sr. Nos. D-5 of the SIT Record/Investigation filed as Spiral N in the HC CRA 205/2014
3.	Report of the Concerned Citizens Tribunal, Gujarat 2002	Findings and recommendations on role of the media all over Gujarat in 2002  <b>[PAGE NO. 31 46]</b>	<b>Reference:</b> Annexure III, File I, D-2, Pages 254-255, SIT Record/Papers Listed at Page 779, Volume XIII of the SC Record
4.	(Acharya) Giriraj Kishore, Vice President of the Vishwa Hindu Parishad (VHP) allowed VIP entry into Ahmedabad on 28.2.2002 and a hate offender.  Speeches by Dr. Praveen Togadia, International General Secretary, VHP	Makes inflammatory speeches before arriving in Gujarat on 27.02.2002 and on 28.02.2002  - Extracts of hate speech included in Protest Petition dated 15.04.2013	<b>References:</b>  <b>Protest Petition</b> at Para 168-173, Pages 283-284, Vol IV of the SC Record.  <b>Concerned Citizens Tribunal</b> Togadia, Volume 1. Annexure 10 pg 269-270

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		<p><b><u>[PAGE NO. 47</u></b> <b><u>50]</u></b></p> <p>- Text of Dr. Togadia's speech as part of the Concerned Citizens Tribunal Report</p> <p><b><u>[PAGE NO. 55</u></b> <b><u>56]</u></b></p> <p>- Statement dated 10.05.2010 made by Dr. Togadia before the SIT, Gandhinagar</p> <p><b><u>[PAGE NO. 57</u></b> <b><u>59]</u></b></p>	
	<p>G. Zadaphiya, Minister of State, Home and a VHP member commits offence of hate speech</p> <p>Dr. Jaideep Patel, Joint Secretary, VHP Gujarat commits offence of hate speech</p>		
	<p>ALLEGATION II, The Decision to bring dead bodies of those killed in Godhra train fire to Ahmedabad and Parade them in Ahmedabad City</p>	<p>Extract from Inquiry Report of AK Malhotra presented to the Supreme Court on 12.5.2010 relating to the parading of dead bodies and mob mobilizations and crowds allowed to gather during the funeral processions of the Godhra Victims in Ahmedabad on 28.2.2002</p>	<p>Page 162 Malhotra Report, Volume XI of the SC SLP Record</p>

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		<b>[PAGE NO. 51 54]</b>	
	<b>Post facto claims by VHP leaders</b>	<p>Accused No. 23 in the Original Complaint Professor Keshavram Kashiram Shastri (now deceased), then Chairman of the Gujarat Unit of the Vishwa Hindu Parishad, in an interview to Rediff.com detailed how the VHP had plans and electoral rolls to target the lives and establishment of Muslims in the state.</p> <ul style="list-style-type: none"> <li>- Extract of Protest Petition dated 15.04.2013 <b>[PAGE NO. 111 - 112]</b></li> <li>- Rediff.com article <b>[PAGE NO. 60 - 61]</b> <b>[PAGE NO. 113 - 114]</b></li> </ul> <p>Other VHP leaders, Ashok Singhal and others also continue with such hate speech</p> <ul style="list-style-type: none"> <li>- Hate speech by political leaders <b>[PAGE NO. 62 - 65]</b></li> <li>- Newspaper reports on hate speech by</li> </ul>	<p><b>Protest Petition:</b> Paras 150-153 at Pages 278-279 at Volume IV of the SC Record;</p> <p><b>Reference:</b> Concerned Citizens Tribunal, Volume 1 Annexure 13- pg 288-289 at Annexure III, File I, D-2 in the SIT Record</p>

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		political leaders <b>[PAGE NO. 66 - 68]</b>	
5.	Regional Press (Sandesh Newspaper etc.)	<p>1. NHRC (without naming the newspaper)</p> <p>2. Editors Guild specifically naming Sandesh and Gujarat Samachar</p> <p>3. Original Complaint dated 08.06.2002</p> <p>4. Extracts of Sandesh newspaper headlines and articles from Editor s Guild Report <b>[PAGE NO. 69 - 88]</b></p> <p>5. Protest Petition dated 15.04.2013 <b>[PAGE NO. 89 - 94]</b></p>	<p><b>Reference:</b> Editor s Guild Report Extracts from Annexure Spiral - N Pgs. 5506-5511 from HC CRA 205/2014 Record</p> <p><b>Reference:</b> Sandesh Headlines &amp; Reports Annexure Spiral N Editors Guild Pgs 5482-5495 from HC CRA 205/2014 record</p> <p><b>Reference:</b> Protest Petition Volume IV Paras 233-238 Pgs 306-311</p>
6.	SIB messages take note of inflammatory pamphlets distributed by VHP in Vadodara city	<p>SIB messages note prevalence of VHP hate pamphlets and make observations of their deleterious effects on the ground in Vadodara (Baroda) and around</p> <p><b>[PAGE NO. 95 - 96]</b></p>	<p><b>Reference:</b> Protest Petition SIB on Hate speech Volume IV of the SC Record at Paras 238 &amp; at Paras 588-590 Pgs 455-456; Also at pages 47 and 48 of annexure III File No.XIX in the S IT Record</p>

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7.	VHP pamphlets and several anonymous pamphlets widely distributed all over the State on and before 27.02.2002 and recovered from multiple sources (SIB, CCT and others)	For example, one such pamphlet calls for (in translation) a social and economic boycott of Muslims.  <b>[PAGE NO. 97 - 110]</b>	<b>Reference</b> at Annexure III, File I, D-2, Pages 254-255, SIT Record/Papers Listed at Page 779, Volume XIII of the SC Record.
9.	ADGP (Int.), April 2002, R.B. Sreekumar recommended 45 pages of incendiary pamphlets sourced by the SIB from different parts of the state for prosecution for violation of the law and incitement to violence.	Letter dated 16.04.2002 by R.B. Sreekumar while he held the post of ADGP (Int.) <b>[PAGE NO. 115 - 161]</b>  R.B. Sreekumar statement before the SIT on 14.07.2009. <b>[PAGE NO. 162 - 168]</b>	<b>Reference:</b> Annexure III, File III, D-27 of the Sit Records/Investigation filed at Page 4505-4559 M SPIRAL of the HC CRA 205/2014 RECORDS)
10	Gujarat State Police Officers who seek action against hate speech and hate writing of Gujarat newspapers	1. March 2002: Rahul Sharma, then SP, Bhavnagar had sought permission to register a criminal case against Sandesh newspaper. <b>[PAGE NO. 169 - 170]</b>  2. April 2002: SIB DCP P.B. Upadhaya recommended sanction to prosecute Sandesh	<b>Reference:</b> Annexure- to M1 SPIRAL Annexure Page No.4799; Letter @ Annexure M, Page No.4503-4504);  Article at Annexure-V Page No.6688 of HC CRA 205/2014 Record)  Reference: Spiral Annexure-M pg 4504 of the HC CRA 205/2014)



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		<p>on the basis of Rahul Sharma s recommendation <b>[PAGE NO. 171]</b></p> <p>3. Then CP, Vadodara D.D. Tuteja recommended the prosecution of Sandesh newspaper</p>	
11	K. Chakravarthi, DGP Gujarat in 2002 makes several statements to the SIT	<p>In statement dated 16/17/12.2009 to SIT, he refers to the VHP s hate pamphlets <b>[PAGE NO. 172 - 187]</b></p> <p>Statement dated 24.03.2011 <b>[PAGE NO. 188 - 194]</b></p> <p>Statement dated 30.01.2011 <b>[PAGE NO. 195 196]</b></p>	
12	PC Pande, CP Ahmedabad makes several statements before the SIT	<p>No mention of hate speech and its impact during the riots and the SIT does not ask him questions in this regard despite references to this in DGP Chakravartis</p>	

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		<p>statement before SIT</p> <p>Statement                      dated</p> <p>24.03.2010</p> <p><b><u>[PAGE NO. 197 - 208]</u></b></p> <p>Statement                      dated</p> <p>07.05.2010</p> <p><b><u>[PAGE NO. 209 - 212]</u></b></p> <p>Statement                      dated</p> <p>05.10.2010</p> <p><b><u>[PAGE NO. 213 - 218]</u></b></p> <p>Statement                      dated</p> <p>23.11.2010</p> <p><b><u>[PAGE NO. 219]</u></b></p> <p>Statement                      dated</p> <p>23.03.2011</p> <p><b><u>[PAGE NO. 220 - 222]</u></b></p> <p>Statement                      dated</p> <p>14.01.2012</p> <p><b><u>[PAGE NO. 223 - 225]</u></b></p>	
13	Letter from High level Functionaries in the Gujarat Govt congratulating newspapers indicted for spreading hate	Editor s Guild Report of 2002 has this letter <b><u>[PAGE NO. 226]</u></b>	<b>Reference:</b> Congratulatory Letter to Newspapers @ Annexure N-Page No.5368)

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## **B. Indictments of the Gujarat Govt and Administrative and Police Heads by Statutory Bodies Ignored**

1. The Original Complaint by Zakia Ahsan Jafri dated 08.06.2002 and subsequently the Protest Petition dated 15.04.2013 before the Learned Magistrate had highlighted several instances of how, between 2002 and 2007 several Statutory Bodies, for instance the National Human Rights Commission(2002, 2004 and subsequently too), Central Election Commission (2002), Women s Parliamentary Committee(2002), the National Commission for Minorities (NCM), (2006) and Food Commissioner (2007) appointed by this Hon ble Court continued to indict the state government for its failure to respond as per the law. *[Reference\_Zakia Jafri Complaint dtd 8.6.2006 at Page Nos 6-73, Volume III of the SC Record; Reference: Protest Petition filed by Zakia Jafri dated 15.4.2013 at Volume III (Pages 195-275),(Volumes IV (Pages 276-549) and V (Pages550-709) of the SC SLP Record]*

2. Misleading reports about normalcy, the preparation of electoral rolls were presented by the Home and Revenue Departments and represented to the Central Election Commission. These relate to crucial issues of Widespread Impact of the Reprisal Killings and Violence post the Godhra Tragedy on 27.2.2002, the Continuing Violence in the State right until the third quarter of 2002, the Subversion of the Criminal Justice System by high level police officers and administrators (Failures to register FIRs, appoint Independent prosecutors etc) and in totality completely ignore or give a go by to the strong remarks of these Statutory Bodies. Over the decades, to deepen accountability and ensure the protection of the most marginalized, the creation of bodies like the NHRC, NCM and others are meant to act as the crucial watch dogs and checks and balances on any elected government. Often the recommendations made by these statutory bodies from 2002 onwards, were

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contradicted by the State's own senior officers. Judgements of this Hon'ble Court commented adversely on the state's attitude to justice, reparation and punishing those guilty of mass violence.

*(Reference: Para 1036 - 1051 the Protest Petition, Pages 665-672 at Volume V of the SC Record)*

3. The allegations of breakdown of Constitutional machinery dealt with pertain not just to the immediate outbreak of the post-Godhra Violent Incidents but continue right until and after May 2002 (when the then Central Government appoints a Security Advisor to the State Govt, senior IPS Officer KPS Gill) and thereafter until and after October 2002 when incidents of continuing violence against marginalised sections of the minority continued and these are accompanied by subversions of any corrective measures by high level functionaries of the State Govt. The subversions include hasty or false registration of FIRs, not recording names of powerful persons, officials or otherwise as accused, subverting independent investigations and prosecutions and misleading this Hon'ble Court, the NHRC, the CEC. In fact right unto and post 2007 these acts of subversion continues.

4. It appears clearly therefore that the State Government abandoned its legal and constitutional duties in this regard. The deleterious impact ignoring these detailed observations/findings and recommendations of these bodies were pointed out in depth, not examined in detail by the SIT and completely brushed off by both the Magistrate and the High Court. These Reports Include:

- a. Report (Interim) and Final of the National Human Rights Commission dated 01.04.2002 & July 2002 respectively  
*[Annexed as A-1 at Volume X of the SC Record]*

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b. Report of the Central Election Commission, 2002.

*[Annexed as A-2 at Volume X of the SC Record]*

c. Report of the National Minorities Commission, 2006

*[Reference: Annexure L , Page 4411 of the CRA 205/2014;]*

d. Ninth Report of the Committee on Empowerment on Women (2002-2003) Concerning Violence Against Women during Riots (July-August 2002) *[Annexed as A-3 in Volume XI of the SLP SC Record]*

e. Report of the Concerned Citizens Tribunal, Gujarat 2002 (Short Term and Long Term Recommendations)

4. The findings of these statutory bodies has been dismissively investigated as an independent head by the Special Investigation Team (SIT) and has been summarily brushed off in the Closure Report. In fact, versions of top level policemen and bureaucrats have been accepted by the Investigating team as defence without considering the gravity of the findings of the statutory bodies.
5. Similarly, the Magistrate s order dated 26.12.2013 does not address the detailed submissions in the Original Complaint and Protest Petition on the detailed findings/observations on the collapse of the Law and Order Machinery (including the failure to respond adequately to the Prelude/Build Up of Violence, the continuing violence, subversion of the justice system and what clearly appears to be several instances of discriminatory governance at work in the police and administration; above all the need for Independent Investigation and prosecution. The Hon ble Gujarat High

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Court, despite being made aware of the gross anomalies also offers only a limited remedy.

6. This shows total non-application of mind and failure to exercise jurisdiction, as the contents (which are not disputed) do constitute a complete failure of the constitutional machinery.
7. In its interim and final report (April-May-July 2002) the National Human Rights Commission recorded strong findings on the complicity of the State Government in the continuing violence, subversion of the justice system, discriminatory mind-set of the top leadership and need for independent investigation and prosecution. The Commission therefore recommended that key cases should be transferred to the CBI, and a Special Court should be set up to investigate these cases and full protection should be given to all witnesses. [*Pages 8-92 Vol. X of Supreme Court Record*]
8. **On and before 27.02.2002:** It is not a coincidence that the National Human Rights Commission, the Editors Guild of India and the State Intelligence Bureau, Gujarat s SIB Messages, Gujarat State Intelligence Bureau reports record the existence of incendiary pamphlets in their multiplicities all over the State of Gujarat in all probability even before the Godhra incident on 27.02.2002.
9. Specifically, the National Human Rights Commission (NHRC) headed by a former Chief Justice of this Hon ble Court, J.S. Verma had, in its Interim Report of April 2002 recommended inter alia that not only such instances be firmly dealt with in accordance with the law but that the burden of proof be shifted on such persons to explain or contradict such statements [*Page 21 Volume X of the SC Record*].
10. Report on the Visit of the NHRC Team headed by the Chairperson, NHRC, Justice JS Verma, the Former Chief Justice of India, to Ahmedabad, Vadodara and Godhra towns between March 19-22, 2002 resulted in, on April 1, 2002, the Preliminary Comments &

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Recommendations of the NHRC together with Confidential Report to Government of Gujarat, Ministry of Home Affairs, Government of India and Prime Minister .

11. The Response of the Gujarat Govt to the Preliminary Comments and Recommendations of the NHRC dtd 1.4.2002 Government of India seeks time to respond until April 30, 2002 (**April 12, 2002**)
12. These detailed proceedings and reports of the NHRC in respect of the situation in Gujarat are in continuation of the proceedings recorded on March 1 and 6, 2002 and April 1 and May 1, 2002. This is a detailed report that at the outset observes that on the part of the Gujarat Government there is a Lack of Response to the Confidential Report of the NHRC by the Gujarat Govt. Observations by NHRC

.... The Govt of Gujarat has sent its reply dated 13<sup>th</sup> April 2002 and MHA reply dated 15<sup>th</sup> Aril 2002... The above reply of the Govt of Gujarat does not respond to the contents of the Confidential Report of the NHRC dated April 1, 2002.

Besides, in this detailed Order the NHRC has made strong Observations on the Failure of action by the State Govt on Intelligence before and after Godhra (27.2.2002); widespread lack of faith in investigation process, discriminatory treatment in matters of administration of relief package by the Govt; in invocation of POTO in Godhra case and lenient provisions related to post Godhra mass and widespread reprisal killings. The Extensive Report also comments on the Inadequate Relief to the victims - No Visits to Relief Camps (even Shah-e-Alam) by High Functionaries of the Government.

# DD

## Findings & Recommendations Interim Report of NHRC May 31, 2002

- i) Poor Recording of FIRS and Investigation, Hence Transfer of Major Critical Cases to CBI
- ii) These Time Bound Trials to be conducted in Special Courts by judges handpicked by the Chief Justice, Gujarat; Special PPs should also be appointed.
- iii) Time Bound Trials, Help Desks and Police Desks in Relief Camps for FIRs, Hate Speech to be Prosecuted. *The Commission recommends that places of worship that have been destroyed be repaired expeditiously. Assistance should be provided, as appropriate, inter-alia by the State.*

### Findings & Recommendations Interim Report

NHRC had made strong observations on the Serious Failure of Intelligence & Action by the State Govt before & after Godhra tragedy and largescale loss of life afterwards; widespread lack of faith in the integrity of the investigation process and the ability of those conducting investigations.

(a) Transfer of Critical Cases to CBI

(These Include Godhra, Gulberg, Naroda Patiya, Best Bakery, Sardarpura)

b) Poor Recording of FIRS and Investigation, Hence Transfer of Major Critical Cases to CBI

c) These Time Bound Trials to be conducted in Special Courts by judges handpicked by the



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Chief Justice, Gujarat; Special PPs should also be appointed.

d)Time Bound Trials, Help Desks and Police Desks in Relief Camps for FIRs, Hate Speech to be Prosecuted. *The Commission recommends that places of worship that have been destroyed be repaired expeditiously. Assistance should be provided, as appropriate, inter-alia by the State.*

Reference: [Page 17, Volume X of the SC record]

13. These Comments of the NHRC on the Response of the Govt of Gujarat are telling.

- i) .... The facts speak for themselves...The Commission has therefore reached the definite conclusion that.....there was a comprehensive failure of the state to protect the Constitutional rights of the people of Gujarat [Page 26, Volume X of the SC record]
- ii) Failure of Intelligence [Page 26-27 of Volume X of the SC Record]
- iii) Failure to Take Appropriate Action: failure to anticipate the violence or to take appropriate action [Page 27 of Volume X of the SC Record]
- iv) ...Public Servants who had sought to perform their duties diligently and to deal firmly with those responsible for the violence had been transferred at short notice to other posts

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without consulting the Director General of Police and indeed, over his protests.

- v) ... Pattern of Arrests *Page 28 of Volume X of the SC Record*
- vi) Uneven Handling of Major Cases (Gulberg, Chamanpura, Naroda Pariya and Best Bakery are specifically alluded to especially with regard to tardy action and arrests [*Page 28 of Volume X of the SC Record*])
- vii) Distorted FIRs..looting in areas of rich people but failure to identify who these people are.[ *Page 29 of Volume X of the SC Record*]
- viii) ....Senior Political Personalities who have been named were seeking to influence the functioning of police station.. ... Victims having great difficulties getting FIRs recorded, in naming accused and getting copies of the FIRs [*Page 29 of Volume X of the SC Record*]
- ix) Powerful Accused Not Named in FIRs/ Let Off  
Almost 90% of those arrested even in heinous offences like murder, arson, etc have managed to get bailed out as soon as they were arrested. Reports have also appeared in the media that those who have been released on bail were given warm public welcomes by some political leaders. This is in sharp contrast to the assertion made by the State Government in its Report of 12<sup>th</sup> April 2002 that bail applications of all accused persons are being strongly defended and rejected.

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Lack of Faith in Integrity of Investigation Process; *[Page 29 of Volume X of the SC Record]*

NHRC refutes GOG claim that situation was brought under control in 72 hours *[Volume X of the SC Record]*

Discriminatory Attitude of the State Government *[Volume X of the SC Record]*

x) Pervasive Insecurity of Justices Kadri & Divecha *[Page 29-30 of Volume X of the SC Record]*

xi) Letter of Justice AN Divecha (retired, HC) to Justice Verma, Chairperson of the NHRC dated 23.3.2002. This letter speaks of the all-pervasive Violence; the Inability of Influential Persons Including Ministers to Save Him etc; and the Need for Rehabilitation without Ghettoization. *[Annexure L, Pages 4301-4306 of CRA 205/2014 Record; Page 63-67 of Volume X of the SC Record]*

13. The recommendations of the NHRC on May 31, 2002 were not only completely ignored by the government and administration but the Investigating Team looking at the Wider Implications and Ingredients of the Conspiracy that included a complete subversion of the Criminal Justice System. No Officials of the NHRC, not even the Hon ble Chairperson, were examined by the SIT and neither did the Magistrate s Court nor the Gujarat High Court find any lacunae in this regard.

i) Once again Transfer of Investigation to CBI Urged though Govt of Gujarat and Govt of

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India have resisted/not agreed [*Page 31-32 of Volume X of the SC Record*]

- ii) Detailed Recommendations on Setting up of Special Courts, [*Para 21*] *Page 34-36 of Volume X of the SC Record*
- iii) Special PPs of Integrity be appointed especially since Questionable PPs had ensured easy bail to accused. [*Page 34 of Volume X of the SC Record*]

Transfer of Investigation, NHRC to monitor [*Para 20(xiii), (xiv)*], *Page 34-36 of Volume X of the SC Record*

Survey of Affected Persons Recommended and Rehabilitation of Displaced Persons [*Page 34-36 of Volume X of the SC Record*]

Commission Requests Detailed Reports on prosecution of Hate Speech by Persons, Politicians & Organisations. [ [*Page 35 of Volume X of the SC Record*]

Commission Recommends Action Against Delinquent Public Servants. [ [*Page 36 of Volume X of the SC Record*]

14. The stringent Observations in the Report of the Central Election Commission (CEC), dated August 16, 2002, a Constitutional Body were not only completely ignored by the government and administration but the Investigating Team looking at the Wider Implications and Ingredients of the Conspiracy that included a complete subversion of the Criminal Justice System. No Officials of the CEC were even examined by the SIT and neither did the Magistrate's Court nor the Gujarat High Court find any lacunae in this regard.

15. These Observations and Findings of the CEC that did not find the atmosphere vis a vis safety and security of life and law and order conducive to holding early elections in the state, are telling:

- (i) Report of the Chief Election Commissioner (CEC) James Lyngdoh on advancement of Gujarat state elections as suggested by the Govt of Gujarat

*[Page 94-125 of Volume X of the SC Record]*

- (ii) **Report of the Central Election Commission (CEC):** CEC has pointed out these major defaults of officers in its order dated 16.8.2002 *[Pages 325 of Volume IV & Page 665 of Volume V of the SLP SC Record Protest Petition, Volume 1]* **(Misleading CEC)**

- (iii) Gujarat Assembly was promulgated by April 2002 as part of a cynical design to use the widespread displacement of affected persons from the minority community (the displaced were admittedly 1,68,000 between February 28 2002 and December 2002) to advantage. The circumstances created by the systematic battering of the minority community were sought to be electorally manipulated. The CEC squarely held that under the circumstances Article 324 that required the EC to hold free and fair elections and in circumstances where election could be neither free nor fair Article 174 of the Constitution (that required elections to be held within six months of the legislature being suspended) needed to necessarily bow to Article 324 of the Constitution.

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- (iv) Continuing Violence: Team Surveys of the ECI show that disturbances continued right until August 2002 there were not just public disturbances and violence but that electoral rolls of several districts were faulty largely because of mass dislocation caused by the violence *[CEC Report at Page 102 of Volume X of the SC Record]; Protest Petition: Paras 524-530 Volume IV Pages 425-427]*
- (v) The ECI observed that, on the basis of the State of Gujarat s own report to the Commission that 20 of Gujarat s 25 districts were affected areas in which 27 lakh, 12 thousand BPL card holders were in receipt of free rations. The Commission has observed that given that the scheme of free rations has been continued till October 2002 it is clear that vast numbers of people in a large geographical area were affected contrary to the state s claim urging early election.

*[Page 103-104 of Volume X of the SC Record]*

*[Page 104-6 of Volume X of the SC Record]*

*[Page 107 of Volume X of the SC Record]*

*[Page 108-9 of Volume X of the SC Record]*

*[Page 110 of Volume X of the SC Record]*

*[Page 111-113 of Volume X of the SC Record]*

a) Strong Fear and Insecurity especially among the Minorities

b) Small incidents escalate to communal tension

c) complaints of brigands belonging to outfits moving around creating terror with impunity

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d) Faulty FIRs: powerful accused not arraigned;

f) Detailed Observations on how Municipal and Taluka elections in Gujarat in 2002 were postponed and why therefore, logically, the state elections too should be

Again the contradictory versions between the senior and accused administrators and policemen is given and pitted against ADGP RB Sreekumar and CP, Ahmedabad KR Kaushik who speak of undercurrent of communal tension and need for additional forces

*[Pages, 113, 116-117 of Volume X of the SC Record]*

g) Inadequate Relief and Rehabilitation; State's abdication of responsibility & Bias in Implementation of Relief Measures

*[Page 118 -120 of Volume X of the SC Record]*

## iv) **Directions of the ECI**

a. EC concludes that the law and order situation is far from normal.

b.GOG circulars admit that Elections 22 District Panchayat, 15 Taluka Panchayat and 81 Municipalities have been postponed to October 2002.

c.EC quotes from GOG Orders postponing local body elections and concludes **(Para 40)** that if the state government is not in a position to hold elections to local bodies, that too in urban areas, how can it hold a general

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election to the State Assembly which requires far greater mobilisation and effort..is beyond one s comprehension comments the EC.

*[Page 123-125 of Volume X of the SC Record]*

- a) No confidence in the Police: Arrest and Punish the Guilty; Overall lack of faith in state machinery, govt and police; Critical Observations about the Subversion of the Justice Process; Impunity to Perpetrators, Continuance of Curfew etc
- b) Widespread dislocation and Displacement inside and outside the state; need for Confidence Building Measures
- c) Deals with the poor conditions of the internally displaced persons and the status of refugees in all parts of Gujarat.
- d) Critically comment on the state government s deliberate denial of basic relief measures to those refugees not living in officially designated relief camps
- e) Directions of the Commission that include special revision of electoral roles, house to house surveys in 20 Affected Districts.
- f) Situation Far From Normal, Wounds raw, tensions high.

16. Date of Report (31.7.2002) of the SIB given by ADGP(Int) R.B. Sreekumar to Chief Election Commissioner J.M. Lyngdoh on his team s visit to the State. As many as 152 of the 182 assembly constituencies in the State had been affected. *(Para 524 to Para 530 at pages 231 of the Protest Petition @ Pages 425-427, Volume IV of the SC Record)*. A closer scrutiny has led to the conclusion that out of 26



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police districts, 4 Commissionerates, and 11 districts had no deaths due to riots and in the five districts of Bharuch, Junagadh, Patan, Vadodara rural and Bhavnagar and the Commissionerate of Rajkot and Surat there was relatively less violence. This was because of the lawful and constitutional behaviour of the police in charge. Then ADGP RB Sreekumar's views as supported by then Police Commissioner of Ahmedabad KR Kaushik gave details of the spread and extent of the violence. *[Page 113 of Volume X of the SC Record]*

17. Senior officials, some of whom have been named in the complaint of Zakia Jafri dated 8.6.2006 gave misleading reports to the C.E.C when he visited Ahmedabad. But for the independent reports of the State Intelligence, corroborated by the then Commissioner of Police, Ahmedabad, Kaushik, a Constitutional Authority like the CEC would have been undermined and mis-informed.
18. Statement of one of the officers named in the complaint dated 8.6.2006, then Chief Secretary Subha Rao is recorded by SIT wherein he refers to the official version given by him and other officers to the Chief Election Commissioner Shri Lyngdoh on 9.8.2002. He is not interrogated by SIT about the severe conclusions in the CEC Order dated 16.8.2002 on the inconsistencies in the official version nor the Election Commission's own assessment of the situation that went contrary to the official version.
19. Statements of DGP Chakravarthi recorded by SIT. He is not asked any questions about the misrepresentation by higher officers to the CEC as Commented upon by the CEC
20. Statement of ACS (Home) Ashok Narayan recorded by the SIT. RB Sreekumar's contemporaneous affidavit before the Nanavati Shah Commission mentions the deliberate misleading of the CEC by higher placed officials of the State Government

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21. **Women s Parliamentary Committee Violence Against Women During Riots Report of the Women s Parliamentary Committee** Violence Against Women During Riots WPC-Mandate  
*[Pages 126-141 Vol. XI of Supreme Court Record]*

- i) The Committee visited Vadodara, Panchmahal and Ahmedabad from 2<sup>nd</sup> to 4<sup>th</sup> July, 2002 and went to three Relief Camps viz. Lunawada Relief Camp, Panchmahal, the Shah Alam Relief Camp, and Dariyakhan Ghummat Relief Camp at Ahmedabad. Finally, the committee held discussions with the Chief Secretary, Government of Gujarat, Additional Chief Secretary, Home Department, Principal Secretary, Revenue Department and Secretaries, Department of Women and Child Development, Social Justice and Empowerment, Health Department and other officials of Government of Gujarat and representatives of the Ministry of Human Resource Development (Department of Women and Child Development).

## **WPC-Observations**

- i) The Committee having taken note of the serious nature of the Violence against Women during the recent prolonged riots in Gujarat as projected in the Media and in the reports submitted to the Committee by the National Commission for Women and some NGOs/women activists who had visited Gujarat



and heard the problems/grievances of the women who were victims of violence, the Committee took a decision to study the situation in Gujarat in detail and prepare their Report on the Violence against women and steps taken for their rehabilitation.

- ii) Relief, Rehabilitation, Compensation: Women unaware of Relief Packages, compensation not paid. *[Page 131-132 of Volume XI of the SC Record]*
- iii) Housing Compensation Inadequate payment. *[Page 133 of Volume XI of the SC Record]*
- iv) Demand for comprehensive survey for compensation.
- v) Fear and Insecurity. *[Page 133 of Volume XI of the SC Record]*
- vi) Sexual Assaults Testimonies. *Page 136, 139 of Volume XI of the SC Record]*
- vii) FIRs of Women and Girls not Recorded. *[Page 133, 136, 139 of Volume XI of the SC Record]*
- viii) Women Demand the Camps should not be closed before Monsoon or before proper Rehabilitation. *[Page 140 of Volume XI of the SC Record]*
- ix) Home Secretary admits that FIRs too general and proper, detailed FIRs needed to be recorded. : (21) List of 58 Women Assaulted given to Committee by Shah-e-Alam. *[Page 135 of Volume XI of the SC Record; ]*

## WPC-Findings

- i) The Committee note that 185 cases of attacks on women have been registered of which 100 are in Ahmedabad City. A total of 57 attacks on children have also been registered of which 33 are registered in Ahmedabad City. Rape cases of 11 women have also been registered. Of these 3 cases are from Dahod, 1 from Anand, 4 in Panchmahals and 3 in Ahmedabad City. *[Page 137 of Volume XI of the SC Record]*
- ii) The Committee feel that it is in the bounden duty of every State machinery to take pre-emptive steps to prevent spread of violence. For this purpose, the intelligence services have to always remain vigilant and cautious. The Committee regret to note that the failure to anticipate the potential dangers of the situation by the intelligence services was responsible for the violence, death and destruction of the magnitude that was witnessed in Gujarat. *[Page 137 of Volume XI of the SC Record]*
- iii) The Committee feel that effective and preventive steps ought to have been taken to ensure that riots of such intensity did not spread. *[Page 136 of Volume XI of the SC Record]*
- iv) Discrimination in Payment of Relief. *[Page 136 of Volume XI of the SC Record]*

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- v) Inadequate Housing Compensation Paid.
- vi) Forcible Closure of Relief Camps: The Committee noted that in comparison with the figures of number of Relief Camps and the inmates in the peak period in April, 2002, there is reduction of Relief Camps by 111 Camps and reduction in the number of inmates by 1,19,839. Relief Camps have been closed down in Anand, Kheda, Panchmahal, Sabarkantha, Vadodara and Mehsana. *[Page 138-139 of Volume XI of the SC Record]*

## **WPC- Recommendations**

- i) Rectify improper FIRs registered and protect women who are threatened to withdraw FIRs; Ensure FIRs registered where still not done. *[Page 139 of Volume XI of the SC Record]*
- ii) Security to be provided to women and children so they can return home. *[Page 140 of Volume XI of the SC Record]*
- iii) Provide enough Milk, Food and Bedding in Relief Camps. *[Volume XI of the SC Record]*
- iv) Inaction on Hate Speech: The Committee has noted with regret that no efforts have been made to confiscate the hate literature that has been widely circulated in the State or to identify those responsible for its preparation, printing and circulation. The Committee hopes that the law enforcement machinery acts effectively in this regard. *[Page 141 of Volume XI of the SC Record]*

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- v) Special Courts/Impartial Investigation. [Page 141 of Volume XI of the SC Record]

22. Continuing Failure in rehabilitation etc can be observed in the 2004-2005 report of the National Human Rights Commission (2004-2005)

## **NHRC Annual Report (2004-2005)**

### **Findings**

- i) It found 4,545 families comprising around 30,000 persons still living in very difficult conditions in 81 relief colonies.
- ii) Pathetic Rehabilitation: The study found that none of the colonies had been set up or assisted by the state government. Only five of the 81 colonies had government or government recognised schools and only four served midday meals to the children. Only five had ICDS centres, of which four served supplementary nutrition to the children, and one to nursing and expectant mothers. Only three had PDS shops and only 725 out of 4,545 families were recognised as BPL although their intense poverty as internally displaced persons facing economic boycott was acute. People who had APL cards are reluctant to apply to apply for a transfer of the card because they fear that this may be cancelled.

23. A Report of the National Commission of Minorities Visit to Gujarat on receipt of Complaints (13-17,2006) recorded the following set of findings. The

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SIT did not see it fit to Investigate any of these **National Commission of Minorities Visit to Gujarat**

## Findings

- i) Four years Down Livelihood issues and no proper Jobs/Businesses.
- ii) Abject Poverty, No Issuance of BPL Cards.

**24.** On **19.3.2007**, the Food Commissioner of the Supreme Court's Report to the Supreme Court regarding the Implementation of the Food Schemes in Relief Colonies of Displaced Persons (Carnage of Gujarat 2002); Refers to the NCM Report of 2006.

## Findings

- (i) It found 4,545 families comprising around 30,000 persons still living in very difficult conditions in 81 relief colonies.
- (ii) Pathetic Rehabilitation: The study found that none of the colonies had been set up or assisted by the state government. Only five of the 81 colonies had government or government recognised schools and only four served midday meals to the children. Only five had ICDS centres, of which four served supplementary nutrition to the children, and one to nursing and expectant mothers. Only three had PDS shops and only 725 out of 4,545 families were recognised as BPL

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although their intense poverty as internally displaced persons facing economic boycott was acute. People who had APL cards are reluctant to apply to apply for a transfer of the card because they fear that this may be cancelled.

**(iii) Recommendations**

- (i)** Contempt of court notices are issued to the chief secretary and other official of the government of Gujarat for misrepresenting facts and furnishing incomplete and inaccurate information to the commissioners appointed by the Supreme Court. Antyodaya Cards must be given.
- (ii)** Primary schools should be opened.
- (iii)** ICDS Centres for 81 colonies.
- (iv)** PDS.
- (v)** Widow Pensions.
- (vi)** MNREGA enrolment.
- (vii)** Chief Secretary personally liable.

25. In the SIT Investigations, both the Inquiry report dtd 12.5.2010 presented before the Hon ble Supreme Court and the Final (Closure) Report filed before the Magistrate on 8.2.2012, these allegations are dismissed lightly. (Reference: ALLEGATION NO. XVIII: State Home Department gave misleading reports about normalcy in the State to Central Election



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Commission for ensuring early Assembly Election. (*Pgs 214-219 of Volume XI of the SC SLP Record; Pages 1397-1400 of Volume VIII of the SC SLP Record*)

26. It may be pertinent to mention that a Copy of the 2002 Order of the Central Election Commission (CEC) titled A Copy of the Order 464/GJ-LA/2002 dated August 16, 2002 *which is Annexed at Volume X of the SLP SC Record* is available at <https://archive.pib.gov.in/archive/releases98/lyr2002/raug2002/16082002/r160820029.pdf>

Some portions of the NHRC Annual Reports are available on the NHRC website but the suo motu Investigation Reports into Gujarat 2002 are not available on the official website of the NHRC.

- (i) <https://nhrc.nic.in/sites/default/files/AR02-03ENG.pdf>;  
<https://nhrc.nic.in/sites/default/files/AR04-05ENG.pdf>.
- (ii) The Report of the National Minorities Commission (2006) on Gujarat situation is not available on the website.



## EVIDENCE IN DOCUMENTS

<p>Report (Interim) and Final of the National Human Rights Commission dated 01.04.2002 &amp; July 2002 respectively</p> <p>Preliminary Comments &amp; Recommendations of the NHRC together with Confidential Report to Government of Gujarat, Ministry of Home Affairs, Government of India and Prime Minister .</p>	<p>Strong Indictments by the NHRC in 2002 and thereafter in 2004-2005</p> <ol style="list-style-type: none"> <li>a. Failure of Intelligence</li> <li>b. Failure to respond effectively</li> <li>c. Hate Speech</li> <li>d. Uneven Handling of Cases, Pattern of Arrests</li> <li>e. Transfer of Investigation and Trials to CBI, Independent Prosecutors, special courts etc</li> <li>f. Treatment of officials who performed their duty</li> <li>g. After awaiting the Govt of Gujarat (GOG s response) which was found to be unsatisfactory NHRC concluded that</li> </ol>	<p><b>[Annexed as A-1 at Volume X of the SC Record]</b></p> <p><b>References:</b>  <b>Zakia Complaint dtd 8.6.2006</b>          Para (57, 58, 65, 66) at Page 35, 38 of the Zakia Jafri Compliant at of Volume III of SC SLP Missing CEC NHRC</p> <p><b>Zakia Jafri Complaint dtd 8.6.2006 in Protest Petition:</b>          Pages 325 of Volume IV &amp; Page 665 of Volume V of the SLP SC Record Protest Petition, Volume 1 (Misleading CEC)          Pages 635-636, Pages 665-666 of Volume V of the SLP SC Record          Pages 667-668 of Volume V of the SLP SC Record Attitude of State Govt to Statutory Bodies like NHRC/CEC etc dealt with</p> <p><b>Reference: SIT Investigation Record</b>          Annexure III 6 File VI D-88 Proceedings of the National Human Rights. Commission on situation in Gujarat from 1st March 2002 to 1st July 2002. (The Index) Listed at Page 785 Volume XIII SC SLP Record].</p>
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	<p>there as a complete breakdown of Constitutional Machinery</p> <p>h. Letter of Retd HC Judge An Divecha is telling</p> <p>i. Measures recommended by NHRC Ignored</p> <p>j. Prosecution of Delinquent Public servants not done</p> <p>k. NHRC Officials and Chairperson not examined</p>	<p><u>Reference: Pages 24-26 of Volume X of the SC record; __Annexure L, Page 4252 of the CRA 205/2014 Record]</u></p> <p><u>Reference:</u> Annexure L , Page 4244, Para (vi) of the CRA 205/2014 Record; Para 19-20 (vi, viii,xii, xiii,2. [Pages 21-22, Volume X of the SC record Annexure 3 <u>Reference:</u> Annexure L, Page 4248-4249 of the CRA 205/2014 Record <b>a to i)</b> <b>References:</b> Annexure L, Page 4256-4275 of the CRA 205/2014 Record;</p> <p>c. Hate Speech: Annexure L, Page 4268-69 of CRA 205/2014 Record; [Page 35 of Volume X of the SC Record]</p> <p>h.Annexure L, Pages 4301-4306 of CRA 205/2014 Record</p> <p>i.Annexure L, Page 4262-63 of CRA 205/2014 Record</p> <p>j.Annexure L, Page 4268-69, of CRA 205/2014 Record; [Page 36 of Volume X of the SC Record]</p>
<b>Report of the Central Election</b>	The report of the CEC comments strongly on	<b>Reference:</b> <b>Zakia Jafri Complaint dtd</b>

<p><b>Commission, 2002</b></p>	<p>how there are divergent versions among state government officials regarding the spread and extent of Contining Violence, Damages, Pervasive Insecurity etc</p> <p>Report of ADGP-Intelligence Gujarat RB Sreekumar dtd 31.07.2002 given to ECI and Annexed to Its Report gives Tables of Extent and Spread of Violence</p> <p>One of the officials names in the Zakia Jafri Complaint dtd 8.6.2006 is then (2002) Chief Secretary Subha Rao who s statement is recorded by SIT wherein he refers to the official</p>	<p><b>8.6.2006 in Protest Petition</b></p> <p>Pages 199 of Volume III of the SLP SC Record, NHRC Report and Order dated May 31, 2002 mentioned Pages 667-668 of Volume V of the SLP SC Record Attitude of State Govt to Statutory Bodies like NHRC/CEC etc dealt with</p> <p>A Copy of the Order 464/GJ-LA/2002 dated August 16, 2002 <i>which is Annexed at Volume X of the SLP SC Record</i></p> <p><b>Reference:</b>  <b>[Annexed as A-2 at Volume X of the SC Record]</b>  <i>[Annexure L, Page 4339-4378 of the CRA 205/2014 HC Record and at Annexure III File II, SR Nos D-39 of the SIT Record/Investigation;Page 94-125 of Volume X of the SC Record]</i></p> <p><b>References:</b>  <i>[CEC Report at Page 102 of Volume X of the SC Record]; [Reference: Protest Petition: Paras 524-530 Volume IV Pages 425-427]</i></p> <p><b>Reference:</b>          (Para 524 to Para 530 at pages 231 of the Protest Petition @ Pages 425-427, Volume IV of the SC</p>
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	<p>version given by him and other officers to the Chief Election Commissioner Shri Lyngdoh on 9.8.2002. <b>He is not interrogated by SIT about the sever conclusions in the CEC Order dated 16.8.2002 on the inconsistencies in the official version nor the Election Commission s own assessment of the situation that went contrary to the official version.</b></p> <p>Statement of then DGP K Chakravarthi recorded by SIT on three occasions, he is not questioned on Misrepresentation of Facts etc to a Constitutional authority like the ECI (CEC)</p> <p>Statement of ACS (Home) Ashok Narayan recorded by the SIT. In his statement dated 13.12.2009, he admits that then ADGP Intelligence RB Sreekumar gave a distinct version of the state of Law and Order in the state to the ECI (CEC).</p>	<p>Record).</p> <p><b>Reference:</b> <b>Annexed Here;</b> Annexure L , Pages 4413-4420; of CRA 205/2014 in the HC</p> <p><u>(Reference:</u> Annexure M-1 , Pages 4837-4897 of CRA 205/2014 HC Record]</p> <p><b>Reference:</b> Statement of ACS (Home) Ashok Narayan recorded by the SIT.</p>
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	<p>RB Sreekumar s contemporaneous affidavit before the Nanavati Shah Commission mentions the deliberate misleading of the CEC by higher laced officials of the State Government.</p>	<p><b>Reference:</b> Annexure M-1 , Pages 4900-4923 of CRA 205/2014</p>
<p><b>Report of the Ninth Report of the Committee on Empowerment on Women (2002-2003) Concerning Violence Against Women during Riots</b></p>	<p>After extensive visits to several districts of the State the WPC makes extensive recommendations about Relied &amp; Rehab; Housing Compensation; Fear &amp; Insecurity; Recording of Sexual Violence Testimonies; FIRS of Women Not Recorded</p> <p>Home Secretary admits to the WPC that FIRs are too general</p> <p>No Forcible Closure of Relief Camps before</p>	<p><b>Reference:</b> (July-August 2002) [Annexed as A-3, Pages 126-141 in Volume XI of the SLP SC Record]</p> <p><b>Reference:</b> <b>Zakia Jafri Complaint dtd 8.6.2006 in Protest Petition:</b> Pages 204-208 of Volume III of the SLP SC Record</p> <p><b>References:</b> [Page 131-132 of Volume XI of the SC Record; Annexure L , Page 4394 Para (ii) to (vii)(ix)(x), of the CRA 205/2014 Record]; <b>Also at</b> Page 135-136 of Volume XI of the SC Record; Page 133, 136, 139 of Volume XI of the SC Record;</p> <p><b>Reference:</b> [Annexure L , Page 4399 Para (19) of CRA 205/2014; Page 135 of Volume XI of the SC Record; ]</p>

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	the Monsoon	<p><b>Reference:</b> [Annexure L , Page 4395 Para (xiii) &amp; (xiv) of CRA 205/2014 ; Page 140 of Volume XI of the SC Record]</p> <p><b>Reference:</b> Annexure L , Pages 4401-4407 at Paras (33) to (40) of the CRA 205/2014]; Page 137 of Volume XI of the SC Record</p>
	Comprehensive Findings and Recommendations of the WPC	
<b>Report of the Concerned Citizens Tribunal, Gujarat 2002 (Short Term and Long Term Recommendations)</b>	Short Term and Long Term Recommendations	<b>Reference:</b>
<b>National Human Rights Commission (Annual Report 2004-2005)</b>	(Annual Report on Internal Displacement) Findings in Annual Report on Internally Displaced Persons;4,545 families comprising around 30,000 persons still living in very difficult conditions in 81 relief colonies. Pathetic Rehabilitation by Govt	
<b>Report of the National Minorities Commission (NCM) 2006</b>	<b>This Report, four years after the Violence is telling in its indictment of the Failure to humanely rehabilitate Internally Displaced persons, women,</b>	<b>Reference: Annexure L , Page 4411 of the CRA 205/2014;]</b>

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		<p><b>men and children as an outcome of the Violence in 2002.</b></p> <p>Four years Down Livelihood issues and no proper Jobs/Businesses.</p>	
The Food Commissioner Of this Hon ble Court s Report to the Supreme Court (19.3.2007)	<p>Stringent Findings regarding the Implementation of Food Schemes in Relief Colonies of Interced Persons (Carnage of Gujarat 2002); Refers to the NCM Report of 2006.</p> <p>Contempt of Court Notices Issued o the Chief Secretary, Gujarat Government.</p> <p>Antyodaya Cards must be given.</p> <p>Primary schools should be opened.</p> <p>ICDS Centres for 81 colonies.</p> <p>PDS. (Public Distribution Schemes) must be accessible, Widow Pensions &amp; MNREGA Enrolment too</p>	<p><b>Reference:</b> Annexure III 6 File VI D-89 letter dated 19-03-2007 Dr. N. C. Saxena IN SIT Investigation Papers, part of CRA Record;</p> <p><b>References:</b> [Annexure L , Page 4412 Para (2), of the CRA 205/2014 HC Record]</p>	
Orders of this Hon ble Court in several related matters that have not been acted upon	<ol style="list-style-type: none"><li>1. SC Order dtd 23.11.2003 Staying Trials</li><li>2. SC Order (Aug 2004) on Guj Govr Misleading Court on Bail Applications</li><li>3. SC Order on Re-Opening of 2000 cases</li></ol>	<p><b>Reference:</b> Pages 199 of Volume III of the SLP SC Record, Onwards Deals with the Background to the Zakia Jafri Criminal Complaint dated 8.6.2006</p> <p>Where observations of the Supreme Court are Mentioned</p>	