

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

SLP CRL D NO. 34207/2018

IN THE MATTER OF :

ZAKIA AHSAN JAFRI ... PETITIONER

vs.

THE STATE OF GUJARAT ... RESPONDENT

**Final NOTE – Part II**

ON BEHALF OF SHRI MUKUL ROHATGI  
ON BEHALF OF RESPONDENT NO. 2

1. At the outset, it is submitted that the Respondent has dealt with limited issues in the present note as according to the Respondent, the remaining issues are in totality dealt with by a mere reading of the Closure Report.

**FURTHER INVESTIGATION IS REQUIRED OR NOT**

2. Trial Court in eight cases investigated by SIT did not find any material in support of allegations made in the complaint of Jakia: Trial in eight of the cases investigated by SIT on the directions of Hon'ble Supreme Court are over. Quarterly progress report in these cases were submitted regularly before Hon'ble Supreme Court. The judgements pronounced in these cases does not support the allegations made by Smt. Jakia in her complaint, including that of larger conspiracy.

3. It may be noted that the trial is concluded in 8 out of the 9 cases and the details are as under :

Case	Date of Trial Court judgment	Date of HC judgment
i. Godhra Railway Police Station Cr. No 09/02	01.03.2011	09.10.2017 [2 appeals]

Case	Date of Trial Court judgment	Date of HC judgment
		3 appeals pending
ii. Khambholaj Police Station Cr. No 23/02	12.04.2012	11.05.2018
iii. Khambholaj Police Station Cr. No 27/02	04.05.2012	Pending
iv. Naroda Police Station Cr. No 98/02	-	-
v. Naroda Police Station Cr. No 100/02	31.08.2012	25.04.2018
vi. Meghaninagar Police Station Cr. No 67/02	17.06.2016	Pending
vii. Visnagar Police Station Cr. No 60/02	30.07.2012	pending
viii. Vijapur Police Station Cr.No.46/02	09.11.2011	02.01.2012
ix. Prantij Police Station Cr.No.100/02	27.02.2015	pending

4. It may be noted that in no case has the SIT or the Court during trial, has found evidence of any conspiracy, larger or small relatable to the one alleged by the Petitioner.

5. Further, the SIT has not found any conspiracy, linking separate and disparate acts of arson and looting, or outrageous claims made in sting operations or individual utterances/publications of purported hate speech, to any singular larger conspiracy or planned event. It is stated that it is impossible to link any "*meeting of the minds*" in any of the 9 cases or for that matter other incidents alleged in the Complaint and the Protest Petition.

6. Further, it seems that spontaneous riots took place in the State, one day after the Godhra train carnage. It is submitted that no material could be

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discovered/investigated pointing towards any meeting of minds/conspiracy in the higher echelons of the administration or the political establishment conspired with other persons to cause the riots or turned a blind eye. Further, absent any chain or any perceivable link or connection, the case of any larger conspiracy cannot survive in the air.

7. It is submitted that to highlight other issues, unconnected with each other, and without connecting them to the original larger conspiracy is an exercise in futility. For ex : to link the purported parading of the dead bodies with the contents of the sting operation, is absurd as the two do not have any connection nor any connection has been made by the Petitioner.

8. Observation of Hon'ble Supreme Court: The Judgment pronounced by Hon'ble Supreme Court in the SLP (Crl.) 1088 of 2008 on 12.09.2011 directed as under:

*“8. We are of the opinion that bearing in mind the scheme of Chapter XII of the Code, **once the investigation has been conducted and completed by the SIT, in terms of the orders passed by this Court from time to time**, there is no course available in law, save and except to forward the final report under Section 173(2) of the Code to the Court empowered to take cognizance of the offence alleged. As observed by a three-Judge Bench of this Court in *M.C.Mehta (Taj Corridor Scam) Vs. Union of India & Ors. 1*, in cases monitored by this Court, it is concerned with ensuring proper and honest performance of its duty by the investigating agency and not with the merits of the accusations in investigation, which are to be determined at the trial on the filing of the charge-sheet in the competent Court, according to the ordinary procedure prescribed by law.”*

The Hon'ble Supreme Court in their order dated 01.05.2009, at paragraph 4 noted as under :

*“due to the efforts of SIT, persons who were not earlier arrayed as accused have now been arrayed as accused. From the details indicated above it appears that in most of the cases a large number of persons have been additionally made accused. Besides this, a large number of witnesses were also examined in each case. This goes to show the apparent thoroughness with which SIT has worked. Therefore, SIT shall continue to function until the completion of trial in all*

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*the cases and if any further inquiry/investigation is to be done the same can be done as provided in law, more particularly, under Section 173(8) of the Code of Criminal Procedure, 1973”.*

## **ALLEGED PARADING OF DEAD BODIES**

**9.** It is alleged by the petitioner that as part of conspiracy hatched by accused persons named in the complaint, the dead bodies of the victims of burning of Sabarmati Express at Godhra Train station were deliberately brought to Ahmedabad with an intention to generate anger and instigate mobs. Paragraphs 549 of the Protest Petition (**page 404 to 410 of the Vol. IV of the SLP filed by petitioner**)

**10. No parading of dead bodies while being brought to Ahmedabad:** On the basis of statements recorded and documents collected during the course of inquiry and investigation by SIT it is clearly established (**page 1436 of the Vol VIII of the SLP filed by the petitioner**) that at the Godhra Collectorate, after holding discussions, a unanimous decision was taken that the dead bodies which had been identified should be handed over to their relatives at Godhra itself, and those bodies whose legal heirs or guardians had not come, could be sent to Sola Civil Hospital, Ahmedabad. The reason for taking this decision was that they (deceased) were scheduled to travel to Ahmedabad by Sabarmati Express. It has further come to light that the decision to send the bodies to Sola Civil Hospital was taken after taking into account that the hospital was situated on the outskirts of Ahmedabad City and thus away from the crowded area for security reasons. It has also come to light that out of 58 dead bodies 4 bodies, belonging to Dahod, Vadodara, Panchmahal and Anand Districts, were handed over to their legal heirs/guardians after identification at Godhra itself. The remaining 54 dead bodies were sent under police escort to Sola Civil Hospital, Ahmedabad. Following chart reflects that the decision was correct as most of the victims were resident of Ahmedabad or area which are nearer to Ahmedabad (as compared to Godhra).

**11.** The District wise Details of the Native place of 54 Dead bodies brought to Ahmedabad from Godhra is as under :

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Sr.No.	Name of the District	Number of Dead bodies	Remarks
1	Ahmedabad	33	25 Identified + 8 Identified afterwards by DNA test
2	Anand	05	
3	Mehsana	02	
4	Sabarkantha	02	
5	Rajkot	01	
6	Surat	02	Identified afterwards by DNA test
7	Unnav (U.P.)	01	Identified afterwards by DNA test
8	Kanpur	01	Identified afterwards by DNA test
9	Unidentified	07	
10	<b>Total</b>	54	

**12.** Out of 54 dead bodies, 35 could be identified and handed over to their relations on 28-2-2002. The remaining 19 dead bodies were cremated together by the police and Civil Administration on 1-3-2002. Out of these 19 dead bodies, 12 could be identified later by DNA test and the remaining seven (7) remained unidentified.

**13.** In addition, four (4) dead bodies belonging to Dahod, Vadodara, Panchmahal & Anand were identified by their relations at Godhra railway station and as such the same were handed over to them at Godhra itself and transported to their native places by three ambulances & a Maruti Van.

**14.** Shri Prahlad J. Patel of Mehsana who received severe burn injuries in the Godhra carnage on 27-2-2002 was hospitalized at Civil Hospital, Ahmedabad and succumbed to the injuries on 3-4-2002 only.

**15.** Further, following material reproduced from the Closure Report will reflect that there was no parading of dead bodies while they were being transported from Godhra Railway Station to Sola Civil Hospital, Ahmedabad (Pg 261-264 of Convenience Compilation filed by the SIT):

*“Shri Raju Bhargava, the then Superintendent of Police, Godhra has stated that since, there was a curfew in the town, he had arranged for four (4) mini trucks, Tata-407 and one Tata-608 tempo for the transportation of the aforesaid dead bodies. He also*

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*arranged for the police escort with a pilot gypsy. Further, one Sub Inspector was sent in gypsy with some other staff and two armed guards each were made to sit in the aforesaid five vehicles. The convoy left Godhra around midnight intervening 27/28-02-2002 for Ahmedabad by road. On the way to Ahmedabad, the escorts from the concerned districts had replaced each other. The five trucks carrying dead bodies reached Sola Civil Hospital, Ahmedabad between 0330 hrs to 0400 hrs on 28-02-2002. At Sola Civil Hospital, Dr. Pushpa Belani, Medical Superintendent, PI Lathiya of Sola P.S., Shri Prajapati, Deputy Collector, Shri K. Srinivas, Collector and several other Administrative and Police Officers were present.*

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*It may thus be seen that the journey from Godhra to Ahmedabad started around midnight and the dead bodies reached Sola Civil Hospital sometime between 0330 to 0400 hrs and there was no one on the highway at that point of time in the night to see them. Further, the decision to bring the dead bodies of the victims to Sola Civil Hospital does not support the allegations of the petitioner, as at that time Sola Civil Hospital was situated on the outskirts of Ahmedabad and thus away from crowded area of the city. On the issue of handing over the dead bodies to Jaydeep Patel of VHP, SIT Closure Report clearly establishes that though a letter had been addressed by Shri M.L. Nalvaya, the then Mamaldar & Executive Magistrate, in the name of Shri Jaydeep Patel of VHP and the dead bodies were acknowledged by Shri Hasmukh T. Patel of VHP, yet the dead bodies were escorted by the police upto Sola Civil Hospital, Ahmedabad situated on the outskirts of Ahmedabad City. At Sola Civil Hospital, Shri Jaydeep Patel handed over the letter to the hospital authorities and the local police as well as the hospital authorities took charge of the dead bodies.”*

**16.** Petitioner has further alleged that proper procedures were not followed in cremation of unidentified dead bodies. In Paragraphs 551 of the Protest Petition (**page 434 of the Vol. IV of the SLP filed by petitioner**) the allegation reads as follows:

*551.....Of these, 19 of the unidentified dead bodies were cremated by the hospital authorities on 28.2.02 at Gota Cremation ground, near the Sola Civil Hospital by the District Administration and police officers with the help of the sarpanch of Gota. The undue haste in carrying out these cremations while the city of*

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*Ahmedabad was on fire has not been explained by SIT. The failure to follow regular procedures related to unidentified bodies has also been left deliberately unexplored.]*

**17.** In this regard the Closure Report reflects that no illegality is disclosed in this regard, rather the decision was most prudent in the given situation. The relevant paragraph from the Closure Report is reproduced herein below (**page 262-264 of the Convenience Compilation filed by SIT**):

*“The 19 unidentified dead bodies were cremated quietly on the same evening by the local administration and police authorities at Gota cremation ground nearby with the help of Sarpanch of Gota village after retaining their DNA samples. Subsequently, 12 dead bodies could be identified after conducting DNA tests, while the remaining seven (7) remained unidentified.”*

#### **TEHELKA STING OPERATION**

**18.** In the second week of May 2007, while Shri Ashish Khetan was working with Tehelka, Shri Tarun Tejpal, Editor in Chief called him on phone and asked to conduct an inquiry into an incident related to the M.S. University, Vadodara where the workers of Vishwa Hindu Parishad had conducted various acts of vandalism and had manhandled some of the students and a professor over a painting prepared by some student in which some of the Hindu deities were allegedly shown in objectionable position. Accordingly, Shri Ashish Khetan, in order to conduct a sting operation, took spy-cameras and also got prepared an identity card in the assumed name of Piyush Agarwal of Delhi University. Thereafter on 16-5-2007, he came to Baroda and after conducting sting operation on Shri Dhimant Bhatt, Chief Auditor of M.S. University, Baroda and office bearer of VHP, he discussed with Shri Tarun Tejpal regarding the sting operation should be on the issue of 2002 riots. Thereafter, from May 2007 till September 2007 he had clandestinely recorded the audio/visual conversations with eighteen individuals pertaining to post-Godhra riots. The telecast of the sting operation was published on 27/10/2007 by purchasing the rights of the said sting operation by the Company "TV Today Network" and on the TV Channel - "Aajtak" under the caption of "Operation Kalank". The extracts from the said recordings were published at page 41 of the Tehelka magazine in its issue of 3-11-2007.

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**19. Order of National Human Rights Commission and CBI investigation** : NHRC taking suo-motu cognizance of the report telecast by 'Aaj Tak', a TV channel in a programme captioned "Operation Kalank" on October 25, 2007, had directed CBI to submit its report by 09.12.2008 vide order dated 5<sup>th</sup> March, 2008. CBI had submitted an interim request to the NHRC on 10.12.2008 for extension of the time. The NHRC extended time up to 10.04.2009 which was further extended up to 10.05.2009 on the second request of the CBI.

**20. CBI Report On Authentication** : The report has opined the following with regard to the authenticity of the recordings in the sting operation and Operation Kalank:

- (i) Video signals in the footage of the DVDs P-V/D-1 to P-v/D-15 match in respect of speech, utterances, laughter, stray ringing tones of mobile hand sets, movements of body parts and body language of the persons appearing in the recorded events.
- (ii) No Evidence of editing, alteration and tempering has been detected in the audio video recordings and their respective voice track recorded in the DVDs, exhibits P-V/D 1 to P-V/D-15 (ii) Cameras exhibits P-I/I and P-II/I are in working order.
- (iii) The camera characteristics of the video clips, their signals, frame coordinates and number of frames per second of the video footage and the time lag of audio track recorded I the DVD exhibits P-V/D-I to P-V/D-15 are similar to the camera signals, frame co-coordinators, number of frames per second and the time lag of audio track recordings of cameras P-I/I and PII/I and hence the DVDs could have been recorded with the camera exhibit P-I/I and the camera exhibit P-II/I.
- (iv) A large number of video clips produced in the video CDs exhibit P-V/C-I to P-V/C-5 have been taken from the video footages of DVDs exhibits PV/D-I to P-V/D-15 on the CDs. However, in some of the clips of CDs, the voice (audio signals) in the recording of DVDs have not been produced.

**21.** Therefore, while the CSFL report can vouch for the technical veracity of the tape, it cannot, obviously, vouch or comment upon any of the contents of the sting operation or the claims made therein.

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**22.** In Operation Kalank the following 18 persons belonging to different Hindu outfits like VHP, Bajrang Dal, RSS and Gujarat Police have been shown making revelations :

1	Sh. Babu Bhai @ Babu Bajrangi, S/o Shri Rajabhai Patel R/o BF-6, Bhagyoday Society, Behind Devi Cinema, Naroda, Ahmedabad.
2	Sh. Arvind Pandya S/o Sh. Himmatlal Pandya Advocate, 402, Ashirwad Flats, Opp. Saraswati Primary School, Near Maninagar Cross Road, Ahmedabad.
3	Sh. Haresh Bhatt S/o Shri Indu Prasad Bhattt, R/o 402, Shivalaya Apts, Amarkunj Society, Nehru Nagar, Ahmedabad.
4	Sh. Rajendra Vyas S/o Shr Laxmi Shankar Vyas, R/o 525 Vadigam Dariapur, Ahmedabad.
5	Sh. Ramesh Chandra Nandkishore Dave S/o Shri Nand Kishore Dave R/o 1913, Ranachodji Temple, Kadmapole, Dariapur, Ahmedabad.
6	Sh. Mangi Lal Jain S/o Sh. Dhoolchand Jain R/o 127/990, Kalapinagar, Gujarat Housing Board, Asarawa, Ahmedabad.
7	Sh. Madan Dhanraj Rawal S/o Shri Dhanraj Lalaji Rawal R/o Chamanpua, Mohanlal Vakil Ki chali, Asarwa, Ahmedabad.
8	Sh. Prahlad Raju Aseri S/o Rajuji Viramji Aseri R/o 56/12, Kamtilal Hiralal Chokis-ki-chawl, Chamanpura, Asarawa, Ahmedabad.
9	Sh. Dhaval Kumar Jayantibai Patel S/o Sh. Jayantibai Shomabhai patel R/o Badagaon, Taluka-Dhansura, Dist Sabarkantha Gujarat
10	Sh. Anilbhai Shankarbhai Patel S/o Shri Shankarbhai Virambai Patel R/o Badagaon, Taluka-Dhansura, Dist Sabarkantha.
11	Sh. Bharat Rajanikant Bhatt S/o Shri Rajanikanth Bhatt R/o Behind Shri Triveni Vidyalaya, Mehta Pura, Himmmat Nagar, Sabarrkantha Gujarat.
12	Sh. Dhimant V. Bhatt S/o Sh. Vishnu Prasad Bhatt R/o B/40, Manorath Society, New Sama Road, Vadodara.

13	Sh. Deepak N Shah S/o Sh Navneet Lal Shah R/o 3, Mahavir Colony, Kirti Sthal, Raj Mahal Road, Vadodara.
14	Sh. Dilipbhai R. Trivedi S/o Sh.Raman Lal Trivedi 1, Anand Park Society, TB Hospital Road, Mehsana, Gujarat President VHP Gujarat.
15	Sh. S. J. Gadvi, SP (Rural) Vadodara and then DSP Ahmedabad I 2002
16	Sh. K. G. Erda, Dy. S. P. Valsad and then Police Inspector, Gulbarga in 2002 Ahmedabad.
17	Sh. Suresh Richard, accused in Naroda Patia case, Ahmedabad.
18	Sh. Prakash Rathod, accused in Gulbarga Society case, Ahmedabad.

**23. Material from Sting Operation was filed in 3 out of the 9 cases:**  
The SIT filed the Tehelka tapes in Gulberg Society, Naroda Patiya and Naroda Gam being cases wherein the Tehalka material was filed which related to persons : Babu Bhai @ Babu Bajrangi, Suresh Richard and Prakash Rathod being Sr No. 1, 17 and 18 of the list above who were accused in the said matters.

**24. Evidence from the Sting Operation cited by SIT in Gulberg Society Case:** Contrary to the submissions of Ld. Advocate for the petitioner this evidence was submitted in Gulberg Society case, where in in Sessions Case No 152 of 2002 (arising out of Gulberg Society incident) the Ld. Court has not relied on the evidence of this sting operation, and in this regard the relevant extract from the judgement of trial court [**Pg 2-124 – Convenience Compilation II on behalf of the SIT**] is reproduced herein below:

*“590. No doubt, the PW-313 has carried out the sting operation upon three of the accused herein, but the material emerging therefrom does not inspire much confidence and it is settled law emerging from the judgments of the Hon'ble Supreme Court delivered in the case of R.K. Anand v. Registrar, Delhi High Court as reported in 2009 LawSuit(SC)1191 and Rajat Prasad v. C.B.I. as reported in 2014 LawSuit(SC) 337, that a sting operation can at the best be good corroborative material against the accused who are “stung” by the operation. It cannot be used against the accused other than such persons who feature in the sting operation, since in my opinion, any material emerging from such sting operation against accused who are not a part of the*

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*operation, would constitute to be a statement simplicitor of a coaccused which has no evidentiary value. Again, if we look at the real intention and purpose of the sting operation, the same is clearly to implicate and establish the role of more accused in the alleged greater conspiracy which has been very zealously pursued by some of the victims more particularly Mrs. Zakia Jafri, widow of late Shri Ehsan Jafri. However, all this material in my opinion, was always available with the S.I.T. which was an independent team of investigators set up by the Hon'ble Supreme Court of India and whose investigation was being closely monitored by the Hon'ble Supreme Court of India with utmost regularity. Even such S.I.T. has, as is a matter of record, not made much headway in such investigation, nor is any material brought for consideration of this Court which would establish a larger conspiracy and therefore, the sting operation in my opinion, has no much role to play nor has, in my opinion, any material value in deciding the guilt or otherwise of the accused herein.”*

**25. One of the accused persons named in the complaint were ‘stung’ in Operation Kalank, and he was chargesheeted in the concerned cases:**

The complainant had named 63 persons as accused in the complaint. Out of these 63 accused persons, Babu Bajrangi Patel was ‘stung’ in the Operation Kalank. It may be mentioned here that Shri Babu Bajrangi has already been charge sheeted and convicted in Naroda Patia case (Naroda P.S. I CR No. 100/2002), and chargesheeted and facing trial in Naroda Gam case (Naroda P.S. I CR No. 98/2002).

**26. The Sting Operation not part of the complaint, but SIT investigated thoroughly:**

As the complaint was filed before this sting operation was conducted, it is an admitted fact that the complaint filed by Smt. Jafia Jafri dated 08.06.2006 does not contain any allegation pertaining to the sting operation ‘Operation Kalank’, as the said Sting Operation was telecasted a year and four months after the submission of the complaint. Yet, SIT has investigated the facts pertaining to the sting operation very thoroughly.

**27.** Other persons whose statements were recorded were not accused in any case and also no corroborative evidence was found pertaining to any larger conspiracy in the said statements. Significantly, Mr. Khetan statement is also revealing [See Pg 619, 622 of Volume VB of Convenience Compilation of the Petitioner]. Reference may be made to the paras

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above. Also, it is on record that persons : Babu Bajrangi, Dhaval Jayantibhai Patel, Suresh Richard, and Prakash Rathod being the persons stung by the operation have claimed before the SIT that a script was handed over which was to be read out for the purposes of a film/documentary, etc. It may be noted that the said aspect was investigated and no corroborative material could be found/discovered substantiate any of the claims made in the sting operation. **Further, the sting, is illimitation oriented and strictly speaking, cannot even referred to as “extra judicial confession” as the same is obtained on a false premise.**

**28. ‘Fact in issue’ and investigation by SIT:** The order of Hon’ble Supreme Court dated 27.04.2009 that SIT shall look into and take steps as required in law with regard to the complaint dated 08.06.2006 by the petitioner could not have meant to reinvestigate all the cases/incidents in Gujarat post Godhra train incident, as it is against established provisions of law. It is very relevant to understand the ‘fact in issue’ in the said complaint, which was directed to be inquired/investigated by Hon’ble Supreme Court. The ‘fact in issue’ in this investigation was allegation of a larger conspiracy hatched by the named accused persons in the complaint. It is the case of the complainant that the incident in Gujarat, including Gulberg Society incident, which took place post Godhra Train are result of this larger conspiracy under the leadership of the then Chief Minister. Therefore, SIT had investigated very thoroughly all the material in the said Sting Operation which are relevant to the ‘fact in issue’ in this matter.

**29.** However, material revealed in the sting operation with regard to larger conspiracy have been thoroughly investigated. As per established provisions of law SIT could not have relied on the material revealed in extra-judicial confession made in this sting operation against any person other than who had made extra-judicial confession, and therefore the Closure Report does not extensively mention regarding the Tehelka Sting operation. As stated herein above only one accused person named in the complaint is in the sting operation, who has been chargesheeted in the concerned cases. He has been convicted in one of the cases and facing trial in the other.

**30.** The SIT has recorded the statements of the persons who figure in the said sting operation and revealed anything relevant with regard to the fact in issue.

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1	Sh. Babu Bhai @ Babu Bajrangi, S/o Shri Rajabhai Patel R/o BF-6, Bhagyoday Society, Behind Devi Cinema, Naroda, Ahmedabad.
2	Sh. Arvind Pandya S/o Sh. Himmatlal Pandya Advocate, 402, Ashirwad Flats, Opp. Saraswati Primary School, Near Maninagar Cross Road, Ahmedabad.
3	Sh. Haresh Bhatt S/o Shri Indu Prasad Bhatt, R/o 402, Shivalaya Apts, Amarkunj Society, Nehru Nagar, Ahmedabad.
4	Sh. Rajendra Vyas S/o Shri Laxmi Shankar Vyas, R/o 525 Vadigam Dariapur, Ahmedabad.
5	Sh. Ramesh Chandra Nandkishore Dave S/o Shri Nand Kishore Dave R/o 1913, Ranachodji Temple, Kadmapole, Dariapur, Ahmedabad.
6	Sh. Dhaval Kumar Jayantibai Patel S/o Sh. Jayantibai Shomabhai patel R/o Badagaon, Taluka-Dhansura, Dist Sabarkantha Gujarat
7	Sh. Anilbhai Shankarbhai Patel S/o Shri Shankarbhai Virambai Patel R/o Badagaon, Taluka-Dhansura, Dist Sabarkantha.
8	Sh. Bharat Rajanikant Bhatt S/o Shri Rajanikanth Bhatt R/o Behind Shri Triveni Vidyalaya, Mehta Pura, Himmat Nagar, Sabarkantha Gujarat.
9	Sh. Dhimant V. Bhatt S/o Sh. Vishnu Prasad Bhatt R/o B/40, Manorath Society, New Sama Road, Vadodara.
10	Sh. Deepak N Shah S/o Sh Navneet Lal Shah R/o 3, Mahavir Colony, Kirti Sthal, Raj Mahal Road, Vadodara.
11	Sh. Dilipbhai R. Trivedi S/o Sh.Raman Lal Trivedi 1, Anand Park Society, TB Hospital Road, Mehsana, Gujarat President VHP Gujarat.
12	Sh. Suresh Richard, accused in Naroda Patia case, Ahmedabad.
13	Sh. Prakash Rathod, accused in Gulberga Society case, Ahmedabad.

**31. Ex-facie false claims made in the sting operations make them unreliable and do not inspire confidence of any independent investigating team :** SIT has recorded statements of other witnesses and collected documents regarding the facts disclosed in the sting operation

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which are relevant with regard to larger conspiracy, i.e., fact in issue. It is relevant to highlight some of the issues raised by the petitioner pertaining to sting operation:

- Para 254 of the Protest Petition: 254. *Babu Bajrangi, Bajrang Dal leader, Naroda, Ahmedabad, to Tehelka: Bajrangi (prime accused in the Naroda Patiya massacre) says he was present in Godhra at the time of the train fire and vowed to kill four times as many people in Patiya as the kar sevaks who died in Godhra.*

**FALSITY :** The call details of Babu Bajrangi [Pg 125-130 – **Convenience Compilation II on behalf of the SIT**] clearly establishes that he was in Ahmedabad from morning till 11:15 hours on 27.02.2002, and therefore he could not have been in Godhra at the time of Godhra Train incident.

- Number of startling materials was revealed in sting operation of Haresh Bhatt, the then MLA from Godhra. In his statement recorded by SIT on 29.03.2010 [Pg 674, **Vol VB of Convenience Compilation of the Petitioner**] he had stated as follows:

*The news about burning of a railway coach at Godhra Railway Station was received by me through radio at about 14:00 hrs on 27-2-2002. At that time, I was in village Naika. After hearing the news, I came to Ahmedabad City in the evening. At Ahmedabad, I came to know that the dead bodies of some of the Ram-sevaks killed in the Godhra incident were being brought to Sola Civil Hospital Ahmedabad. I did not visit VHP office at Ahmedabad. I do not know who took the decision for the Gujarat bandh and Bharat bandh calls on 28-2-2002. I came to know about these bandhs from news paper reports on 28-2-2002. I reached Sola Civil Hospital at about 7:30- 8:00 pm on 28-2-2002 and remained there, as the dead bodies were being brought from Godhra by road. At Sola Civil Hospital, there were many workers of VHP. We waited for the dead bodies to come. Finally, the dead bodies arrived at about 2:30 or 3:00 am on 28-2-2002. I had come to know that Shri Jaydeep Patel had gone to Godhra to bring the dead bodies of Godhra victims to Ahmedabad. I remained there for sometime and came to my house in Ahmedabad and slept. I came to know about the bandh in the morning. I went to my village at about 12:40 hrs by my personal car, as my mother was sick. I remained in the village for about one week and did not come to*

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*Ahmedabad. As a Vice President of VHP, I did not take part in Gujarat bandh and Bharat bandh on 28-2-2002 and 1-3-2002, respectively. No incident of rioting, arson etc. took place in my village. No one approached me during the riots. I had not been named in any of the FIR registered during the riots either at Ahmedabad or at any other place. I had collected donations totaling 10-12 lakhs for the Hindu victims from the traders at C.G. road, Ahmedabad City and deposited the same with VHP officer. I do not know anything about the camps, where the Hindu victims were kept.*

- **FALSITY** : To verify the claims of Shri Haresh Bhatt, his Call Detail Records were analysed, which reveals that he was present at Ahmedabad till 9:30 hrs on 27.02.2002. His location was again reflected in Ahmedabad directly at 18:40:21 hrs which support his claim that he had went to his village during the intervening period. Again on 28.2.2002 his location remained at tower of mobile service provider located in Paldi (close to his residence) in Ahmedabad till 28.02.2002 till 12:00:04 hrs, which again support his claim that he went to his village for a week. Further, Shri Haresh Bhatt had not been named in any of the FIRs registered pertaining to riot cases in Gujarat that took place post-Godhra Train incident. It is submitted that even he has been not been named as accused persons in the complaint given by the petitioner. In such a situation there is only conclusion which can be drawn, i.e. there is no material in the Tehelka Sting operation which supports the allegations of the complainant.
  - With regard to the claim of the petitioner that Tehelka Sting operation reveals that there was “buildup of arms and ammunition” in Gujarat even before Godhra Train incident. It is of paramount importance that the materials disclosed in the sting operation should be corroborated or discarded on the basis of other material available with SIT. In this regard the judgement of trial court in Sessions Case 152 of 2002 and allied matters (arising out of Meghaninagar PS FIR No. 67 of 2002, commonly known as Gulberg Society Case) regarding use of fire-arms in the incident observe as follows:

*Para 722.....Again, there is absolutely no material in the shape of oral evidence or documentary evidence which would even remotely establish any inmate, victim, resident or person who had taken shelter in Gulbarg Society, having*
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*sustained bullet injuries in private firing. Again, there is no recovery of any bullet casing or any such private firing by any member of the mob. The only casings and material that have been recovered, at the cost of repetition, are empty cartridge shells and bullet casings, ballistically established to have been fired from the licensed weapon further established to be of the ownership of late Shri Ehsan Jafri...*

**FALSITY** : There exists no corroborative material on record for the same and further, no material could be discovered. Late Shri Ehsan Jafri is husband of the present petitioner, and victim in this case. However, judgment unequivocally observes that no other fire-arm was used other than by the said victim. Further, there is no evidence or allegation regarding use of any 'bomb' in the said case.

**32. Clarification relating to 3 persons - with the name Anilbhai Patel:** The sting was carried out in respect of (i) Shankarbhai Patel VHP worker, The other persons is (ii) Anil Tribhuvandas Patel was a minister, who joined BJP in latter part of 2002. [one of the 63 names] and the last is (iii) Anil M. Patel - BJP Doctors Cell. The SIT recorded statements of all three persons. The Petitioner has referred to statements of the doctor [**Pg 626 of Volume VB of Convenience Compilation by Petitioner**] as if he was concerned with the sting rather than reading the statement of Anil Shankarbhai Patel.

**33. Sting of Shri Arvind Pandya:** It is the claim of petitioner that one of the person who was 'stung' in Operation Kalank, namely Shri Arvind Pandya, was Public Prosecutor in riot cases. It is submitted that Shri Arvind H. Pandya was appointed as one of the defending Spl. Counsel for Gujarat State in June, 2002 to defend the Govt. before Nanavati-Shah Commission of Inquiry and he resigned in Oct. 2008. [*The final report published in 2019 of the said Commission is being provided separately*]

#### **ALLEGATIONS PERTAINING TO CALL RECORDS**

**34.** The Petitioner has alleged that SIT has failed to :

- collect the Call Detail Records of the accused persons,

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- not analysed the available Call Detail Records from CD supplied by Shri Rahul Sharma
- failed to seize the phones of the persons involved.

**35. No Call Detail Records are available with service provider after one year:** The incident in consideration for these proceeding happened in the year 2002, and the SIT came into existence in the year 2008. The order of Hon'ble Supreme Court to look into and inquire into the complaint of the petitioner dated 08.06.2006 was issued on 27.04.2009. In the year 2002, two mobile operators were providing services in the Gujarat State, namely, AT & T and Celforce. Relevant meta data, i.e. electronic call records, are maintained by the service providers for one year only and therefore it was not possible to obtain any call records by the SIT from the mobile service providers. In this regard the 'License Agreement for Provision of Unified Access Services' provide as under:

*"The LICENSEE shall maintain all commercial records with regard to the communications exchanged on the network. Such records shall be archived for at least one year for scrutiny by the Licensor for security reasons and may be destroyed thereafter unless directed otherwise by the licensor"*

It is submitted that the same is evident from the statement of **Viraf Fanibanda statement on 28.11.2008** - Head legal Advisor Idea Cellular and **Dhiren Jayantilal Laria statement on 28.11.2008** - Legal Department Vodafone, recorded by the SIT. The said statements have not been placed on record by the Petitioner.

Therefore, the allegation of the Ld. Counsel for the petitioner that SIT has failed to collect the Call Detail Records of the various involved persons is without any merit.

**36. Authentication of CD of Call Detail Records supplied by Shri Rahul Sharma:** Shri Rahul Sharma, I.P.S. (GJ-1992) was serving as Deputy Commissioner of Police (Control Room), Ahmedabad City during 24-3-2002 to 5-7-2002. Shri Rahul Sharma was authorized to assist supervisory officer in investigation of post-Godhra riot cases which were being investigated by Crime Branch-Ahmedabad City, by the then Commissioner of Police, Ahmedabad City. He was neither Investigating Officer nor direct Supervisory Officer in the Naroda Police Station CR no. I 193/2002. Meanwhile, Shri Rahul Sharma while assisting the Joint Commissioner of Police (Crime Branch) obtained Compact Disks containing call details in connection with

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investigation of Naroda Police Station CR no. I 193/2002 from two different Cell Phone Service Providers (M/S Celforce and M/S AT&T) containing call details of all subscribers in Ahmedabad City and Godhra as case property of the offences under investigation. Further, Shri Rahul Sharma had failed to handover the said case property to the investigating/supervisory officer of the case, nor got it entered into the Register of Case property (Muddamal) Register, nor did he inform the court of jurisdiction about the seizure of aforesaid case property. However, during the course of further investigation conducted by SIT, Shri Rahul Sharma had produced the abovementioned Compact Disks on 31.5.2008. These C.D.s were seized by the Investigating Officer and taken as evidence in the said investigation. Further, two C.D.s were collected by the Investigating Officer from the Commission of Inquiry headed by Justice Nanavati, which were submitted before the Commission by Shri Rahul Sharma during the course of examination in the Commission. Also, one C.D.s containing the same information was submitted by Shri Amreshnhai N. Patel, Jan-Sangharsh Manch, which was obtained by him from the Commission of Inquiry, was also submitted before the Investigating Officer, and taken on record.

**37.** It is submitted that it was not possible for SIT to obtain the certificate of 65B of the Indian Evidence Act, as the original CDs were never produced by Shri Rahul Sharma. Also, the data from the CDs was copied by Shri Rahul Sharma in his personal computer and format changed by changing in zipped format. The act of not handing over the original C.D.s of call details to the Investigating Officer of the relevant case, and copying in his home computer was extremely detrimental to the trial of these cases. This fact is evident from his statement which is at **Pg 106 of Vol II of the Convenience Compilation of the Petitioner.**

**38.** It is very clear from the above extract that Shri Rahul Sharma had failed to ensure the integrity of the data, and failed to provide the original CDs of the call detail records of the two mobile service providers. In view of this fact obtaining certificate under section 65B of the Indian Evidence Act was impossible for SIT. However, in the given circumstance SIT had made best efforts to authenticate the available data. During the course of investigation, the C.Ds as collected from Mr. Rahul Sharma, Justice Nanavati Inquiry Commission and Mr. Amrish Patel were sent along with letter to Forensic Science Laboratory, Gandhinagar, for examination, comparison and checking the contents available therein. Forensic Science Laboratory,

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Gandhinagar post comparison (i.e. comparing and examining the CDs collected from: 1. Mr. Rahul Sharma, 2. Justice Nanavati Inquiry Commission, 3. Mr. Amrish Patel), has opined that MD5 Hash value of the files in all the three CDs were found same, which shows that these files were same files. SIT also collected the CPU of the computer of Mr. Rahul Sharma. The F.S.L, Gandhinagar had opined that the files containing call data records or fragments of the files could not be found on the computer storage media. SIT also recorded statements of various witnesses under Section 161 of the Code of Criminal Procedure, 1973 for tracing the original CDs and authenticating the available data. However, due to lack of proper procedure by Shri Rahul Sharma in obtaining the CDs and providing it to the concerned Investigating Officer, original CDs could not be traced. Further, the call details of Gandhinagar tower, where most of the functionaries of Government of Gujarat were placed, are not available with the SIT as the same had not been requisitioned/obtained by Shri Rahul Sharma during investigation of the riot cases. This was a serious lapse as office of DG & IGP Gujarat, Secretariate of Govt. of Gujarat and all ministers were located in Gandhinagar.

**39. Call Detail Records available with SIT were investigated properly and proper conclusions were drawn:** The Call Detail Records as available from the CDs provided by Shri Rahul Sharma were investigated very thoroughly by the SIT. The perusal of Closure Report reflects that appropriate conclusion have been drawn on the basis of the detailed analysis. However, these call detail records had failed to support the allegations of the petitioner. Some of the conclusions drawn in the Closure Report on the basis of call detail analysis are reproduced herein-below:

- Late Ashok Bhatt had earlier stated 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 Shri George Fernandes, who had gone to CP's office. The call detail records of Govt. mobile phone no. 9825039877 of Late Ashok Bhatt show that he returned from Godhra to Ahmedabad on 28-02-2002, at about 05:16:51 hrs. Thereafter, the call details do not show its location till 15:50:43 hrs on 28-02-2002, when the
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location was traced to Koba Circle, Gandhinagar. During this period, it is presumed that he was at Gandhinagar. His location on 28-02-2002 at 16:16:37 hrs to 17:47:22 hrs was shown as Shahibaug Kedar Tower, Ahmedabad City, which would conclusively prove that during this period he attended CM's press conference at Circuit House Annexe, Shahibaug, Ahmedabad City. Thereafter, again the location was seen at 17:59:22 hrs at Koba Circle, Gandhinagar, which shows that he was returning to Gandhinagar. It may thus be seen that these call details would conclusively go to established that Late Ashok Bhatt did not visit Shahibaug Police Control Room on 28-02-2002. *(page 268 of the Convenience Compilation filed by the Respondent)*

- Shri Pande has categorically stated that neither Late Ahesan Jafri, Ex-MP, nor anybody else from Gulberg Society contacted him either on his landline phone or mobile phone on 28-2-2002, seeking help. The call details of Govt. mobile phone no. 9825048303 for 27/28-2-2002 allotted to Shri P.C. Pande have been examined, but the same does not contain any call from Late Ahesan Jafri, Ex-MP from his landline no. 079-2125166. Enquiries further revealed that Late Ahesan Jafri, Ex-MP did not have any mobile phone and there was no other landline or mobile phone in the Gulberg Society (except the landline at late Ahesan Jafri's house). Further, the call details of Shri P.C. Pande show that 302 incoming/outgoing calls had been received/ made to/from his mobile phone on 28-02-2002, between 0035 hrs to 2400 hrs. A close scrutiny of the call details show that Shri Pande had received/made calls to/from his mobile phone almost every minute or every two minutes and the phone was never switched off. However, no calls had been received either from Late Ahesan Jafri, Ex-MP or any other resident of the Gulberg Society. *(page 323 of the Convenience Compilation filed by the Respondent)*
  - Regarding Dr. Anil T. Patel of Ahmedabad, he was located at a distance of about 168 kms from Lunawada and even if it is presumed for the time being that he did receive a call between 3 pm to 6 pm to attend the alleged meeting, it was almost impossible to reach Lunawada from Ahmedabad, attend the meeting late in the night and then return to Ahmedabad in the
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night itself. It would be worth while to mention here that the call details of mobile phone of Dr. Anil Patel showed its location at 2148 hrs on 27-02-2002, at Ahmedabad. In view of these facts, by any stretch of imagination Dr. Anil Patel could not have attended the alleged meeting at Lunawada late in the night of 27-02-2002. This allegation appears to be a figment of imagination of some interested elements based on the rumours and is therefore, not established. (Page 332 of the Convenience Compilation filed by the Respondent)

**40. Seizing of phone by SIT after seven years would have served no purpose:** It has already been stated that SIT came into existence in the year 2008, and the order to look into this complaint was made in the year 2009. None of the users of the mobile phones would have continued to use same handset for more than seven years, and seizing the mobile phones of the accused persons would have been useless fishing inquiry, and has served no purpose.

#### **WITNESSES RELIED UPON BY THE PETITIONER ARE TAINTED**

**41. Shri R B Sreekumar :** Most of the allegations in the complaint of Smt. Jafia Jafri are drawn from the nine affidavits filed by Shri R B Sreekumar before Nanavati-Shah Commission. It is a matter of record that Shri R B Sreekumar, Rtd. IPS was posted as Additional Director General of Police (Armed Unit), Gujarat at the time of riots and the facts stated by Shri R B Sreekumar in the nine affidavits filed before Justice Nanavati-Shah Commission of Inquiry does not derive any of its content from the personal knowledge/information which he might had received as occupant of this post. Similarly, perusal of his statements recorded by the Special Investigation Team reveals that the knowledge/information of all the facts, pertinent to the complaint, mentioned by him is acquired after he was posted as Additional Director General (Intelligence), Gujarat on April 9 2002. Further, Shri R. B. Sreekumar did not make any allegations against the State Government in his initial two affidavits filed before Justice Nanavati-Shah Commission of Inquiry, and started alleging only from third affidavit dated 09.04.2005. The motive behind it was that in February 2005 he was superseded by his junior Shri K. R. Kaushik, as the recommendations of the

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Departmental Promotion Committee which considered a pending criminal proceeding against Shri R. B. Sreekumar, initiated by JMFC Bhuj.

**42.** Apart from the above, specific allegations made in the affidavits of Mr. Sreekumar have been thoroughly investigated by the SIT and have been found to be incorrect. The same have been encapsulated in detail under various heads in the closure report.

**43.** It is pertinent to point out that recently he is named accused person in the FIR filed by CBI in ISRO spying case which was registered under directions of Hon'ble Supreme Court. In **S. Nambi Narayanan v. Siby Mathews, (2018) 10 SCC 804 [Pg 279-300 – Convenience Compilation II on behalf of the SIT]**, this Hon'ble Court, ordered as under :

*“44. Mr Giri, learned Senior Counsel for the appellant and the appellant who also appeared in person on certain occasions have submitted that the grant of compensation is not the solution in a case of the present nature. It is urged by them that the authorities who have been responsible to cause such kind of harrowing effect on the mind of the appellant should face the legal consequences. It is suggested that a committee should be constituted to take appropriate steps against the erring officials. Though the suggestion has been strenuously opposed, yet we really remain unimpressed by the said oppugnation. We think that the obtaining factual scenario calls for constitution of a committee to find out ways and means to take appropriate steps against the erring officials. For the said purpose, we constitute a committee which shall be headed by Justice D.K. Jain, a former Judge of this Court. The Central Government and the State Government are directed to nominate one officer each so that apposite action can be taken. The Committee shall meet at Delhi and function from Delhi. However, it has option to hold meetings at appropriate place in the State of Kerala. Justice D.K. Jain shall be the Chairman of the Committee and the Central Government is directed to bear the costs and provide perquisites as provided to a retired Judge when he heads a committee. The Committee shall be provided with all logistical facilities for the conduct of its business including the secretarial staff by the Central Government.”*

**44.** Thereafter, in **S. Nambi Narayanan v. Siby Mathews 2021 SCC OnLine SC 760 [Pg 301-302 – Convenience Compilation II on behalf of the SIT]** vide order dated July 26, 2021, this Hon'ble Court, noted as under :

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- “1. Heard learned counsel for the parties.
2. We have perused the reports submitted by the Office of Joint Director, HOZ, Central Bureau of Investigation and status report submitted by Mr. Arvind Kumar Sharma, Advocate (Central Agency Office).
3. It is mentioned in the report that after examining all relevant aspects, the FIR has been registered. The CBI has not uploaded the FIR, as of now, and is inviting order of the Court in that regard. That be done in the course of the day.
4. We hasten to add that in the earlier order, this Court had directed the CBI to ensure that the report submitted by Justice D.K. Jain Committee should not be made public. Now, that the CBI has finally decided to proceed in the matter, further steps after registration of FIR must follow as per law and no directions are required from this Court in that regard.
5. Needless to observe that the respondents herein or the persons named as accused in the FIR, can take recourse to all permissible remedies available to them in law, which will have to be decided on its own merits and in accordance with law.
6. Further, after registration of FIR, the Investigating Agency must collate material on its own and not proceed merely on the basis of the report submitted by Justice D.K. Jain Committee. In other words, that report need not be made the sole basis to proceed against the respondents or persons named as accused in the FIR now registered by the CBI.
7. All contentions available to both sides in the proceedings, which are consequence of registration of FIR, must proceed as per law.
8. As the Committee report has been finally acted upon, we accede to the request of Mr. S.V. Raju, learned Additional Solicitor General that the Committee constituted under the orders of this Court, may cease to function hereafter.
9. We appreciate the efforts put in by the members of the Committee, including the Chairman of the Court appointed Committee - Shri Justice D.K. Jain.”

He was serving in IB at that point of time.

## HATE SPEECH ALLEGATIONS

45. The complaint of Smt. Jakia in this regard was limited to the extent stating that :

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*“Why was and has then and has not been since, no action against vernacular press publishing communally inciting news and articles, despite proposals from SP Bhavnagar, CP Ahmedabad and ADGP (Int.), Sreekumar ? Please note that ADGP (Int.), Sreekumar had even presented one of such reports as an exhibit to the Nanavati Commission, on 31.8.2004, during his cross-examination?”*

**[@Pg. 58 OF Volume - III of SLP]**

*“The accused no. 20 namely Dr Praveen Togadia, International general secretary, VHP c/o Dhanvantri Hospital, Ahmedabad; Res. 50, Vaibhav Bungalow - 2, Nr.Gulab Tower,Memnagar,Ahmedabad-380061.Off. 11,Mahalaxmi Society, Near Mahalaxmi Four Roads, Paldi, Ahmedabad-380007. The international general secretary of the Viswa Hindu Parishad, the owner of Dhanwantri Hospital, Ahmedabad and the proud author, verbal and written of several incendiary speeches that have breached criminal law by inciting violence against the religious minority.”*

**[@Pg. 64 OF Volume - III of SLP]**

**46.** It may be noted that most of the allegations mentioned in this volume of Convenience Compilation are brought on the record by the petitioner in the Protest Petition filed before Ld. Magistrate when the Closure Report of SIT was under consideration. The petitioner at every stage has kept on expanding the allegations which does not have any bearing with the original complaint. To cite an instance the petition states that :-

*“a. 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 SLP**] too have been on record during this period making a series of hate speeches that constitute criminal offences [**@ Para 169 of the Protest Petition - Pg. 283 Volume IV of the SLP**]. 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.*

**47.** The annexed documents quote from various speeches of Shri Praveen Togadia, with headings. It should be mentioned here that Shri Praveen Togadia was not in Gujarat at the time of the riots, and came to Gujarat only

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in May, 2002. Petitioner has made interpretations of the various statements made by various persons, wherein to illustrate this fact certain allegations are reproduced herein-below:

*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 – Pg.284 Volume IV of the SLP**]. 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.*

*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 SLP**].*

**48.** In the Protest Petition the petitioner has stated that :-

*“168. — Incidents like this (Godhra) show the psyche of a community. What was the reason for the pilgrims who were attacked when they came from Amarnath? What was the reason? That is the psyche, I say...communal violence can be checked only (when we understand) why this incident happened, who did it, what is the psyche behind it? This should be studied”. — Acharya Giriraj Kishore; (Newshour, Star News, 27 February 2002.)”*

**49.** Bare perusal of these statements does not reveal any relevance to the cause of the petitioner that a larger conspiracy was responsible for the post-Godhra riots in Gujarat. It may be noted that as far as the overall allegations of “hate speech” are concerned, the State of Gujarat, on enquiry, has informed that only out of the 2000 cases which were before this Hon’ble Court previously, a total of 232 cases [**Pg 373-419 of the Convenience Compilation II filed by the SIT**] had been registered under Section 153A or Section 295 or Section 295A.

**50.** The Petitioner has also alleged that “*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*

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(VHP) and publishing houses for propagating an incendiary rhetoric”. In this regard the allegation of the petitioner in the original complaint was “Failure to take action against the print media making communally inciting reports though State Intelligence Bureau and some field officers had recommended for action, as noted in the first Affidavit dated 06.07.2002 of Shri R.B. Sreekumar during his cross-examination before the Nanavati-Shah Commission on 31.08.2004.” [Page 1397 – Volume – VIII of the SLP]

51. It is stated that regarding the same SIT had submitted in its Closure Report that “During the course of enquiries by SIT, Govt. of Gujarat has intimated in writing that no criminal action had been taken on the recommendations of Shri R.B. Sreekumar against the print media. However, this material is not sufficient to make out any criminal case against any of the accused persons.”

52.

53. It is stated that it was not the remit of the SIT to investigate every utterance of hate speech during a surcharged atmosphere of riots after 7 years of the incident. Further, in the absence of any link to any organised attempt to instigate a community, the allegations of sporadic utterance does not further the case of the complainant any further.

**BUILD UP OF COMMUNAL MOBILISATIONS BY VHP CADRES- STOCK-PILING AND TRANSPORTATION OF ARMS AND AMMUNITION BEFORE THE GODHRA INCIDENT ON 27.2.2002; FROM SIB RECORDS (STATE INTELLIGENCE BUREAU), GUJARAT**

54. At the outset, in this regard, it may be noted that the SIB msgs, relied upon by the Petitioner themselves, show that the State Government and the Police were *proactive in dealing with the crisis* that was burgeoning. Further, it is submitted that the same is further corroborated by the proactive steps of calling the army to the State at the earliest instance.

55. The Petitioner has relied upon the messages from State Intelligence Bureau to substantiate this allegation. It is submitted that the said State Intelligence Bureau being referred is Criminal Investigation Department (Intelligence) of the State Police, is responsible to collect intelligence, which may have a bearing on the law and order situation in the State and in the country. At the time these messages were sent, this department was headed

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by accused number 60, Shri G C Raiger, the then ADGP, in the complaint. The other authorities who were supervising the functions of this department are all names accused persons in the complainant, such as DGP Gujarat, Minister of State Home, and the then Chief Minister, where they had been alleged to be part of larger conspiracy leading to various incidents mentioned in the complainant. It is submitted that if that is the case and there was a pre-planned conspiracy by the accused persons even before the Godhra Train incident, as alleged by the petitioner, these messages would not have been sent.

**56.** These messages in fact indicate that intelligence agencies of the State Police were collecting the relevant intelligence and, more importantly, disseminating to the concerned authorities.

**57.** The trial of the incident at Godhra Railway station has not indicated any indication that state authorities had any prior information regarding the incident. The Protest Petition discussing the 'Prelude to Godhra' conclude in **para 471 page 404 Vol IV SLP** filed by the petitioner as : *"Moreover they were provoked by the unruly and aggressive kar sevaks who had been aggressively attacking members of the minority community even before the Sabarmati Express train had reached Godhra, five hours late on 27.2.2002. This violence continues and is allowed even as the train proceeded towards and reached Ahmedabad Railway station in the sensitive Kalupur area on the afternoon of 27.2.2002 while the chief conspirator is on his way to Godhra."* The contention of the petitioner that Godhra Train incident was also a preplanned conspiracy is ridiculous, to say the least. In this regard Hon'ble High Court of Gujarat in the Confirmation Appeals in Godhra Train case [**Pg 303-335 – Convenience Compilation II on behalf of the SIT**] had concluded that the incident was a preplanned conspiracy by the convicted accused persons. The relevant paragraph reads as follows:

*"10 The testimonies of the above witnesses not only establish intention of members of unlawful assembly, but their presence in furtherance of their common object to commit the crime and their testimonies are inextricably interwoven to establish execution of conspiracy by the core group of conspirators and to make an assault on the train and to set on fire coaches inasmuch as members of unlawful assembly were armed with deadly weapons, acid bulbs, burning rags, iron pipes, etc. and in spite of round of firing, the mob refused to disburse and continued to make violent attack. When members*

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*of unlawful assembly were apprehended and they were rounded off by the police once again an attempt was made by such members to release them. All these would collectively reveal purpose and design viz. object of unlawful assembly to commit the crime for which they were charged.”*

**58.** The complaint (Page 13 of the Vol III of the SLP filed by the petitioner) in paragraph 9 states that there was ‘intelligence failure’ on part of State machinery. It may be noted that any intelligence failure on the part of State intelligence machinery does not imply any criminal conspiracy on the part of state authorities. Further, the judgment of Hon’ble High Court of Gujarat in the confirmation appeal of the convicted accused persons in Godhra Train case also indicate that there was failure on the part of state machinery in maintaining law and order at the place of incident. However, there is absolutely no material to support the case of petitioner that the Godhra Train incident was resultant of the preplanned conspiracy by the authorities of state government.

**59.** The Closure Report had deal with the allegations of alleged intelligence failure on the part of State police machinery. A paragraph of the Closure Report is reproduced herein below:

*A-25: Shri K. Chakravarthi, formerly DGP, Gujarat State.*

*Shri K. Chakravarthi has stated that he remained posted as DGP, Gujarat State from 01-04-2001 to 31-01-2004. He has further stated that in February, 2002, intelligence reports had been received about the movements of kar-sevaks from Gujarat to Ayodhya, in connection with Ram Maha-Yagna to be held on 15-03-2002. Further, a specific intelligence report was sent to IG (CI), U.P., Lucknow by SP, Western Railway, Vadodara vide fax message dated 16-02-2002 that Shri Prahlad J. Patel, President, Bajrang Dal, Mehsana with a group of 150-200 Bajrang Dal workers would be going to Ayodhya for Maha-Yagna on 22-02-2002, from Mehsana Railway Station for Ahmedabad and further on 24-02-2002, from Ahmedabad to Ayodhya by Sabarmati Express of 24-02-2002. It was further intimated that the said group would return on 26-02-2002, from Ayodhya at night for Ahmedabad and would reach Ahmedabad on 28-02-2002 morning. According to Shri Chakravarthi, no specific information regarding the movements of kar-sevaks on return journey was received till 27-02-2002 and that a wireless message*

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*dated 27-02-2002 was received from IG (CI), Lucknow only on 28-02-2002 at 0815 hrs.*

**(Page 366 of the Convenience Compilation filed by the SIT)**

**60.** SIT has recorded statements of various officials of State Intelligence Bureau, such as Shri P B Upadhyay DCI Communal, Shri O P Mathur IGP CID IB, Shri G C Raiger ADGP CID IB, etc. No evidence has come on record that failure to collect intelligence was a deliberate act of omission on the part of state government authorities.

**61.** The relevant paragraph from the statement of Shri Ashok Narayan, the then Additional Chief Secretary (Home), Gujarat dated 12.12.2009 [**Pg 336-347 – Convenience Compilation II on behalf of the SIT**] recorded by the SIT and referred in above submission is reproduced hereinbelow:

*“The State of Gujarat has a long history of communal riots way back to 1714. Thereafter riots had erupted in the State on many occasions during the last three centuries. However, post-independence, major riots took place in the State in 1969, 1985 and 1992-93. Inputs regarding the communal situation in the State had been received from the State Intelligence Bureau as well as Intelligence Bureau, Ministry of Home Affairs, Government of India. This information was sent to the concerned authorities to initiate appropriate preventive and remedial measures. Actionable information was analysed and communicated to the DGP and other field formation for further necessary action. At the time when I took over as ACS (H), the communal atmosphere in Gujarat State was neither surcharged nor volatile prior to 27.02.2002. It may be mentioned here that the programme of Shilanyas for Ram Mandir at Ayodhya was announced quite a few months back to be done on 15<sup>th</sup> March 2002 and this announcement had arose some passions across the country. In Gujarat State Intelligence outputs were available to the government about the movement of the Karsevaks from different places in Gujarat to Ayodhya. Keeping in view this information all SsP/CsP were alerted on 07.02.2002 about the movements of Karsevaks. The Government had specific information that on 16.02.2002 that Shri Prahladbhai J. Patel, President of Bajrang Dal would leave for Ayodhya for Maha Yagna along with 150-200 persons. Further on 22.02.2002 he will depart from Mehsana railway station at 15.40 hours by Delhi-Ahmedabad Mail train for Ahmedabad and on 24.02.2002 they*

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*would leave Ahmedabad railway station by Sabarmati Express train 9165 Dn. at 20.25 hours for Ayodhya. Also there was information that they will return on 26.02.2002 from Ayodhya at night and would reach Ahmedabad on 28.02.2002 morning. The group was supposed to carry Trishuls with them. Accordingly this message was passed on by SP Western Railway, Vadodara Gujarat to IG Communal Intelligence, UP, Lucknow vide fax message dated 16.02.2002. However, no specific information had been received from the IG Communal Intelligence, UP about the return journey of Karsevaks or from anyone else.”*

**62.** The perusal of the statement reflects that it is not supporting by any means the case of petitioner. The purported failure of the Gujarat intelligence machinery to collect advance intelligence from Uttar Pradesh may be intelligence failure, but implying conspiracy to this act, especially when no material is available in this regard, is without any merit.

**63.** Petitioner has alleged that various police functionaries of Gujarat Police had not followed the directions given in various provisions of Gujarat Police Manual regarding the handling of communal disturbance and communal riots. Police are a highly interactive and dynamic organization. Policemen are required to handle situations of different nature. These situations sometimes are unpredictable being sporadic, sudden and spontaneous in nature. Policemen under all circumstances are expected to work always in accordance with the provisions of the laws of the land. In order to deal with the routine and static functions, as well as, for handling the dynamic and ever changing law and order incidents, they need to have clear and specific instructions for dealing with all these situations. In order to enable the policemen function lawfully and for discharging their various duties efficiently, it is necessary that police manuals are formulated and made available to them as a reference and guidebook during an hour of need. The instructions contained in any police manual should be able to help and assist the policemen in dealing with different issues and situations whether arising out of law and order conditions, crime management matters or any other professional demand. Gujarat has long history of communal disturbances, and Gujarat Police Manual extensively deals with the handling of communal disturbance and communal riots. It should be understood that the situation after Godhra train incident was unprecedented, and the investigation has shown that the situation went beyond control of police

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authorities at various places. It should be understood that following these guidelines verbatim by police for dealing the communal tension and riots is not possible and that is also not the purpose of the manual, as it only provides the guidelines in this regard.

## EVIDENCE OF COMMISSION OF INQUIRY AND OTHER COMMISSIONS

64. It is allegation of the Ld. Counsel for the petitioner that SIT failed to consider the reports and evidence recorded by various commissions, including Nanavati-Shah Commission of Inquiry, National Human Rights Commission, Concerned Citizens Tribunal, etc. SIT failed to record the statements of presiding officer of these commissions. Further, it is alleged by Ld. Counsel for the petitioner that Ld. Magistrate and Hon'ble High Court had also failed to appreciate this lacuna in the impugned judgements.

65. It is submitted that almost the entirety of the complaint of the Petitioner was based on the affidavits filed before the Nanavati Shah / Mehta Commission. It is submitted that in a subsequent development, the said Commission has delivered its final report and has taken note same content of the allegations placed by the Petitioners herein. It is submitted that the Commission findings are, in totality, in sync with the Closure Report of the SIT [Pg 131-278 – Convenience Compilation II on behalf of the SIT]. The relevant findings are quoted as under :

“150. *The evidence further discloses that in the morning of 28.2.2002, a high level meeting of the Chief Minister and Sr. Officers was held to review the law and order situation. The **wireless message was then sent by Home Department to all the CPs, DMs, and SPs for taking certain actions.** The said message was:*

**“IN VIEW OF THE DEVELOPMENT ON ACCOUNT OF TODAY’S GUJARAT BANDH, YOU ARE DIRECTED TO ROUND UP ANTI SOCIAL AND KNOWN COMMUNAL ELEMENTS UNDER THE PREVENTIVE LAWS (.) MOBILE PATROLLING SHOULD BE INTENSIFIED AND ADEQUATE BANDOFAST MUST BE ARRANGED AT SENSITIVE AREAS AND PLACES WHICH HAVE WITNESSED VIOLENCE (.) ADEQUATE PROTECTION SHOULD ALSO BE PROVIDED**

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TO PLACES OF WORSHIP (.) EFFECTIVE ACTION SHOULD PROMPTLY BE TAKEN TO DISPERSE UNRULY MOBS /UNLAWFUL ASSEMBLIES (.) ELEMENTS INDULGING IN VIOLENCE AND BENT UPON TO JEOPARDIZE COMMUNAL HARMONY MUST BE DEALT WITH FIRMLY (.) NO STONE SHOULD REMAIN UNTURNED FOR MAINTENANCE OF PEACE AND TRANQUILITY (.)

(P. S. SHAH)  
ADDL. SECRETARY TO GOVERNMENT,  
HOME DEPARTMENT (SPL.)”

At about 10.55 a.m. DGP sent a fax message to all the PCs, DISPOLs and Range Heads to take strict action, including preventive arrests of persons trying to disturb communal harmony. They were also directed to take effective steps against persons found causing harm to persons and properties and to see that they were arrested and proper investigation was done in cases registered against them. They were also directed to inform persons in charge of bandobast about the said instructions. On that day, by a fax message, Home Department directed the Addl.DGP (INT) Gandhinagar to get details of arrival of Haj Pilgrims and instruct the concerned officers to ensure their security and to avoid any untoward incident. The Chief Secretary and ACS (Home) held a meeting with DGP and other Sr.Police Officers. The ACS (Home) instructed the police that mobile patrolling should be intensified and adequate protection should be provided at places of worship and that effective action should be taken to disperse unruly mobs. He also instructed them to control firmly anti social elements indulging in violence and jeopardizing communal harmony.

151. The evidence further discloses that a high level review of the situation at the Chief Minister level was made by mid-day some time after the noon. The meeting was attended by the Chief Minister, Minister of State (Home), Acting Chief Secretary, Addl. Chief Secretary (Home), the Director General of Police and Addl.DGP

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(Intelligence). Soon thereafter i.e. by 13.40 hours, the Chief Minister made an oral request to the Union Home Minister for army deployment. At about the same time the Addl. Chief Secretary (Home) requested the Union Defence Secretary to make army available for internal security duties. The Chief Minister publicly announced at about 16.00 hours the decision of the State Government to call the army. A formal request was also sent to the Central Government for army deployment. Informal interaction was maintained with the local army personnel at Gandhinagar and Ahmedabad from the evening of 27th. . The inquiries made with the local army had revealed that no force was available at Ahmedabad for deployment as the whole force was deployed in forward areas. The State Government persisted with its efforts. The army personnel were airlifted from the forward positions on the country"s border and started arriving at Ahmedabad by mid-night of 28.2.2002.

152. As the State Police Force was inadequate, the DGP on 28.2.2002 moved the State Government to request the Central Government to provide 10 companies of RAF and to request the neighbouring State Governments of Rajasthan, Madhya Pradesh and Maharashtra to provide 10 companies each of their State Reserve Police. Pursuant to the request made by the State Government, the Government of India approved deployment of six companies of CISF, 17 companies of BSF and six companies of Border Wing Home Guards which were already in the State. One company reported at Bhuj at about 15.00 hours, one company reported at Palanpur at about 18.00 hours and the third company reported at Rajkot on the next day at about 13.00 hours. It was decided by the concerned authorities to send four companies of CISF to Gujarat. One of them was to be sent from Udepur and one was to be sent from Bhopal. It was also decided by the concerned authorities that out of the Border Wing Companies which were under Army Operation Control, two companies would be made available from Banaskantha and three companies would be made available from Bhuj.
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153. The army which was away and airlifted started arriving by the mid night of 28.2.2002. Within about 3 hours, the army was provided with logistic support consisting of six buses, 9 trucks, 15 jeeps, Executive Magistrates, Liaison Officers, Guides and maps.

154. On 1.3.2002, the Government directed the law enforcing authorities through wireless messages to take all necessary steps to control violence and to deal strictly with persons found indulging in violence. Relevant parts of the two messages are quoted below:

“In view of prevalent surcharged and tense atmosphere, direction given by Home Department time and again for maintenance of public order peace and frequently should be implemented (.) Following salient features should be kept in mind and put in to action immediately (.)

1. Communal riots schemes for the respected districts/cities must be implemented (.)
  2. Revised guidelines given by the Government of India to promote communal harmony which was circulated under Home Department letter No. SBII/COM/1097/GOI/295 dated 30.10.1998 must be implemented strictly and effectively (.)
  3. Close vigil must be kept on the activities of anti social and communal minded elements and they should be rounded up under preventive laws (.)
  4. Prompt and effective action must be taken against hard core communal elements bent upon to jeopardize communal harmony (.)
  5. Special attention must be paid to communal sensitive areas especially the places which have witnesses communal violence (.)
  6. Bandobast should be tightened and mobile as well as foot patrolling should be intensified especially in affected areas (.)
  7. Any attempt to jeopardize tranquility peace and public order must be nipped in bud (.)
  8. All necessary precautionary as well as preventive measure must be taken depending upon local situation (.)
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9. Effective action should be taken to disperse unruly mobs and unlawful assemblies (.)
10. Meetings of peace committee/Ekka committee and Mohalla committee should also be held (.)
11. Tense situation, if any must be defused by taking appropriate measures and involving prominent members of both community as well as social leaders (.)
12. Last but not the least, curfew imposed in the cities/towns concerned should be strictly implemented (.)

(J.R.R

ajput)

UNDER SECRETARY TO  
GOVERNMENT,

HOME

DEPARTMENT (SPL.)”

“Home Department has already issued Crash Message including the last message No. SBII/COM/102002 dated 1.3.2002, directing you to control the situation very effectively and to take all steps including the implementation of Communal Riot Scheme. As you know, in a communal outbreak, the District administration and the Police have to act in a decisive, prompt and effective manner to bring the situation under control. Do not repeat, do not hesitate to use whatever force necessary for bringing the situation under control. When lives and properties are threatened in a communal situation, necessary force including firing have to be resorted to for bringing the situation under control. If the situation deteriorates beyond a point, besides imposing curfew, you should also issue „shoot at sight” orders and prevent collection of unlawful mobs in public places. Kindly acknowledge receipt of this communication and make sure that no major incidents take place within your jurisdiction.

(G.SUBBA RAO)

Chief Secretary.

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204. The army which was away and airlifted started arriving by the mid night of 28.2.2002. Within about 3 hours, the army was provided with logistic support consisting of six buses, 9 trucks, 15 jeeps, Executive Magistrates, Liaison Officers, Guides and maps. By 7.30 a.m. on 1.3.2002 army was, provided with 7 more Executive Magistrates and some more vehicles. The deployment of army commenced by 11.00 hours after high level meeting between the Chief Minister, Union Defence Minister, Senior Officers of the Army and the State administration. In Ahmedabad, 9 columns of army were deployed on 1.3.2002. During the course of the day, 30 more vehicles were provided to the army personnel. In all, 32 Executive Magistrates and 18 mobile phones were provided to the army on that day. Central Para Military Forces consisting of some companies of BSF, CISF and Border Wing Home Guards became available to the State Government on 1.3.2002, pursuant to the request made in that behalf on 28.2.2002. All of them were deployed on the same day. The State Government also gave detailed directions to the police to implement the directions which were give to them earlier. They were reiterated in detail. By another message sent on that day by the Home Department, the police authorities were directed to act in a decisive, prompt and effective manner to bring the situation under control and not to hesitate to use force and even to issue „shoot at sight“ orders. Directions were given by DGP to subordinate police officers to take all necessary steps to control violence and to restore law and order. The State Government requested the States of Maharashtra, Rajasthan and Madhya Pradesh to send some force consisting of State Reserve Police (SRP). On that day i.e. on 1.3.2002, army personnel were airlifted in six aircrafts and taken to Vadodara. They reached there from 16.30 hours onwards. Later 2 columns of army were moved to Vadodara at about 18.30 hours.

205. On 2.3.2002, 2 columns of army were dispatched to Godhra where they reached at about 01.30 hours. Two columns of army were moved to Rajkot at about 11.00 hours. As situation in Bhavnagar and Surat

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deteriorated, army columns were moved to Surat on 3.3.2002 at 11.00 hours and to Bhavnagar at 22.35 hours.

206. On 4.3.2002, the Addl. Chief Secretary (Home) again sent a message to the district police heads to deal firmly with persons indulging in rumour mongering and also instructed them to activate district and city Peace Committees. Instructions regarding taking help of Revenue and Panchayat employees were also given. By another message sent on that day, it was impressed upon the District Officials to watch over any attempt to disturb peace and to take usual steps for building an atmosphere of communal harmony and ensure public safety. Similar messages were sent thereafter from time to time. Between 27.2.2002 and 31.5.2002, the Home Department had sent 14 such messages. The Chief Secretary and Addl. Chief Secretary (Home) had arranged two video conferences with police officers and other concerned officers on 4.3.2002 and 11.3.2002, for reviewing the law and order situation and to give them instructions regarding steps to be taken by them. Every day, right from 27.2.2002, high level meetings with Senior Officers were held by the Chief Secretary and ACS (Home). The evidence discloses that the District authorities and police force continued their efforts till 31.5.2002 sincerely to contain the communal violence. The actions taken by the Government show that there was no reluctance or negligence on its part in taking the required steps for preventing and containing the communal riots.

209.7 On consideration of the evidence on this point, the Commission comes to the conclusion that because of (1) curfew in Godhra Town, (2) the fact that the dead bodies not identified at Godhra were of persons who either belonged to Ahmedabad or places beyond or around Ahmedabad and (3) no relatives were available at Godhra to take them, it was decided by the Government to send them to Ahmedabad. It was a unanimous decision taken in a meeting where the District Officials, other local leaders and the Chief Minister were present. The

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modality of transporting the dead bodies was left to the local administration and it appears that under instructions of the District Magistrate and the Additional District Magistrate it was decided to send the dead bodies in trucks to Ahmedabad under police escort. It was decided by the local officers to send the dead bodies to Civil Hospital at Sola which was on the outskirts of Ahmedabad and quite away from densely populated localities of Ahmedabad. It appears that the Taluka Mamlatdar and Executive Magistrate Shri Nalwaya had on his own thought it fit to hand over those dead bodies to Shri Jaydip Patel even while sending them under police escort. That appears to have been done by him as the dead bodies were of VHP men and Shri Jaydip Patel wanted to go with those dead bodies. As a matter of fact the dead bodies left Godhra sometime after 10.30 p.m. and reached Sola sometime between 2.00 a.m. and 3.00 a.m. They were taken straight to Sola Civil Hospital through the Naroda-Sarkhej-Gandhinagar outer road. The dead bodies were not taken within the "streets of Ahmedabad" or the trucks had not passed through densely populated parts of Ahmedabad city. It is therefore, incorrect to say that the dead bodies were paraded on the street of Ahmedabad with a view to inflame the passions of Hindu community. The transportation was done at night and there is no evidence to show that at any place on the road people had gathered to see those dead bodies. The evidence also discloses that the decision to send those dead bodies to Ahmedabad was taken for the reason that curfew was already imposed in Godhra town by the time such decision was taken and it was felt that it would be very difficult for the relatives of those dead persons to come to Godhra and collect dead bodies of their relatives. The Commission does not find any substance in the allegation that the Chief Minister had arranged the same with an evil intention.

213 Attention of the Commission has also been drawn to the circumstance that the Phone Call details as shown by the analysis of the CDs produced by Shri Rahul

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**Sharma establish that on 27th, 28th and 1st some of the Ministers of the State Government and some officers of the CMO were in contact with the persons who later became accused in criminal cases as they had taken part in the communal riots.**

213.1 The said CDs were produced by Shri Rahul Sharma, who was the Superintendent of Police of Bhavnagar district till 26.3.2002 and DCP in charge of Control Room in Ahmedabad city from 8.4.2002, during his cross examination by Jan Sangharsh Manch. He produced those CDs on 30.10.2004. He has stated that while working as DCP Control Room at Ahmedabad city, he was told by the Commissioner of Police, Ahmedabad city to assist in investigation of Naroda Patiya case and Gulberg Society case which were with Shri S.S.Chudasama, who was then ACP in the Crime Branch. Shri Surolia was the Supervising Officer and he had to assist Shri Surolia in supervising those cases. In connection with those cases, he had collected data from AT & T and Cell Force about the calls received or sent by persons holding mobile phones within they city of Ahmedabad. From those original CDs, with the help of his personal computer, he had prepared one CD after zeeping the data of the original CDs. As those CDs were a part of information received during investigation, he had requested Shri P.P. Pande to keep the original CDs alongwith the file. From the CD which had remained with him he had prepared two copies (2 CDs) and produced them before the Commission. One CD from which he had prepared copies has remained with him. The Government of Gujarat raised an objection that the said CDs do not show the true and correct data. They are not in the original form and the data is de-shaped or reshaped according to the requirements of JSM, which has become a political body highly interested in maligning the Government. Therefore, the Commission examined Shri Sharma again on 8.6.2006. When asked as to why he had not produced the CDs earlier on his own, he stated that he did not do so because no occasion arose earlier for producing the same. In reply to the question as to why he had

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brought the CDs on that day, he stated that he anticipated that some questions may be asked to him. He also stated that he did not file any additional affidavit with respect to the CDs as it was not mandatory for him to do so and there was no "emphasis" from the department in that behalf. According to him, he prepared those CDs after obtaining CDs from the two mobile phone service providers viz. Cell Force and AT & T. He got the data transferred from those CDs to a hard disc of his computer at his home for processing. Subsequently the data was compressed by zeeeping them. The zeeeped data was then transferred to another CD and from that CD, he had prepared two copies which have been produced before the Commission. In his further evidence, he stated that the original CDs were returned to Shri Pande, the then Jt. Commissioner of Ahmedabad city. As regards the reason why he thought it fit to obtain data regarding telephone calls from two mobile phone services providers, he stated that during the investigation of the Godhra train incident, a conspiracy theory was proposed and as an experienced police officer he had felt that if a conspiracy of that magnitude was hatched, then it could not have been without any links to Ahmedabad.

213.2 With respect to the CDs, Shri P.P.Pande, Shri Harish Muliya, Shri Chandana and Shri Harisinh Gohil have also filed affidavits. Shri Pande has categorically stated that Shri Rahul Sharma had not given to him any CD to be kept with the case file. He further stated that the CDs should have been returned to the investigating officer as all the evidence including muddamal of the case usually remains with the investigating officer only. He was not the investigating officer and therefore there was no question of returning those CDs to him. In clear terms, he has stated that he had neither given any CD to Shri Rahul Sharma nor Shri Sharma had ever given him any CD. Shri Harish Muliya, Assistant Police Commissioner has stated in his affidavit dated 19.9.2007 that after looking into the inquiry papers, he could say that police constable Shri Harisinh had

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handed over the CDs obtained from service providers to Shri Rahul Sharma and that the said CDs were never returned to the Crime Branch. Shri Chandna, who was PSI, Ahmedabad city, has stated that under instructions of Shri Rahul Sharma he had collected one CD from Cell Force and handed over the same to Shri Sharma. He had gone alongwith Shri Sharma to the office of AT & T at Gandhinagar. When Shri Sharma was transferred, Shri Sharma had handed over one sealed cover containing CDs to him after telling him that he should handover those CDs to Shri Pande of Crime Branch. As he could not deliver those CDs to Shri Pande, he had personally returned the sealed cover to Shri Rahul Sharma, after telling him that nobody had come to take that cover and therefore he was returning the sealed cover to him. Shri Harish Gohil was working as a Police Constable in the Crime Branch. He has stated that he had delivered the letters written to Cell Force and AT & T on instructions from Shri Suroliya. As instructed by Shri Surolia, he had taken signatures of ACP Shri Chudasama and then handed over those letters to AT & T and Cell Force. On 14.5.2002 he had collected 2 CDs from Cell Force company and handed over the same to Shri Sharma as instructed by Shri Suroliya.

213.3 To ascertain the truth, the Commission had issued summons to Cell Force & AT & T with a direction to supply the data relating to 43 telephone numbers listed by JSM. On 10.10.2007 Idea Cellular Ltd., formerly AT & T, informed this Commission that:-

“We regret to inform you that any details beyond the period of one year would not be technically feasible to maintain record of & hence the same would not be available”.

On 10.10.2007 Vodafone Essar Gujarat Ltd., informed this Commission that:-

“With reference to the captioned subject, we humbly submit that for the call data relating to the said purpose our office was coordinating with Mr. Rahul Sharma, IPS. Based on his instructions we had handed over the data on a Cd to the officer designated by him. However, he

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had got in touch with our office informing us that after studying the data available on the CD he required certain additional data, which we then extracted from our online database and handed it over to his office on another CD. The company had provided the said, desired data in desired format for the second time to Mr. Chandana, who was coordinating the same. With regards to reproducing the data on 10th October, 2007, kindly note that this data pertains to very old period, hence we are unable to retrieve/process the same. Kindly note that as per the Condition No. 13 of the License issued by the Department of Telecommunication, Ministry of Communications & Information Technology, Government of India, we are supposed to preserve the records for a period of one year only. The data available online for us pertains to the last one year"s data only".

213.4 In his statement recorded by the Special Investigation Team on 31.5.2008, Shri Rahul Sharma has stated that the data contained in the CD of AT & T was copied by him in his computer and thereafter, he had returned the original CD in the office. Later on, in his statement recorded on 3.2.2009, he stated that the said CD was returned to the office of Shri Suroliya but he was not sure to whom the CD was given. As regards the CD received from Cell Force, he stated that the data contained in the CD was copied by him in his computer and thereafter, original CD was handed over to Shri Chandana for returning it to Shri Pande. He stated that Shri Chandana had told him that he had twice or thrice tried to return it to Shri Pande but Shri Pande was not available. In the first week of July when he was transferred, he asked Shri Chandana about the CD and he had informed him that the CD was still with him. So, he had obtained that CD from Shri Chandana and given it to a rider instructing him to return it to Shri Pande of the Crime Branch. The rider had informed him after some time that the CD was handed over by him to Shri Pande. Shri Sharma was shown a list of riders

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and he was asked who that rider was, and in reply he stated that he was not able to remember who that rider was. However, he stated that the said CD was returned to Shri Pande. As regards the data of the two CDs which he had copied in his computer, he stated that it was not possible to recover the said data from the computer and he was not sure whether even with the help of data recovery software, the data can be recovered now.

213.5 Shri Rahul Sharma had filed an affidavit on 1.7.2002 narrating the relevant facts relating to the communal riots which happened in Bhavnagar district during his tenure as Superintendent of Police of that district. Thereafter, he was called by the Commission on 30.10.2004 for giving his deposition. On that day while replying to the questions put by JSM in respect of the investigation of Naroda Patia case and Gulbarg Society case, he stated that he had prepared a copy from the original CDs supplied by AT & T and Cell Force and it had remained with him. At the instance of JSM he produced 2 copies of that CD prepared by him. The fact that he had prepared a copy from the original CDs after zeeeping the original data of CDs was known to him alone. He had not thought it fit to produce the same before the Commission on his own. Unless he had informed JSM about it, the JSM could not have known that such a CD was available with Shri Sharma. There was no reason for him to bring the two CDs on that day with him. If he thought that it contained information relevant for the purpose of inquiry going on before the Commission then he should have produced the same on his own. He did not do so. The manner in which the said CDs came to be produced before the Commission, clearly indicates some connection between him and JSM. Otherwise there was no need for him to prepare 2 CDs which he produced before the Commission, as at that time he was not at all concerned with the investigation of the Naroda Patia case and Gulbarg Society case. He was also not concerned with the investigation of the Godhra incident and therefore, the reason given by him for obtaining telephone data does not appear to be true.

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*It appears to the Commission that he had prepared CDs at the instance of JSM and brought them for producing before the Commission when called upon to do so by JSM. In his evidence before the Commission, Shri Sharma has stated that after the information was received by the Crime Branch from AT & T and Cell Force, Shri Pande, who was then the Joint Commissioner of Police had handed over the said CDs (information) to him. Shri Pande in his affidavit has specifically stated that he had not handed over any CD to Shri Sharma. The affidavit of Harisinh Gohil discloses that on 14.5.2002 under instruction of Shri Suroliya, he had gone to the office of Cell Force and after obtaining 2 CDs in a sealed cover from the Cell Force Officer Shri Dhiren Loria, he had handed over the same to Shri Sharma on the same day. The affidavit of Shri Chandana, who was incharge of Computer section of Ahmedabad police also discloses that on 25.6.2002 he had gone to the office of Cell Force on being instructed to do so by Shri Sharma and had brought 2 CDs in a sealed cover and handed over them to Shri Sharma on that day. The CDs which were earlier obtained from Cell Force company did not contain according to Shri Sharma enough data and therefore, they were again sent back to the office of Cell Force. Those CDs were brought by Shri Chandana on 25.6.2002 and handed over to Shri Sharma. The affidavit of Shri Harish Muliya, who was ACP, Crime Branch of Ahmedabad city discloses that on examination of the record of Crime Branch, he found that the said CDs were never received by the Crime Branch. Shri Pande himself had denied that he had handed over the CDs to Shri Sharma after obtaining the same from AT & T and Cell Force and that appears to be true in view of the other evidence. Even on the point of returning the original CDs Shri Sharma is contradicted by Shri Pande and Shri Chandana. Shri Pande has stated that the original CDs were not returned to him. He appears to be right because he was not the Investigating Officer and therefore those CDs were not required to be kept by him. Since the CDs were obtained as evidence during the course of*

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investigation, they were required to be kept alongwith the investigating papers with the Investigating Officer. While giving evidence before the Commission, Shri Sharma has stated that since those CDs were really a part of information received during the investigation, he had requested Shri Pande to keep original CDs alongwith the case file. In his statement before the Special Investigation Team, he has stated that the CD which he had obtained from AT & T was returned by him to the office of Shri Suroliya and that he was not sure about the person in that office to whom it was handed over. As regards the CD obtained from Cell Force, he stated that he had handed over the same to Shri Chandana but as Shri Chandana could not deliver it to Shri Pande, he had sent the same alongwith one rider in the first week of July, 2002 and that Shri Chandana had informed him that it was handed over to Shri Pande in person. Thus, Shri Sharma"s evidence on this point is evasive and not consistent and leads to the conclusion that he is not telling the truth regarding possession of the original CDs and his claim that the copies of CDs produced by him contain the same and correct data as contained in the original CDs. It leads this Commission to the conclusion that in absence of the original CDs and non production of the data copied by him in his computer from the original CDs, the data contained in the CDs produced before the Commission cannot be accepted as reliable and correct. The allegation of the State Government is that Shri Sharma has either de-shaped or reshaped the original data i.e. the data contained in the original CDs. On appreciation of other evidence on this point, the Commission comes to the conclusion that Shri Rahul Sharma"s version regarding the data contained in the CDs is not reliable and cannot be accepted as true. This conclusion is reached apart from the doubt that arises from the evidence of Shri Zadaphia and others who have denied to have made calls as shown in the

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**analysis of the phone calls data produced before the Commission.**

214 On the basis of SP Shri Rahul Sharma's evidence before the Commission an attempt was made to show that the entire police administration as well as State administration was completely neutralized by the Government resulting in police failure to protect lives of persons of minority community. Shri Rahul Sharma has nowhere in his evidence stated that the entire administration was neutralized, what he has stated is that he was told that "Bureaucracy has been completely neutralized". This witness further stated that he had not understood what was meant by those words which according to him were told to him by DGP Shri Chakravarti. Apart from unreliability of Shri Sharma, this version of his further discloses his bias against the Government. Shri Chakravarti's evidence rules out the probability of his having said so to Shri Rahul Sharma.

216 While the communal violence was going on within the State, the Government transferred some officers. Relying upon this circumstance it was alleged that the Chief Minister transferred those police officers who were effective in controlling communal violence in their districts and that he had done so without knowledge of the then DGP and the Home Secretary. The record shows that the transfers were made in routine course by following regular procedure. Though it is true that there was no proposal by the Home department for transferring DSP Shri Srivastava and DSP Shri Rahul Sharma, they were transferred. The record shows that they were also transferred because the Government decided to effect more transfers than proposed. Order of transfer dated 24.3.2002 shows that it was a consolidated order of transferring 17 officers and promoting 10 officers. The material also shows that even after the transfer of those two SPs who were then in-charge of Kuchcha and Bhavnagar Districts, the situation in those districts had remained under control. The officers who were posted there were equally competent and had effectively controlled the law and order situation in their districts. That shows the falsity of allegation that Shri Srivastava and Shri Sharma were transferred because they were effectively controlling law and order situation within their districts and the Government did not want it.

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217 *In some districts communal violence continued even in the month of April and May, 2002. It was therefore, alleged that the Chief Minister deliberately did not take any action against any police officer in whose jurisdiction unhindered and unchecked violence was continued resulting in deaths of many persons belonging to minority community. The evidence discloses that violence at some places could not be checked because the police force was inadequate and also because the violence took place at places and at the time when the policemen were not present there. There is no evidence to show that the police allowed the incidents to happen by deliberately not taking action or going to those places despite being informed about them. Moreover, initiation of disciplinary proceedings against an officer who is prima facie found to be negligent in performance of his duty has to be done by the competent officer and not by the Chief Minister. Service conditions of Government officers are governed by statutory rules. In fact some inquiries were initiated against some officers who were prima facie found to be lax or negligent in performance of their duty. The allegation made against Chief Minister on the basis of this assumed lapse on his part is really misconceived and wrong.*

218 *On the basis of the report published in Divya Bhaskar newspaper that the Commissioner of Police Shri PC Pandey had written a letter to the DGP to take action against Minister Shri Bharatbhai Barot as he had personally instigated a mob involved in violence outside Delhi Darwaja on 15.4.2002 and yet the Government did not take any action against Shri Barot. As a matter of fact what was written by Shri PC Pandey who was the Commissioner of Police in his letter to the DGP was that he desired that during riots party workers and Ministers should avoid visiting the disturbed areas to avoid gathering of persons on seeing such personalities. Mr. Pandey had not stated that Shri Barot had in any manner instigated mob violence outside Delhi Darwaja on 15.4.2002. Therefore, there was no reason for the Government to take action against Shri Barot. The allegations made against the Government and Shri Barot are thus found to be false and made with an intention to malign the Government.*

220 *The Commission has also considered the report of the Citizens Tribunal headed by Mr. Justice Krishna Iyer. What*

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we find is that the Citizens Tribunal has mainly relied upon the statements produced before it by „Citizens for Justice & Peace“ NGO of which Ms Tista Setalvad was the Secretary. The Citizens Tribunal did not have the advantage of the material which has been produced before this Commission by the State. Moreover the evidence produced before this Commission has been tested by cross examination of substantial number of witnesses. The report given by the said Tribunal though of some assistance by way of material referred to therein does not reflect the correct picture of what happened and what was done by the Government to prevent and deal with the communal violence. The Commission has also gone through the report published by the Editors Guide. The scope of inquiry made by this Commission is much larger. It is conducted by following an elaborate prescribed procedure. The Commission has to come to its own conclusions. On consideration of the evidence, the Commission finds that the allegation made against the Chief Minister that he had tried to justify the post Godhra violence against Muslims is really not true. It is also incorrect to say that there was deliberate delay on the part of the State Government in the matter of army deployment in Ahmedabad. Enough vehicles, civil personnel and other logistics were made available to the army within a short time.

221 Shri R.B.Srikumar in one of his affidavits has stated that many illegal instructions were given orally to officials by the Chief Minister. No such allegation was made by him either in his first affidavit or when he gave evidence before the Commission. This allegation is made after some departmental action was initiated against him. From his subsequent affidavits, it clearly appears that he is a disgruntled officer. His attempt to support his allegation by producing a register and his personal diary, which according to him contain some of the illegal directions given to him, at a very late stage creates a suspicion that they were prepared by him at a later stage. There was no reason for him to keep a register and diary of such illegal instructions. If he had genuinely thought it fit to note down such illegal instructions as and when they were given then he ought to have brought that fact to the notice of the Commission when he filed his first affidavit or when he gave the evidence. Moreover his credibility also becomes

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questionable because of one more allegation made by him and which is found to be false. Shri R.B.Srikumar in his affidavit dated 3.5.2010 has stated that he had received two sets of reliable information. He was informed that some UP policemen were eye witnesses to the incident of burning of coach S-6 of Sabarmati Express Train at Godhra Railway Station. He has stated that according to that information „friends“ of I.B. were eye witnesses to all the incidents at Godhra Railway Station on 27.2.2002. According to his information received from reliable sources UP police had deployed 3 to 4 police personnel to accompany the Gujarat contingent of Karsevaks returning from Ayodhya by that Train. They had traveled alongwith Rambhaktas from Ayodhya to Ahmedabad and they had witnessed the whole Godhra train fire incident and subsequent developments at the Godhra Railway Station. They had also submitted reports about what they had witnessed regarding the activities of Rambhaktas during their journey from Ayodhya to Ahmedabad. By the said affidavit he requested the Commission to get relevant reports from the DGP of UP Police, as he was in possession of those reports. To ascertain correctness of what Shri Srikumar has stated in his affidavit, a letter was written by the Commission to DGP, UP Police on 30.6.2010. By his letter dated 6.8.2010, the Addl. DGP, UP has stated that only the escort personnel had traveled by the said train upto the limits of their jurisdiction. Except the usual escort personnel, no other policeman was deputed to travel by the said train. No other policeman was put on duty for the protection of Karsevaks in the Sabarmati Express Train. He has stated that there is no substance in the assertion that UP policemen were eye witnesses to the incident of burning coach No. 6 of the Sabarmati Express Train. **In view of this clear reply from the UP police, and the fact that jurisdiction of the UP police ended at the border of UP State and much before of the Gujarat State border, what can be said is that the said information placed before the Commission by Shri Srikumar is completely false. The allegation that UP police had travelled upto Godhra railway station in the Sabarmati Express Train alongwith the Karsevaks and had seen the incident of burning coach S-6 if that train is also false. Placing such false material before the Commission further**

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**raises a doubt regarding the motive of Shri Srikumar. Instead of assisting the Commission by placing correct facts before it, it appears that because of action taken against by him the Government, he is prepared to make even false allegations against the Gujarat Government to malign it.**

222 Mr. Sreekumar has also produced alongwith one of his affidavits, text of conversation which he had during the meetings, with the Advocate Shri Pandya and Government Officials. According to him it was tape recorded by him on a device given to him by Shri Rahul Sharma. We proceed on the basis that he did it bonafide and not with any ulterior motive, but the said conversations do not disclose that there was any pressure or persuasion from those officers on Shri Sreekumar to tell something to the Commission which was false. As stated by Shri Sreekumar he was not threatened by hem nor he was influenced in any manner to tell something to the Commission which was not true.”

66. It is submitted that in view of the above, even the Commission Report, has not found favour on any of the allegations made therein and therefore, the entire substratum of the case of the Petitioners, does not survive.

**67. Observation of Hon'ble High Court of Gujarat in Special Criminal Application No 421 of 2007, Smt Jafia Ahesan Jafri Vs State of Gujarat:** On the petition filed by the present petitioner before the Hon'ble High Court of Gujarat, the scope of application of Section 6 of Commission of Inquiry Act, 1952 in present proceeding vis-à-vis proceedings before Justice Nanavati-Shah Commission of Inquiry had been clearly laid down. It was unequivocally stated that these proceedings before Justice Nanavati-Shah Commission of Inquiry does not have any applicability even for prima-facie satisfaction on the aspect of commission of offence. Following observations made by Hon'ble High Court of Gujarat in Special Criminal Application No 421 of 2007 are very pertinent for the present proceedings:

“36. Now, there is another reason also why present petition is not to be entertained. At the outset, it is required to be noted that considering the averments and allegations in the complaint at Annexure – A dated 8.6.2006 there are by and large general allegations which are on the basis of some affidavits filed by third parties, more particularly, affidavit of one Shri Shreekumar filed before Justice Nanavati & Justice Shah Inquiry Commission and

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*some five to six incidents are narrated in the said complaint.....It is also required to be noted that the petitioner No.1 has submitted complaint on 8.6.2006 i.e. after the period of almost four and half years of filing of the first FIR and Charge-sheets. As stated above, basis of the allegations in the complaint is some affidavits filed by the third parties before the Inquiry Commission constituted under the provisions of the Commission of Inquiries Act. Now, whether statement / affidavits of third parties before the Inquiry Commission can be relied upon and/or considered for the inquiry and/or for making out a prima facie cognizable case is doubtful. Such affidavits / statements before the Commission have no evidentiary value.....*

**[Pg 180-183 of the Convenience Compilation filed by the SIT]**

*37. ....as the evidence submitted during the proceedings before the Inquiry Commission has no evidentiary value and the same cannot be the basis to make out prima facie cognizable case against the accused persons. Even straight way to rely upon such affidavits / statements during the proceedings before the Inquiry Commission and to form a prima facie opinion with regard to cognizable offence is neither desirable nor proper....*

**[Pg 183-184 of the Convenience Compilation filed by the SIT]**

*40..... Even otherwise, in the facts and circumstances and looking to the averments and allegations in the complaint dated 8.6.2006 which are general in nature and which are solely based upon some affidavits / statements of third parties in the proceedings before the Inquiry Commission and without their being any further concrete material evidence, the petitioner is not entitled to the relief of directing the said complaint to be investigated by the CBI.*

**[Pg 191-192 of the Convenience Compilation filed by the SIT]**

**68.** It may be noted that **Section 6 of Commission of Inquiry Act, 1952** reads as follows:

*6. Statements made by persons to the Commission.— No statement made by a person in the course of giving evidence before the Commission shall subject him to, or be used against him in, any civil or criminal proceeding except a prosecution for giving false evidence by such statement: Provided that the statement— (a) is made in reply to a question which he is required by the Commission to answer, or (b) is relevant to the subject-matter of the inquiry.”*

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**69.** Dictum laid down by Hon'ble Supreme Court in this regard: In Shri *Ram Krishna Dalmia vs. Shri Justice S.R.Tendolkar & Ors.* [1959 SCR 279], a Constitution Bench of Hon'ble Supreme Court while considering the constitutional validity of the Commissions of Inquiry Act, indicated that the Commission is merely to investigate, record its findings and make its recommendations which are not enforceable *proprio vigore* and that the inquiry or report cannot be looked upon as judicial inquiry in the sense of its being an exercise of judicial function properly so called. The recommendations of the Commission of Inquiry are of great importance to the Government in order to enable it to make up its mind as to what legislative or administrative measures should be adopted to eradicate the evil found or to implement the beneficial objects it has in view. It would be appropriate to notice the following observations of the Constitution Bench:

*"But seeing that the Commission of Inquiry has no judicial powers and its report will purely be recommendatory and not effective proprio vigour and the statement made by any person before the Commission of Inquiry is, under section 6 of the Act, wholly inadmissible in evidence in any future proceedings, civil or criminal, there can be no point in the Commission of Inquiry making recommendations for taking any action "as and by way of securing redress or punishment" which, in agreement with the High Court, we think, refers, in the context, to wrongs already done or committed, for redress or punishment for such wrongs, if any, has to be imposed by a court of law properly constituted exercising its own discretion on the facts and circumstances of the case and without being in any way influenced by the view of any person or body, howsoever august or high powered it may be."*

**70. Thorough Investigation Conducted by SIT on the allegations pertaining Nanavati-Shah Commission of Inquiry:** As most of the allegations in the complaint were drawn from the affidavits filed by Shri R B Sreekumar, Rtd. IPS, before Nanavati-Shah Commission of Inquiry, detailed investigations were conducted by SIT in report of each and every allegation. Statements were recorded of the concerned persons and documents collected in this connection. The Closure Report also extensively discuss these allegations, as will be evident from following chart:

- **ALLEGATION No. III : Numerous illegal instructions given verbally (by CM) to officials as detailed in third**
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**affidavit dated 09.04.2004 by R.B. Sreekumar to the Nanavati Commission.**

Discussed in Closure Report: Pg 264-266 of the Convenience Compilation of the SIT

○ **ALLEGATION NO. VII : Senior officials were rewarded with undue benefits, even while their conduct was under the scrutiny of Nanavati Commission, as narrated in Para 68 of the complaint dated 08.06.2006, wherein "Rewards" for collaborating with the illegal plans of CM/BJP during 2002 riots and afterwards are listed in respect of the following officers : (1) Shri G. Subba Rao, IAS, the then Chief Secretary, (2) Shri Ashok Narayan, IAS, the then ACS (Home), (3) Dr. P. K. Mishra, IAS, the then PS to CM, (4) Shri A. K. Bhargava, IPS, (5) Shri P. C. Pandey, IPS (6) Shri Kuldeep Sharma, IPS, (7) Shri M. K. Tandon, IPS, (8) Shri Deepak Swaroop, IPS, (9) Shri K. Nityanandam, IPS, (9) Shri Rakesh Asthana, IPS, (10) Shri A. K. Sharma, IPS, (11) Shri Shivanand Jha, IPS, (12) Shri S. K. Sinha, IPS, (13) Shri D. G. Vanzara, IPS.**

Discussed in Closure Report: Pg 271-280 of the Convenience Compilation of the SIT

○ **ALLEGATION NO. VIII : No follow up action was taken (by the Gujarat Government/CM) on the reports sent by R. B. Sreekumar on 24.04.2002, 15.06.2002, 20.08.2002 and 28.08.2002 about anti-minority stance of the Administration. Copies of these reports are appended in second Affidavit dated 06.10.2004 of R. B. Sreekumar to the Nanavati Commission.**

Discussed in Closure Report: Pg 280-283 of the Convenience Compilation of the SIT

○ **ALLEGATION NO. X : Partisan investigations were conducted betraying prejudice against riot victims, as indicated by Rahul Sharma, the then SP, Bhavnagar District during his cross-examination before the Nanavati Commission, as noted in Para 18 of the complaint dated 08.06.2006.**

Discussed in Closure Report: Pg 285-287 of the Convenience Compilation of the SIT

○ **ALLEGATION NO. XVI: Officers at grass-root level were not transferred as per State Intelligence Bureau's**

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**recommendation till the arrival of Shri K.P.S. Gill as Advisor to CM, as indicated by Sreekumar in his second affidavit dated 06.10.2004 to the Nanavati Commission.**

Discussed in Closure Report: Pg 297-298 of the Convenience Compilation of the SIT

○ **ALLEGATION NO. XVII: Failure to take action against the print media making communally inciting reports though State Intelligence Bureau and some field officers had recommended for action, as noted in the first Affidavit dated 06.07.2002 of Shri R.B. Sreekumar during his cross-examination before the Nanavati-Shah Commission on 31.08.2004.**

Discussed in Closure Report: Pg 298 of the Convenience Compilation of the SIT

○ **ALLEGATION NO. XIX : The State Home Secretary Shri G.C. Murmu was presumably detailed for tutoring, cajoling and even intimidating officials deposing before the Nanavati Commission so that they do not tell the truth and harm the interests of CM and ruling party, as narrated in third Affidavit of Shri R.B. Sreekumar**

Discussed in Closure Report: Pg 302-308 of the Convenience Compilation of the SIT

○ **ALLEGATION NO. XX: Shri G.C. Murmu's exercise was for ensuring that officials will not file affidavits relating to the second terms of reference to the Nanavati Commission about the role of CM and other Ministers in the riots as narrated in Para 52 of the complaint dated 08.06.2006 wherein gross dereliction of duty has been alleged in not filing Affidavits relating to second terms of reference to the Commission on the part of 16 specifically named officials including top ranking IAS/IPS officers.**

Discussed in Closure Report: Pg 308-309 of the Convenience Compilation of the SIT

○ **ALLEGATION NO. XXIII: The CD regarding telephone calls by BJP leaders and police officers during riots was not probed into by the Investigating Officers of the Naroda Patia and Gulberg Society cases. The CD was produced by Rahul Sharma, SP, CBI before the Nanavati Commission.**

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Discussed in Closure Report: Pg 310-312 of the Convenience Compilation of the SIT

○ **ALLEGATION NO. XXVII: No action was taken against officers like K. Chakravarthi, then DGP, P.C. Pande, then Commissioner of Police, Ahmedabad City, Ashok Narayan, then Additional Chief Secretary and a large number of senior functionaries in Government who filed incomplete, inaccurate, vague and inadequate affidavits to the Nanavati Commission, as narrated in Paras 54, 55, 56 of the complaint dated 08.06.2006.**

Discussed in Closure Report: Pg 326 of the Convenience Compilation of the SIT

○ **ALLEGATION NO. XXX: The fact that victims of riots and police firings were predominantly of the Muslim community, will establish that rioters, the administration, cohorts of the ruling party (BJP) were moving in collaboration for achieving the satanic objectives of CM. Statistics in this regard are given in the second Affidavit dated 06.10.2004 (Para 3 / Appendix V) of Sreekumar to the Nanavati Commission.**

Discussed in Closure Report: Pg 329 of the Convenience Compilation of the SIT

**71.** In respect to the allegations made in the complaint pertaining to Nanavati-Shah Commission of Inquiry, SIT has extensively questioned the accused persons and collected the relevant documents. In its Closure Report SIT has discussed the findings qua each accused regarding these allegations, which will be clear from following chart:

○ **A-17: Shri Nalinbhai Kantilal Bhatt, formerly MLA, Padra, Baroda, Gujarat**

Discussed in Closure Report: Pg 363 of the Convenience Compilation of the SIT

○ **A-19: Dr. Kaushikbhai Jamnashankar Mehta, General Secretary, VHP, Gujarat.**

Discussed in Closure Report: Pg 364 of the Convenience Compilation of the SIT

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- **A-26: Shri A.K. Bhargava, formerly DGP, Gujarat State.**  
Discussed in Closure Report: Pg 367-368 of the Convenience Compilation of the SIT
  
  - **A-27: Shri G. Subba Rao, formerly Chief Secretary, Gujarat.**  
Discussed in Closure Report: Pg 368 of the Convenience Compilation of the SIT
  
  - **A-28: Shri Ashok Narayan, the then ACS (Home), Gujarat.**  
Discussed in Closure Report: Pg 369 of the Convenience Compilation of the SIT
  
  - **A-29: Shri P.C. Pande, formerly Commissioner of Police, Ahmedabad City, Gujarat**  
Discussed in Closure Report: Pg 369-370 of the Convenience Compilation of the SIT
  
  - **A-30: Shri K. Srinivas, formerly Collector, Ahmedabad City.**  
Discussed in Closure Report: Pg 370-372 of the Convenience Compilation of the SIT
  
  - **A-31: Shri P.K. Mishra, formerly Principal Secretary to Chief Minister, Govt. of Gujarat.**  
Discussed in Closure Report: Pg 372-373 of the Convenience Compilation of the SIT
  
  - **A-32: Shri Kuldeep Sharma, the then IGP, Ahmedabad Rural Range, Gujarat.**  
Discussed in Closure Report: Pg 373-374 of the Convenience Compilation of the SIT
  
  - **A-34: Shri K. Nityanandam, formerly Secretary, Home Department, Govt. of Gujarat.**  
Discussed in Closure Report: Pg 374 of the Convenience Compilation of the SIT
  
  - **A-35: Shri Rakesh Asthana, formerly IGP, Vadodara Range.**
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Discussed in Closure Report: Pg 375 of the Convenience Compilation of the SIT

○ **A-37: Shri G.C. Murmu, Secretary (L&O), Home Department, Govt. of Gujarat.**

Discussed in Closure Report: Pg 375-376 of the Convenience Compilation of the SIT

○ **A-38: Shri Shivanand Jha, formerly Addl. CP, Sector-I, Ahmedabad City.**

Discussed in Closure Report: Pg 377-384 of the Convenience Compilation of the SIT

○ **A-40: Shri Deepak Swaroop, formerly Spl. IGP, Vadodara Range, Gujarat.**

Discussed in Closure Report: Pg 385 of the Convenience Compilation of the SIT

○ **A-47: Smt. Anju Sharma, formerly Collector, Bharuch District.**

Discussed in Closure Report: Pg 388-389 of the Convenience Compilation of the SIT

○ **A-49: Shri Bhagyesh Jha, former Collector, Baroda District, Gujarat.**

Discussed in Closure Report: Pg 390 of the Convenience Compilation of the SIT

○ **A-51: Shri Amrutlal Patel, formerly Collector, Mehsana District.**

Discussed in Closure Report: Pg 391 of the Convenience Compilation of the SIT

○ **A-53: Shri P.N. Patel, formerly Collector, Rajkot District**

Discussed in Closure Report: Pg 392 of the Convenience Compilation of the SIT

○ **A-60: Shri G.C. Raiger, formerly Addl. DG (Int.), Gujarat.**

Discussed in Closure Report: Pg 395-396 of the Convenience Compilation of the SIT

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- **A-61: Shri K.R. Kaushik, formerly Addl.DG, CID (Crime & Railways), Gujarat State.**

Discussed in Closure Report: Pg 397 of the Convenience Compilation of the SIT

- **A-62: Shri Amitabh Pathak, formerly Spl. IGP, Gandhinagar Range, Gujarat.**

Discussed in Closure Report: Pg 397 of the Convenience Compilation of the SIT

**72. Final report of the Commission of Inquiry tabled after Closure Report:** Report was not submitted by Nanavati-Shah Commission till the impugned orders were pronounced: Allegation of the Ld. Counsel for the petitioner that SIT and the courts did not consider the report of Nanavati-Shah Commission of Inquiry, as the final report was tabled before Gujarat Legislative Assembly in the year 2019. [**Provided separately**]

**73. Report of National Human Rights Commission:** It is palpably false and wrong to suggest that SIT has not considered the findings of NHRC, as Document No.88 listed by SIT in the List of Documents filed with SIT report are proceedings and recommendations of National Human Rights Commission on the situation in Gujarat from 01<sup>st</sup> March 2002 to 01<sup>st</sup> July 2002. Allegations pertaining to the report of National Human Rights Commission is extensively discussed in the Closure Report on page no 312-320 of the Convenience Compilation of the SIT.

**74. Evidence before NHRC has no applicability in criminal proceedings:** The Protection of Human Rights Act, 1993 and bases its decision on section 15 of the said act, which reads as under:

*“15. Statement made by persons to the Commission.-  
No statement made by a person in the course of giving evidence before the commission shall subject him to, or be used against, him in any civil or criminal proceeding except a prosecution for giving false evidence by such statement:  
Provided that the statement-*  
(a) *is made in reply to the question which he is required by the Commission to answer; or*  
(b) *is relevant to the subject matter of the enquiry;*

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**75.** This section of The Protection of Human Rights Act, 1993 is similar in wordings and spirit as section 6 of Commission of Inquiry Act, 1952, and therefore, the applicability of statements recorded by NHRC during the course of their investigation, as prescribed under section 15 of the act, does not have any applicability in present criminal proceedings. Similarly, the reports of National Human Rights Commission are for consumption and application by legislature, and in present criminal proceedings it is opinion of a commission, which cannot be relied upon for prima-facie satisfaction of the Court under provisions of The Code of Criminal Procedure, 1973.

**76. Material revealed in the report of “Concerned Citizens Tribunal’ investigated by SIT:** Concerned Citizens Tribunal – Gujarat 2002 was conceived in response to the riots that followed the burning of a train incident at Godhra on 27<sup>th</sup> February 2002. The Tribunal had eight Members namely Mr. Justice V. R. Krishna Iyer, Mr. Justice P. B. Sawant, both retired Judges of Supreme Court of India, Mr. Justice Hosbet Suresh, retired Judge of Bombay High Court, Shri K. G. Kannabiran, President PUCL, Ms. Aruna Roy of Mazdoor Kissan Shakthi Sanghatan, Dr. K. S. Subramanian, IPS (retired) former DGP Tripura, Prof. Ghanshyam Shah, Professor of Social Sciences in Community Health, JNU and Prof. Tanika Sarkar, Professor of History, JNU. Smt. Teesta Setalvad was the Convener of the said Tribunal. The allegations in the complaint pertaining to the report published by the said tribunal were investigated thoroughly by SIT. Statements of Mr. Justice Hosbet Suresh (Retd.) Bombay High Court and Mr. Justice P.B.Sawant (Retd.) Supreme Court of India were also recorded on 28.08.09. The main allegation from this report was as follows:

*Data in the ‘Concerned Citizens Tribunal’ Report by panel of Judges, Justice Sawant and Justice V. R. Krishna Iyer as in Para 10 of the complaint dated 08.06.2006) wherein it was mentioned, inter-alia, as : What transpired in the days that followed the Godhra incident began with the Chief Minister of the State announcing on 27.02.2002 through Akashvani Radio that there was an ISI conspiracy, and deciding against the advice of the Godhra Collector, Smt. Jayanti Ravi, to take the bodies of the burnt Kar sevaks in a ceremonial procession by road to Ahmedabad. The tragic Godhra killings were used and manipulated to justify pre-orchestrated mass carnage that enjoyed the political sanction of the constitutionally elected Government. Top level meetings were held between the Chief Minister, some of his Cabinet and top-level bureaucrats at which*

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*illegal instructions were issued to perform illegal acts. Proof of this was documented by a Citizens Tribunal constituted and headed by a former Judge of the Hon'ble Supreme Court, when a former Minister (Late Shri Haren Pandya) testified about the details.*

**77.** This allegation has been dealt in detail in Closure Report from **Page 245-260 of the Convenience Compilation of the SIT**. Some of the conclusion drawn are reproduced herein-below:

*As regards the deposition of Late Haren Pandya before the Concerned Citizens Tribunal, further investigation has established that the meeting convened at CM's residence, was an essentially law and order review meeting that was held on 27-02-2002 and that none of the Cabinet Ministers attended the same. Late Haren Pandya was not even a Cabinet Minister at that time and was holding the portfolio of Minister of State for Revenue. Shri Gordhan Zadafia also did not attend this meeting, as he had stayed back at Godhra. In view of the version of all the senior officials of the Home and Police Department the alleged testimony of Late Haren Pandya before the Tribunal cannot inspire confidence.*

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*Further investigation revealed that Govt. mobile no. 9825039852 was allotted to Late Haren Pandya. The call detail records of the said mobile phone for 27-02-2002 have been sorted out and the same show that Late Haren Pandya remained at Ahmedabad City till 10:46:55 on 27-02-2002. His location at Ahmedabad City again comes at 16:24:24 hrs and thereafter he remained at Ahmedabad City till 22:52:07 hrs on 27-02-2002 and therefore, this would conclusively establish that Late Haren Pandya did not attend the law & order review meeting that took place at CM's residence at Gandhinagar on 27-02-2002 at about 2300 hrs.*

## **TREATING THE PROTEST PETITION AS A COMPLAINT**

**78.** The Protest Petition filed by the petitioner in response to the Closure Report of the SIT before Ld. Magistrate, contained number of fresh allegations which were not present in the original complaint dated 08.06.2006. Ld. counsel for the complainant has submitted before the Hon'ble Court that if Protest Petition contains fresh allegations not

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otherwise covered during investigation but projected by the complainant, the Magistrate can initiate proceedings by treating the Protest Petition as complaint. It is also prayed by the complainant that the fresh allegations should be investigated

**79.** In this case the petitioner had submitted a complaint dated 08.06.2006 before DG of Police, Gujarat State for registering fresh FIR. Subsequently Hon'ble High Court of Gujarat directed that it is open for the complainant Smt. Jakia to move the concerned Court u/s 190/200 Cr.PC. Thereafter, Hon'ble Supreme Court directed SIT to 'look into' the complaint. In protest petition paragraph 1094 highlighting final submissions, the prayer at (b) is to take cognizance of offences under various sections of IPC and other penal laws. These offences highlighted in paragraph 1092 include such events, allegations constituting offences are over and above what were included in the initial complaint, in the petition before the Hon'ble High Court of Gujarat and before the Hon'ble Supreme Court i.e. fresh allegations and penal sections had been included in **Paragraph 1093 (page 703 of Vol. V of the SLP filed by the petitioner)**.

**80. Fresh Allegations in Protest Petition:** The Protest Petition filed by the petitioner in response to the Closure Report of the SIT before Ld. Magistrate on 08.02.2012, contained number of fresh allegations which were not present in the original complaint dated 08.06.2006. Ld. counsel for the petitioner has extensively quoted from this Protest Petition wherein he had mostly referred to these fresh allegations, which were never a part of the original complaint dated 08.06.2006. It is also prayed by the complainant that the fresh allegations should be investigated. Headings under which some of the fresh allegations are mentioned in the Protest Petition are enumerated herein-below:

- Conspiracy and Its Objectives fulfilled through the Free Abuse of Hate Speech
  - Inaction on Hate Speech as Part of the Conspiracy, Self-Confessions and Hate Speech Un-investigated by SIT
  - Sandesh Newspaper as Collaborator in the Conspiracy
  - Build Up as Exposed in the Tehelka Tapes
  - Prelude to Godhra
  - Provocative Behaviour of the Kar Sevaks
  - Hasty Post-mortem and Disposal of the Dead Bodies of Godhra Victims
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- Decision for a Hurried Post Mortem
- Why was the Post-Mortem done in this Hasty and Fraudulent Manner?
- Panchmahals district, Godhra
  - 2. Mystery of the fire
- PSI Mr. Mahendrasinh Lalsinh Rathod, Vijapur Police Station
- Deepda Darwaza Conspiracy
- Failure To Order Adequate Bandobast Even After The Massacres  
On 28.2.2002

**81. New accused persons proposed in the Protest Petition:** In protest petition in paragraph 1093 (page 703 of Vol. V of the Convenience Compilation filed by the petitioner) the complainant had prayed for arraigning new accused for several offences outlined within the entire Protest Petition, while clarifying that the list is not exhaustive. The bare reading of this paragraph will make it clear that the intention of the petitioner is to keep on making the frivolous allegations without any basis. The relevant paragraph is reproduced herein below:

*1093. New Accused to be arraigned for several offences outlined within the entire Protest Petition based on available evidence and further investigation. Evidence of the involvement of others, too may come in through the further investigation, therefore it may be stated that this list is not exhaustive. Specifically for those public servants who specifically failed their calling the issues would include:*

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3. *The Sec. Legal Dept., Mrs. Bela Trivedi and her successors.*
  - (i) *Article 51A of the Constitution of India*
  - (ii) *Press Council Act - 1965*
  - (iii) *Article 51A of the Constitution of India*
  - (iv) *Prevention of Objectionable Matter Act - 1976*
  - (v) *Circular Bunch - Communal Peace*
  - (vi) *DGP K. V. Joseph's booklet (Instruction to deal with communal riots - strategy of approach) - 1997*
  - (vii) *All India Service (AIS) conduct rules.*

**82.** Bare reading of the name of the new accused persons proposed to be arraigned as accused in the Protest Petition will reflect the wild and preposterous nature of complaint, the protest petition and the allegations therein.

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**83. Attempt by petitioner for reinvestigation of cases which are already decided:** Ld. Advocate for the petitioner had extensively read from the Protest Petition, wherein he had repeatedly cited the incidents, depositions, judgments, etc. of the cases which had been tried separately and decided by the concerned courts. Some of these cases have been investigated by the SIT under supervision of the Hon'ble Supreme Court. In one case investigation is conducted by the Central Bureau of Investigation. i.e. Bilkis Bano Case. Another case retrial was conducted outside Gujarat (Best Bakery Case). As discussed earlier, Hon'ble Supreme Court had monitored the further investigation of approximately 2,000 cases in which A Summary reports were filed vide order/judgments in Criminal Miscellaneous Petition No.3740-42 of 2004 of NHRC along with Writ Petition (C) 221/2002, filed by Smt. Mallika Sarabhai and 530/2002 filed by Ms. Mahashweta Devi, simultaneously. None of the trials had supported the claim of the petitioner that all the riots in Gujarat post-Godhra incident were result of a larger conspiracy of which all the accused persons mentioned in the complaint were part.

**84. Deepda Darwaja Case and Sardarpura Case:** Ld. Advocate for the petitioner had read extensively from the Protest Petition covering from page no 505 to 509 (Vol. IV of the Convenience Compilation filed by petitioner) wherein he had read the allegations pertaining to Sardarpura case. While reading these pages he had read the extracts of the testimony of various witnesses, he had highlighted the following paragraph (para 714 page 510 of Vol. IV of the SLP filed by petitioner):

*“714. At about 2.30 at night, police came and opened the door of Mr. Mahmoodbhai and found dead bodies of persons living in the locality. At one place, there were 28 innocent Muslim men, women and children. The entire unlawful crowd was guilty of looting, stonepelting, arson, killing and inflicting grievous injuries. The accused that were identified by witnesses before the Hon. Court belonged to the same village. They (the witnesses) knew the culprits and their names were given to the police as well as to SIT by them. The defence lawyer had argued that since it was night time, it was not possible for the witnesses to identify the culprits. However, as part of the pre-planned strategy, the culprits had installed halogen lamp, the proof of which is with the Hon. Court.”*

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85. It is alleged by the petitioner against SIT in paragraph 711 that *“The SIT should have probed the lapses in responses to the messages, lapses in Fire Brigade response, the build-up and VHP-BD meetings prior to the Godhra incident and analysed the role of the PP, a VHP leader. The SIT has simply ignored all these aspects of conspiracy as it unfolded in Sardarpura.”*

86. It is submitted that the further investigation of Sardarpura Case (bearing FIR No Vijapur P S I CR No 46/2002) was investigated by SIT under orders of Hon’ble Supreme Court in Writ Petition (Crl.) 109 of 2003. The investigation was monitored by Hon’ble Supreme Court, and at the end of the trial 31 accused persons were convicted. Appeals in the Hon’ble High Court of Gujarat are also disposed. As already stated, Hon’ble Supreme Court in their order dated 01.05.2009 [**Pg 348-372 of the Convenience Compilation II filed by the SIT**] have clearly expressed satisfaction with the further investigation conducted by SIT, where in the paragraph 4

*“due to the efforts of SIT, persons who were not earlier arrayed as accused have now been arrayed as accused. From the details indicated above it appears that in most of the cases a large number of persons have been additionally made accused. Besides this, a large number of witnesses were also examined in each case. This goes to show the apparent thoroughness with which SIT has worked. Therefore, SIT shall continue to function until the completion of trial in all the cases and if any further inquiry/investigation is to be done the same can be done as provided in law, more particularly, under Section 173(8) of the Code of Criminal Procedure, 1973”.*

87. The Protest Petition makes similar allegations with regard to Deepda Darwaja case. In this case also SIT has secured conviction against 22 accused persons.

88. The bare reading of these will make it clear that ***the intention of the petitioner is to keep on making the frivolous allegations without any basis.***

89. The scope and jurisdiction of the Ld. Magistrate Court in these proceedings had been clearly laid down in the Hon’ble Supreme Court’s order dated 12<sup>th</sup> September 2011 and various orders in SLP (Crl.) 1088 of 2008. Certainly, these allegations and offences were neither considered by the Supreme Court nor was SIT ever given any direction by Supreme Court to

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investigate those events and offences. The SIT report therefore cannot be examined vis-à-vis a protest petition which contains fresh imaginary allegations not earlier disclosed at any place. A protest petition is permitted by Magistrate only when he considers further report of the investigating agency u/s 173(2) Cr.PC after further investigation u/s 173 (8) Cr.PC as was desired and directed by the Hon'ble Supreme Court of India. Travelling beyond the report of the police in the protest petition is neither permissible nor can be justified.

**90.** The SIT, adopted a Supreme Court compliant procedure, sui generis in nature and as directed by this Hon'ble Court. It was a body created under the order of the Supreme Court with limited directions and duties entrusted in the orders of the Hon'ble Supreme Court and SIT could not have gone beyond the directions/orders of the Supreme Court. The Hon'ble Supreme Court always received SIT's reports of the duties performed by the SIT in compliance of the orders of the Hon'ble Supreme Court and the said Court never found the SIT lacking on any aspect in compliance of the directions/orders of the Hon'ble Supreme Court. Further, Ld. Magistrate in impugned order had observed that the Hon'ble Supreme Court was well aware of the fact that the further investigation in this matter is conducted in the matter of Gulberg Society case. It was a further investigation report in Gulberg Society case, and therefore Ld. Magistrate could not have treated the Protest Petition as 'Complaint u/s 200 CrPC'.

**91.** The Judgment pronounced by Hon'ble Supreme Court in the *Jakia Nasim Ahesan Vs. State Of Gujarat* [(2011) 12 SCC 302] decided on 12.09.2011 directed as under:

*“9. We are of the opinion that bearing in mind the scheme of Chapter XII of the Code, **once the investigation has been conducted and completed by the SIT, in terms of the orders passed by this Court from time to time**, there is no course available in law, save and except to forward the final report under Section 173(2) of the Code to the Court empowered to take cognizance of the offence alleged. As observed by a three-Judge Bench of this Court in *M.C.Mehta (Taj Corridor Scam) Vs. Union of India & Ors. 1*, in cases monitored by this Court, it is concerned with ensuring proper and honest performance of its duty by the investigating agency and not with the merits of the accusations in investigation, which are to be determined at the trial on the filing of the charge-sheet in the competent Court, according to the ordinary procedure prescribed by law.*”

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92. Once the Apex Court had appointed the Special Investigation Team and observed that *the investigation has been conducted and completed by the SIT, in terms of the orders passed by this Court from time to time*, Ld. Magistrate Court had no option other than to summarily reject the prayer of the complainant for ordering further investigation by any other independent agency on the allegations laid down in the protest petition.

93. Further, plain reading of the order shows that the claim of the Ld. Counsel that Ld. Magistrate had let his powers forego to direct further investigation, is not correct. At both the cited pages by the Ld Counsel, i.e. page 61 and 377 (**Volume - II of the S.L.P.**), Ld. Magistrate had dealt with the prayer of the petitioner/complainant to treat the Protest Petition as complaint u/s 199 and 200 Cr.P.C. and direct further investigation on it. Ld. Magistrate did not fetter his powers to direct further investigation, but rejected the prayer on merits. Further, Ld. Magistrate also rejected the prayer to treat the protest petition as complaint u/s 200 CrPC and rejected on legal grounds.

## **POST-MORTEM OF THE DEAD BODIES AT GODHRA RAILWAY STATION**

94. The Petitioner read the paragraphs 472 to 485 of the Protest Petition (page 404 to 410 of the Vol. IV of the SLP filed by petitioner) as under :

*474. The mobile phone records show that Mr Bhatt, Accused No. 2 (now deceased) is in close consultation with the Chief Minister who took the decision to 'finish off' the post-mortem at Godhra itself, however illegal and unwarranted that may be. The mobile phone call records are clear indicators of who was organising doctors to start the post-mortem.*

*475. These doctors should have been examined by the SIT in connection with the Complaint dated 8.6.2006 given the haste in post-mortems and the overall irregularities and illegalities of decisions take at Godhra post the incident. (This is a matter for further investigation by an independent agency).*

*476. .... It is reasonable to conclude that the post-mortem was carried out in great haste and completely ignoring law and procedure at Godhra itself for three objectives linked closely to the conspiracy that was hatched:*

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- a. *The real cause of death could get obliterated;*
- b. *The dead bodies could be transported to reach Ahmedabad next morning to hold a funeral rally;*
- c. *Passions aroused through parading of dead bodies amidst shouting of provocative slogans could be harnessed for unleashing violent reprisal killings.*

95. Bare reading of these allegations reflect that these are conjectures and surmises of the petitioner, especially in view of the fact that trial of the Godhra Train incident is over and Hon'ble High Court had also disposed off the appeals in this regard.

96. **No illegality in postmortem:** It will be appropriate to mention that the case pertaining to Godhra Train burning was also investigated by SIT under supervision of Hon'ble Supreme Court. The trial ended in conviction of 32 accused persons, and the confirmation appeals for capital punishment have also been disposed off by Hon'ble High Court of Gujarat. These courts have already considered the issues pertaining to post-mortem of the dead bodies, and none of the allegations made by the petitioner was supported by any of the findings of these courts. The relevant paragraph from the judgment of the Hon'ble High Court of Gujarat in Criminal Confirmation Case No. 1 of 2011 State Of Gujarat Versus Bilal Ismail Abdul Majid Sujela @ Bilal Haji [Pg 303-335 of the Convenience Compilation II filed by the SIT] is reproduced hereinbelow, wherein the issue of post-mortem was raised specifically by the defence, and which was rejected by Hon'ble High Court:

*"Part IX.....*

*Their arguments / contentions in defence, may be summarized as under:*

*.....*

*Autopsy on dead bodies came to be conducted in very hazardous manner without any sufficient equipment's and then, PM Notes came to be prepared on similar lines, mostly showing the external and internal parts of all the bodies as "charred/roasted", all the injuries as "antemortem" and cause of death as "Shock due to extensive burn injuries".*

*PART XII-H... ABOUT OTHER EVIDENCE AND T.I.P AND I.D.*

*....*

*8. Medical Officers PW-27 to PW-59 and PW-62, who had performed postmortem and respective postmortem notes are again established and proved by the prosecution."*

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97. In this situation when the issues raised by the petitioner had already gone through judicial scrutiny at various levels, prayer of the petitioner that the same should be reinvestigated, is against the interest of justice and the established provisions of law.

98. Similarly, Protest Petition has referred to various other cases where judgments have been pronounced by the trial courts. Many of such cases were investigated under supervision of Hon'ble Supreme Court, and the allegation of the petitioner that whole state machinery was made ineffective as part of single larger conspiracy in Gujarat after Godhra Train incident had not found any support.

## FINAL SUBMISSION

99. **Inherent fallacy in the case of the Petitioner** : It is submitted that the attempt by the Petitioner, in the present SLP, to highlight other issues, unconnected with each other, and without connecting them to the original larger conspiracy is an exercise in futility. It is submitted that the nature of the conspiracy alleged by the Petitioner can only occur in a top down manner and cannot be re-constructed ad-nauseum in a bottom up manner wherein some smaller elements, maybe occurring at various different places, culminate in to one larger conspiracy. Conspiracy, by definition, entails a "*meeting of minds*" and the Petitioner has failed to make out a case of any meeting of minds for any alleged larger conspiracy.

100. **Sui Generis procedure mandates that issues cannot be re-opened**: The Supreme Court adopted a sui generis procedure in the interest of justice and the entire matter has been thoroughly investigated by an independent agency which was monitored by the Hon'ble Supreme Court.

101. **SIT is not a supra investigating agency and functions under the expanse directed by the Supreme Court** : The Petitioner in effect seeks to make its Complaint of 2006 and the Protest Petition in the manner of an over-arching Complaint/ FIR since each and every criminal case that relates to the Godhra Train burning incident and its after-math is being alleged to be as a result of the alleged conspiracy and consequent inaction by the various high-ranking officials. In the present case when there is no material to support the allegation of larger conspiracy hatched in the

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said meeting, the petitioner's case for further investigation is without any merit.

**102. Scope of the Special Petition in appeals from cases of such nature :**

It is humbly stated and submitted that the Ld. Magistrate had passed a well-reasoned order on all the allegations (around 32) culled out from the complaint of the petitioner dated 08.06.2006. In the impugned order Ld. Magistrate had taken into consideration allegations in the complaint, Closure Report of the SIT, statements recorded and documents collected by the SIT, Protest Petition by the complainant, submissions made by the Ld. Special Public Prosecutor and Ld. Counsel for the complainant. A

very  
is passed by  
Magistrate



**SUBMITTED BY :-  
MR. MUKUL ROHATGI,  
For - Special Investigation Team**

detailed order  
the Ld.  
on  
consideration  
relevant facts,  
considering all  
material

of all the  
and after  
the

available on record in relation to each of the 32 allegations, the Ld. Magistrate has expressed that there is no material available on record against any of the named or un-named persons. Ld. Magistrate had also expressed his concurrence with the conclusion drawn by the SIT in its Closure Report on all the 30 allegations. It is established law that while accepting the Closure Report, detailed order is not required, however, in such a contentious case reasoned order is advisable. It is in confirmation with the dictum of Hon'ble Supreme Court of India in *Nupur Talwar Vs C.B.I. (2012 (2) SCC 188)*. In view of the fact that the impugned order of Ld. Magistrate and Hon'ble High Court of Gujarat leaves no scope for any further investigation in the present case.

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