

The Citizens For Justice & Peace through its president
The Dist. Collector, Ahmedabad & Ors... Respondents
Rejoinder Affidavit Of The Petitioners

I, Teesta Setalvad, aged 44 years, d/o Atul M. Setalvad,
address Nirant, Juhu Tara Road, Mumbai 400049, do
hereby solemnly affirm and state as under:

1. I am the secretary of the 1st petitioner abovenamed.
I have read the Affidavit Of Mr. R.S.Patel Deputy
Secretary Revenue Dept made on behalf of Respondent
No 2 (The State of Gujarat) and I am making this
Affidavit on behalf of the Petitioners in Rejoinder
thereto. I say and submit that this affidavit is being
made to comprehensively respond to this affidavit of
Mr. Patel filed at page 155-A to the compilation.

2. At the outset I say and submit that :

(A) Article 21 of the Constitution of India is not
restricted to violation of life and liberty of
citizens committed by the State alone. The
Citizens Fundamental Right is also required to

be protected & safeguarded by the State from being violated & interfered with by private individuals. The State is duty bound to protect the threatened group/ class of citizens from assaults and if it fails to do so it fails to perform its Constitutional as well as its statutory obligations. The State is bound to take every precautionary measure & act swiftly to curb riots & mass terror, as inaction or passivity on its part can result in loss of life, liberty, livelihood & property and negation of Art 21. If it does not do so & especially if its Police officers & ministers are complicit in such unconstitutional acts, it cannot escape liability to pay compensation for loss of life, limbs, livelihood, shelter & property.

(B) From the May-July 2002 report of the National Human Rights Commission [NHRC) annexed hereto as Annexure A, the August 2002 Report of the Parliamentary Committee on the Empowerment of Women (annexed hereto as Annexure - B), the Affidavits dated 15.7.02 & 6.10.04 filed by Mr. R.B.Sreekumar Additional

Director General of Police on behalf of the SIB (CID-IB) before the Nanavaty - Shah Commission, (annexed hereto as Annexure C colly along with other affidavits filed by this police officer) & the figures furnished by the State Government to the NHRC, (annexed hereto as Annexure D colly - State Government's Response to the NHRC dated 31-1-2005 2005 on Relief and Rehabilitation of Riot Affected Persons in Gujarat (Part 1) and Note on Riots After Godhra Carnage (Part 2), it is established that the violence, killings, attacks & destruction of houses continued for months from and after 28th Feb 2002 :

- i. Till 23rd April 2002, 636 Muslims had been killed in the riots (of which 91 had been killed in police firing) and 181 Hindus had been killed (of which 76 had been killed in police firing). Nearly 329 Muslims had sustained injuries in arson as against 74 Hindus. The loss of property of Muslims was accounted to be approximately 600 crores as

against 40 crores of loss of property of Hindus. (Reference Affidavit of Sreekumar Additional DG SIB)

ii. By August 2002, the figure of those killed had increased from 817(on 23.4.2002) to 983 deaths - including 200 killed in police firing. Moreover 2133 cases of injury had been reported. (Ref: Report of Womens Parliamentary Committee)

iii. After August 2002, there were a further 54 deaths. The final fatality figure (as per the 2nd Respondents response to the NHRC annexed hereto as Annexure - C colly) was 1037 deaths: 781 Muslims & 256 Hindus. Out of these 1037: 196 died in police firing: 116 Muslims & 80 Hindus.

Till August 2002 (as recorded in the Report of the Womens Parliamentary Committee) the 2nd Respondents Home Department had itself recorded:

- 185 cases of attacks on women of which 100 were in Ahmedabad city ;
- 57 attacks on children of which 33 were in Ahmedabad.
- 225 women and 65 children killed
- 11 cases of rape of women: 3 cases from Dahod, 1 from Anand, 4 in the Panchmahals & 3 in Ahmedabad.

i. By August 2002 (as recorded in the Report of the Women's Parliamentary Committee - Annexure B) as many as 132,532 persons had been displaced / forced to leave their houses & were living in 121 riot relief camps of which 58 were in Ahmedabad city.

ii. Till June 2002 (as recorded in the Report of the Womens Parliamentary Committee) there had been 4954 cases (2023 urban and 2931 rural) of residential houses having been completely destroyed. There were a further 18,924 cases of partially damaged houses

(11,199 urban & 7095 rural) - i.e. more than 23,000 houses had been destroyed or damaged by the rioters.

iii. The 2nd Respondents have in their Statements to the NHRC confirmed that the residential houses of 18,037 urban families (as against 13,222 till June 2002) & 11,204 families in rural areas (as against 10,025 till June 2002) had been destroyed or damaged.

iv. The widespread nature of these incidents is evident from the fact that they occurred in 993 villages and 151 towns covering 284 police stations (out of a total of 464 in the State) and were spread over 153 Assembly constituencies (out of a total of 182 constituencies). This was reported by the State SIB to the Election Commission and recorded in its order annexed hereto as Annexure E colly.

v. By April 2002 the 2nd Respondents SIB (CID-IB) had estimated the loss / damage to property at Rs. 600 crores to Muslims & 40 crores to Hindus. By Aug 2002 the estimate of loss had risen to Rs. 687 crores.

(C) As has been set out in detail hereinafter the record establishes that there was a complete & prolonged failure by the State Government & its officers/ District Magistrates / police officers to fulfil their constitutional & statutory duty to protect the lives, limbs, livelihood and property of its citizens.

- The Police either failed to respond to repeated & desperate calls for help by those who were facing imminent threats of death, rapine & mayhem, or stood by passively claiming that they were unable to do anything having regard to the large number of rioters involved. This has been revealed through official, semi-official and press reports both in 2002 and thereafter.

- Calls for assistance made to the higher authorities (the Commissioner of Police, the Home Minister & the Chief Minister) by those who were facing death & destruction remained unanswered - resulting in a large number of gory incidents of death, butchery & rape/molestation. In July 2002, former SP Bhavnagar, Mr. Rahul Sharma filed an affidavit before the Nanavaty - Shah Commission in July 2002. Annexed to the affidavit were CDs running into lakhs of printed pages of cellphone records of the top Gujarat police officials and the phone calls received between February 25 and March 4, 2002. Copies of these CDs (three) have been annexed hereto as Annexure F colly. The Indian Express newspapers' seven part articles on Mr. Rahul Sharma's CDs and what they contain dated November 21-24, 2004 and November 28, 2004 are annexed hereto as Annexure G colly.
- In fact in a number of cases police personnel in uniform were found marching behind or

mingling with the mob. In fact in some cases policemen joined in the mayhem & ensured that no resistance could be offered to the rioters.

- Those associated with the Bajrang Dal, the Vishwa Hindu Parishad and the ruling Bharatiya Janata Party were in the forefront of the rioting.
- Moreover the record establishes that the Chief Minister first provoked the situation by directing that the bodies of the Godhra victims be paraded in Ahmedabad (notwithstanding the objections of the Commissioner of Police Mr. P.C.Pande and the Collector of Godhra, Smt. Jayanti Ravi) ; by supporting the Bandh declared by the VHP and by directing the Police not to come in the way of the Hindus venting their anger. Government Ministers remained present at the Police Control rooms.
- The resultant passivity / inactivity/ indifference of the police, generated a feeling that if Muslims were attacked and harassed

and their houses and property destroyed, no action would be taken.

- The District Magistrates/ Collectors/ District Police in the districts of Mehsana, Sabarkantha, Banaskantha, Gandhinagar, Ahmedabad Rural, Kheda, Anand, Vadodara Rural, Godhra , Dahod etc, did not initiate appropriate action to contain/control riots in those areas where mass murder, rape and other heinous crimes were taking place
- The handful of Senior (IPS) Police Officers who took prompt and adequate steps & prevented the mob attacks & arrested those leading the mobs, were removed from their posts by transferring them to irrelevant positions.
- This directly lead to the aforesaid killings, attacks, rape/ molestation and destruction of houses and livelihood details of which (as per the Government record) have been set out in (B) above.
- The National Human Rights Commission after considering the responses of the Government

of Gujarat to its preliminary Reports/findings, concluded in its Report/Proceedings of 31st May 2002, “ there was a comprehensive failure of the State to protect the Constitutional rights of the people of Gujarat”.

- The record also establishes that the Respondent No 2/ its police officers have failed to duly register FIRs, have failed to reflect the names of VHP, Bajrang Dal & BJP members as the accused despite their names being mentioned by the victims, have failed to take steps to arrest such accused persons, have failed to duly investigate and prosecute such heinous crimes. In fact the Respondent No 2 has appointed members of the VHP/ BJP as Public Prosecutors for such offences. Such PPS have not opposed bail for the offenders, who have on being released been lionized and received a hero's welcome. The Respondent No 2 has also sought to conceal the true state of affairs from the Commission of Inquiry, by coaching its officers/ witnesses against

stating/ disclosing facts which could detrimentally affect the Governments case and by threatening/pressurizing and victimizing the few officers who have had the courage to state the correct facts to the Commission.

(D) In these circumstances there arises a clear constitutional obligation on the part of the Respondent No 2 to adequately & appropriately compensate those who have lost their lives, limbs, houses, livelihood & property. The present Petition has been filed as the Respondent No 2 has offered / paid totally inadequate & arbitrary amounts :

i. Compensation for Death: The Respondent No 2 has offered/ paid compensation of only Rs. 1.5 lakhs (Rs. 90,000 in cash & Rs. 60,000 in Narmada Bonds) as compensation to the next of kin of those killed in the rioting. This amount is totally inadequate and arbitrary and amounts to a failure on the part of the State to fulfil its constitutional obligation of compensation. Significantly the Hon'ble Delhi

High Court has in 1996 (six years earlier) directed the payment of compensation of Rs. 2 lakhs & interest from 1984 (aggregating to Rs. 3.5 lakhs) to those killed in the 1984 anti Sikh riots. On that basis and allowing even for a 7% annual rate of inflation from 1996 to 2002, the amount of compensation would be required to be approximately 3.00 lakhs (40% increase on 2 lakhs) and interest on this amount from 2002 to 2007 at 8% per annum: an additional Rs. 1 lakh = 4.00 lakhs !. The Petitioners submit that the ceiling of Rs. 150,000 and the payment of Rs. 60,000 of this amount in bonds is totally illegal, arbitrary & unconstitutional and the amount should in consonance with the State's obligations under Arts 14 & 21 of the Constitution be fixed at Rs. 4,00 lakhs as above. Compensation for injuries/ disabilities sustained should be pro rata to this amount.

- ii. Compensation for rape cases and cases of attacks on women & children: Despite the

State Home Department acknowledging 185 cases of attacks on women, 11 rape cases and 57 attacks on children, no compensation has been paid to the victims of such heinous and dastardly attacks on helpless women & children. In fact the number of rape cases is far more. At the Shah Alam camp a much larger number of rapes had been listed/ provided. It is submitted that the Constitution obligations require the Respondent No 2 to make full and appropriate compensation of not less than that made available in the case of death (i.e. 4.00 lakhs) to such women & children.

- iii. Regarding Destruction of houses/homes: The position re compensation of houses is even worse. The 2nd Respondent has fixed an arbitrary and irrational ceiling of Rs. 50,000 as compensation for destruction of houses and in most cases has paid only a pittance:
- the Womens Parliamentary Committee in its Aug 2002 Report had noted that the

Respondent No 2 had informed the Committee that 4954 houses had been “completely destroyed” (2023 urban and 2931 rural) and that the amount of compensation disbursed for the same was Rs. 7.62 crores. This would mean that an average of Rs. 15,000 has been paid for each completely destroyed house: while a house in the urban area costs approximately Rs. 2 to 3 lakhs & that in the rural area approximately 1 lakh. The consequence has been the inability of almost 5000 families to re construct their houses or make alternative provision for their shelter/ accommodation.

- The Committee recorded that it had been informed that 18924 houses had been partially damaged (11,199 urban & 7095 rural) and for which Rs. 15.55 crores had been paid as compensation. This works out to an average of only Rs. 870 per house !! In fact the Committee noted

that a number of persons / recipients had shown them cheques of as little as Rs. 40 to Rs. 200!!

- The State Government has refused to accept even the estimates of loss contained in panchnamas prepared by its own officers pursuant to site visits/ inspections.

The Petitioners submit that the ceiling of RS. 50,000 is totally irrational, illegal, arbitrary & unconstitutional and the amount should in consonance with the State's obligations under Arts 14 & 21 of the Constitution be fixed at a minimum of Rs. 1.5 lakhs in Rural areas and 3 lakhs in the urban areas and compensation as per losses indicated in the official panchnamas (subject to the above ceilings) should be directed to be paid.

3. COMPLICITY AND INACTIVITY BY THE MINISTERS & OFFICERS OF THE RESPONDENT No 2 :

a. I say and submit that the 2nd Respondents denials of its failure to take necessary preventive & precautionary steps as also regarding the total failure and breakdown of its machinery are false and belied by the record. I deny that the State has discharged its obligations in public law and/or that the Petitioners have not established any infringement of Fundamental Rights under Arts 14,19 & 21.

b. In fact the Government was complicit & the Chief Minister and his cabinet colleagues not only aggravated the situation but also thereafter ensured that the Police did not effectively intervene or prevent the rioters from their unlawful & heinous acts. The consequent inactivity of its officers: District Magistrates, Collectors & Police Officials created a situation where the rioters were enabled & emboldened to attack, kill, molest & rape hapless Muslims & to destroy their houses & property.

c. After the unfortunate attack on the Sabarmati express at Godhra, the Chief Minister instead of taking precautionary & preventive steps, insisted on the dead bodies being brought by road to Ahmedabad & being displayed there- including of those who did not belong to Ahmedabad. He did so notwithstanding the objections of the Commissioner of Police Ahmedabad. This was narrated to Mr. R Sreekumar Additional DG - SBI (CID-IB) by Mr. Chakravarthi (DG) on 28.2.2002 and has been stated by Mr. Sreekumar in his Affidavit filed before the Nanavati - Shah Commission. This necessarily inflamed passions and provided the impetus for the riots that followed.

d. Moreover on February 27th 2002 itself, the Chief Minister / Government which is responsible for maintaining law and order and protecting the lives and property of its citizens, announced that it would be

supporting the State wide Bandh called by the Bajrang Dal & the VHP for the February 28th, 2002. This was widely reported in the Press and TV and has also been recorded / noted by the NHRC in para 15 of its order dated 31st May 2002.

- e. On February 27, 2002 evening the Chief Minister in the presence of some of his cabinet colleagues (including Mr. Haren Pandya Minister of State, Revenue) held a meeting with ACS Home Mr. Ashok Narayan, DG of Police Chakravarthi & Commissioner of Police Ahmedabad Mr P.C.Pande. The Chief Minister stated that in communal riots the police took action against Hindus & Muslims on one to one basis and that this would not do now. He instructed the DG & the CP to “*allow Hindus to give vent to their anger*”. This was communicated by Chakravarthi to Additional DG SIB Sreekumar on February 28, 2002. DG Chakravarti also told Sreekumar that this posture of the CM was a

major obstacle to police officers initiating action against Hindu Communal elements, who by the February 28th 2002, were on a rampage against the minority community. This has been recorded by Mr. Sreekumar in his 4th Affidavit filed before the Nanavaty - Shah Commission.

The Concerned Citizens Tribunal (comprising retired Supreme Court Justices V Krishna Iyer & P.B Sawant , retired High Court Justice H Suresh & others have in their Report recorded that they had *“received direct information through a testimony from a highly placed source of a meeting where the chief minister, two or three of his cabinet colleagues, the CP of Ahmedabad an IG of Police of the state were present. This meeting took place on the late evening of Feb 27th 2002. This meeting had a singular purpose: the senior most police officials were told that they should expect a “ Hindu reaction” after Godhra. They were also told that they should*

not do anything to contain this reaction.”

This two-volume report that was in the original signed by the panel is annexed hereto as Annexure H colly.

Additional Director General - SIB Mr. Sreekumar in his Affidavit has produced his Register of orders in which he has noted that on 7th June 2002, Dr P.K.Mishra, Principal Secretary to the CM had asked him to find out whether Mr. Harenbhai Pandya MOS Revenue had met the Private Inquiry Commission in which Retired Supreme Court Justice V.R.Krishna Iyer was present. Additional DG also noted that Dr Mishra had also given him Mobile No 98240-30629 and asked him to get the call details. Additional DG SIB has noted that on 12th June 2002 he had informed Dr P.K.Mishra that the minister who had met the private Inquiry Commission (comprising inter alia Justice V.R.Krishna Iyer) was known to be Haren Pandya MOS. Additional DG SIB also noted that mobile No 98240-30629 was the

mobile phone no of Mr. Haren Pandya MOS Revenue. A typed copy of this personal register maintained during the period is separately annexed hereto as Annexure I.

Additional DG SIB has also noted in his Register that on 7th May 2002 the CM told him directly that “ *in his view the violence unleashed by the Hindu mob after the Godhra incident on 27.2.2002 was a natural, uncontrollable incident and no police force can control or contain the same.* “

f. From the 28th morning rampaging mobs of those associated with the Bajrang Dal, VHP, BJP attacked Muslim localities, houses and business establishments. Muslim men were killed & beaten and women were raped & killed. Gory murders, rapes and molestations took place at :

- i. Gulberg Society
Chamanpura (where 72 persons including
Ex MP Jaffri were killed & 10 - 12
women were raped in a mob attack which
lasted for 7 hours - till 4.30 p.m. Jafri
had made numerous calls for help to the
Commissioner P C Pandey, to the Home
Minister & the Chief Minister. At about
2.30 Jafri was stripped, paraded naked &
cut into pieces. Police stood by and did
not even try to stop the rioters. The Chief
Minister was also dismissive of Jafri's
calls for help - and in fact later
attributed the violence to firing by Jafri.
Minimal Police intervention took place
only after 4.30 p.m.
- ii. Naroda Gaon , Naroda
Patiya (where 83 men women & children
were massacred and a number of women
were raped, killed and burnt.
P.I.Mysorewalla & the SRPF Men present
provided no assistance to the victims and

instead taunted them & forced them towards the rioting mob & death.

iii. Panchmahal Dailol where a number of Muslims attempting to flee were killed & women raped,

iv. Anand (where 27 persons were burnt alive on 1st March and 2nd March 2002) ,

v. Mehsana where Muslims were killed in Visnagar & electrocuted in Sardarpur,

vi. Dahod where men were killed & women raped,

vii. Sabarkantha (where 60-65 persons attempting to flee in two tempos were burnt alive) ,

viii. Patan, where two boys were shot dead and the FIR names the BJP MLA of Radhanpur and the chief of the BJP's Radhanpur Unit & other VHP & BD members.

ix. Vadodara (where 14 people were burnt alive at the Best Bakery),

x. Vadodara Rural, Bharuch, Kheda, Bhavnagar, Rajkot and many other places.

The Police were either absent and/or inactive, or actually supported the rioters by shooting any Muslim offering any resistance. Significantly on Feb 28th in Ahmedabad of the 40 persons shot dead 36 were Muslims - although it was the Muslim community which was being targeted by huge well armed mobs. Repeated calls to the Commissioner of Police Ahmedabad & even the Chief Minister resulted in no assistance or response. The

murders, mayhem, rape & molestations took place openly and over a number of hours. Details of these heinous crimes have been recorded in the Report of the Citizens Tribunal & also in the "Genocide Gujarat 2002" issue published by *Communalism Combat* based on research & enquiries by me. Both Reports establish complete inactivity of the Police and on a number of occasions active complicity by police officers. Government Ministers J.K.Jadeja & Ashok Bhatt positioned themselves in the DGP's Office & Ahmedabad City Control Room and controlled the deployment of police forces. The Concerned Citizens Tribunal report has been signed by all members of the panel included Justices (retd) VR Krishna Iyer, PB Sawant and Hosbet Suresh.

g. Additional DG Sreekumar has recorded in his Affidavit that on the 28th DG Chakravarthi told him that "activists of the

VHP, Bajrang Dal, BJP and its sister bodies were leading the riots and police officers were not intervening effectively as they were keen to avoid crossing swords with the supporters of the ruling party.”

h. Additional DG SIB recorded in his Secret Report of 24th April 2002 that as on 23rd April 2002, 636 Muslims were killed in the riots (of these 91 were killed in police firing) as against 181 Hindus killed (of which 76 were killed in police firing. Nearly 329 Muslims had sustained injuries in arson as against 74 Hindus. The loss of property of Muslims is accounted to be approximately Rs. 600 crores as against Rs. 40 crores of loss of property of Hindus.”

i. By August 2002 the Government itself had recorded that 185 cases of attacks on women of which 100 were in Ahmedabad city; that there had been 57 attacks on children of which 33 were in Ahmedabad and

that 225 women and 65 children killed. The Government had also recorded 11 cases of rape of women: 3 cases from Dahod, 1 from Anand, 4 in the Panchmahals & 3 in Ahmedabad. In fact the rape / molestation of women was far more pervasive. Many of the victims were killed & burnt beyond recognition. Others were too terrified to record complaints.

j. Additional DG Sreekumar also subsequently reported to the Additional Secretary Law and Order that communal incidents had taken place in 993 villages and 151 towns covering 284 police stations out of a total of 464 and were spread over 153 assembly constituencies out of a total of 182. By Aug 2002 (as recorded in the Report of the Women's Parliamentary Committee) as many as 132,532 persons had been displaced / forced to leave their houses & were living in 121 riot relief camps of which 58 were in Ahmedabad city.

k. By 1st June 2002 (as recorded in the Report of the Womens Parliamentary Committee) there had been 4954 cases (2023 urban and 2931 rural) of residential houses having been completely destroyed. There were a further 18,924 cases of partially damaged houses (11,199 urban & 7095 rural) - i.e. more than 23,000 houses had been destroyed or damaged by the rioters. Thereafter a further 5000 urban houses and a 1000 rural houses have been destroyed or damaged.

l. Additional DG SIB Mr. Sreekumar in his Secret Report dated 24th April 2002 (which was submitted to the Nanavati - Shah Commision) has recorded that: “ (X) The inability of the Ahmedabad city Police to contain and control violence unleashed by the communally oriented mobs created an atmosphere of permissiveness and this eroded the image of the police as an

effective law enforcing machinery in the society, particularly among the lumpen and underworld segments. . . . ” (XI) Many senior police officers spoke about officers at the decisive rung of the hierarchical ladder viz. Inspectors in charge of City Police Stations, ignoring specific instructions from the official hierarchy on account of their getting verbal instructions from the senior political leaders of the ruling party.

m. Additional Director General Sreekumar has also noted in his affidavit of 11.04.2005 that “ It is widely known that the DMs and Collectors , who are bound by Police Acts and Regulations to maintain law and order through their personal intervention and effective supervision of the District Police, had not initiated any action to contain/ control riots or to stabilize the situation, especially in those areas where mass murders, rapes and other heinous

crimes had taken place. This malady was quite pronounced in the Districts of Mehsana, Sabarkantha, Banaskantha, Gandhinagar, Ahmedabad rural, Kheda, Anand, Vadodara Rural, Godhra, Dahod etc..”

n. Additional DG Sreekumar has also pointed out in his 4th Affidavit filed before the Commission that the few IPS officers who had taken effective steps to prevent the mob attacks & arrest those involved were transferred from their posts by the Government. Additional DG had pointed out that :

i. Mr. Rahul Sharma IPS, the then SP of Bhavnagar had been transferred on the 24th of March 2002 to the relatively unimportant post of DCP Control room, for preventing an attack on a Madrassa housing 200 Muslim children by opening fire on the mob & refusing to release 21 arrested persons/ leaders who were

involved. Rahul Sharma was later transferred as SRPF Commandant in July 2002 for opposing the anti minority line adopted in investigation of Ahmedabad city cases by Ahmedabad Crime branch. Rahul Sharma has also filed an affidavit before the Commission in this regard.

- ii. Vivek Shrivastava IPS was transferred from the post of SP Kutch for arresting a Home Guard Commandant for his involvement in riots, despite instructions from the CM office.
- iii. Himanshu Bhatt IPS was transferred from the post of SP Banaskantha in March 2002 for initiating action against a sub inspector who had joined with the rioting mob. Thereafter the SI was reinstated from suspension and posted back in the same Police Station.

iv. M.D.Antani IPS was transferred out of Bharuch Disttrect in March 2002 for taking action against BJP supporters

v. Satishchandra Verma IPS: who was range DIGP Bhuj was transferred in March 2005 after he ordered the arrest of a BJP MLA belonging to Banaskantha district for his involvement in the murder of two Muslim boys during the riots.

o. The NHRC concluded in its Report dated 31st May 2002 that “ there was a comprehensive failure of the State to protect the Constitutional rights of the people of Gujarat”

p. Police officials failed to properly register FIRs. The names of VHP, Bajrang Dal, BJP members & their associates who had been involved in the heinous attacks were not recorded in the Firs. No steps were taken to arrest most of them. Even the few

arrested were bailed out very soon without any opposition from the Prosecutors (quite a few of whom were supporters of the VHP/ BD/ BJP) and the police. The NHRC in its order dated 31st May 2002 records that it's Special Representative had reported on 24th April 2002 that “ *in respect of most of the sensational cases, the FIRs registered on behalf of the State by the Police Officers concerned, the accused persons were shown as “unknown”. His report adds that “ this is the general pattern seen all over the State. Even when complaints of aggrieved parties have been recorded, it has been alleged that the names of the offenders are not included. In almost all cases, copies of the FIR which the complainant is entitled to has not been given”. There has been widespread public outrage, in particular, in respect of atrocities against women, including acts of rape, in respect of which FIRs were neither promptly nor accurately recorded and the victims harassed and intimidated.*”

q. The NHRC in its order dated 31st May 2002 has also noted that its special representative had “ *observed in a Report to the Commission dated 24th April 2002 that “ almost 90% of those arrested even in heinous offences like murder, arson, etc have managed to get bailed out as soon as they were arrested.” Reports have also appeared in the media that those who have been released on bail were given warm public welcomes by some political leaders. This is in sharp contrast to the assertion made by the State Government in its Report of 12th April 2002 that “ bail applications of all accused persons are being strongly defended and rejected”*”

r. In some of the criminal cases which reached trial the prosecutor/prosecution and the police effectively ensured the acquittal of the accused. In the Best Bakery case where a large mob killed 14

persons in Vadodara on 1st March 2002, all the accused were acquitted. The NHRC, the 1st Petitioner herein filed Petitions to the Supreme Court . By a judgement & order the Supreme Court [dated 12-04-2004 annexed hereto as Annexure J] allowed the Petitions, set aside the acquittal, directed a retrial by a Court under the jurisdiction of the Bombay High Court and also directed the appointment of another public prosecutor after taking into account the suggestions of the victims/ affected persons. The Court observed that it was apparent from what had transpired that the investigation had been done in a manner with the object of helping the accused persons. The Court held “ *The investigation appears to be perfunctory and anything but impartial without any definite object of finding the truth and bringing to book those responsible for the crime. The public prosecutor appears to have acted more as a defence counsel than one whose duty was to present the truth before the Court. The*

Court in turn appeared to be a silent spectator, mute to the manipulations and preferred to be indifferent to sacrilege being committed to justice. The role of the State Government also leaves much to be desired. ” The Court observed: “69. *Those who are responsible for protecting life and properties and ensuring that investigation is fair and proper seem to have shown no real anxiety. Large number of people had lost their lives. Whether the accused persons were really assailants or not could have been established by a fair and impartial investigation. The modern day "Neros" were looking elsewhere when Best Bakery and innocent children and helpless women were burning, and were probably deliberating how the perpetrators of the crime can be saved or protected. Law and Justice become flies in the hands of these "wanton boys". When fences start to swallow the crops, no scope will be left for survival of law and order or truth and justice. Public order as well as*

public interest become martyrs and monuments. ”

s. On the Case being retried in the Bombay Court, a number of the accused have been convicted and awarded substantial sentences by the Court's judgement dated 24.2.2006.

t. Another shameful case of gang rape was transferred out of the state of Gujarat to Mumbai i.e. the Bilkees Rasool case and still awaits judgement. Significantly the CBI which was entrusted with the investigation, has found top police officials and government doctors responsible for destruction of evidence.

u. Ten other major criminal trials have been stayed by the Hon'ble Supreme Court on 21-11-2003 after the NHRC petitioner the court for re-investigation and transfer and victim survivors filed extensive

affidavits before the apex court detailing the extent of malafide in the investigations. Powerful accused were being shielded and the path of justice being subverted.

v. The Hon'ble Supreme Court has also ordered that a special cell of 7 Range Inspector Generals should be set up to look into the FIRs and other materials of 2000 cases in which A summary Reports had been filed resulting in closure of the cases, to decide whether further investigation was required and to submit quarterly reports regarding the same to the Court.

4.I shall now deal para wise with the 2nd Respondents said Affidavit in Reply. At the outset I repeat & reiterate what has been stated in the Petition and hereinabove & deny all statements & submissions made in the said Affidavit which are contrary thereto or inconsistent therewith as if the same had been set out herein in extensor & specifically denied.

5. With reference to para 3 of the said affidavit I deny that the Government provided quick or effective humanitarian relief or rehabilitation to the affected persons. This bald averment is belied by the Government's conduct in paying only RS. 150,000 for deaths (and of which Rs. 60,000 is by way of bonds), by offering no compensation whatever for cases of rape / molestation/ attacks on women, by offering no compensation for injuries short of disablement and by fixing a ceiling of Rs. 50,000 for destruction / damage to houses and paying only absurd sums like Rs. 200, 400 or Rs. 1000 for the same. I deny that the State has fulfilled its constitutional obligations. I deny that payment of compensation under Art 14 & 21 to citizens who have lost their lives, limbs, houses & properties by the inactivity & complicity/ connivance of the State & its officers, falls in the domain of " policy decision" and/or is not justiciable.

6. With reference to para 4.1 I say that the Publication of Genocide Gujarat 2002 has been based on my visits to Gujarat in March 2002, visits to sites of the mob attacks, discussions with victims, relatives, photographs taken by me, pamphlets & hate literature collected by me and the public record (FIRs etc). I say that I have verified the Petition and I had for the sake of brevity sought to refer to the same, instead of having to repeat / reproduce the same verbatim in the Petition. I specifically affirm the veracity & correctness of what has been stated therein. I deny that the same contains any factually incorrect information. I say that the deponent / Respondent No 2 has merely made a bald averment of the same containing factually incorrect information, without specifying any inaccuracy. I deny that the contents of the said publication contain "inappropriate language" and/or that they are capable of creating disharmony, or feelings of enmity, or hatred or illwill between communities or that they are capable of hurting religious feelings of the people of the State. I say that the

edition depicts / reproduces the disgusting pamphlets which were being circulated at that time against Muslim citizens and in respect of which the Government of Gujarat & its officers took no steps despite recommendations having been made by the Additional DG & the Commissioner of Police Ahmedabad, as recorded/ reflected in the Reports filed by the Additional DG with the Nanavaty - Shah Commission. The Edition also contains details of the total inactivity & even complicity of the Government & its officers and the trauma & suffering that was inflicted on citizens as a consequence thereof. Moreover the statements made are also supported by findings of (i) the NHRC, (ii) The Womens Parliamentary Committee, (iii) the Reports filed by the Additional DG - SIB, (iv) The affidavits foiled by the Additional DG SIB before the Nanavaty - Shah Commission (v) the observations & findings recorded by the Hon'ble Supreme Court of India while transferring the Best Bakery case, (vi) the detailed Report filed by the Concerned Citizens Tribunal (which comprised two retired Supreme Court judges, 1 retired High Court

Judge . a retired DGP & others The original report has been signed by them and each printed copy bears a print of their signatures.) (vii) the Human Rights Watch Report which has been verified as correct & accurate by the Affidavit of Smita Narula annexed hereto as Annexure K colly. I submit that all the above clearly establishes the complicity and total inactivity of the Government of Gujarat while the constitutional rights of hundreds of its citizens were being openly, viciously and persistently violated by mobs of VHP, Bajrang Dal and BJP workers and lumpen elements. With reference to para 4.2 of the said Affidavit I say that whatever has been provided by way of relief and rehabilitation by the Government is totally inadequate. I say that this is inter alia apparent not only from what has been stated in the Petition and as above but also by the fact that according to the Report of Respondent No 2/ the Additional DG SIB of April 2002 houses/ property in excess of Rs. 600 crores had been destroyed/damaged by the mobs. The total amount expended by the Government of Gujarat, including byway of

compensation for deaths, emergency rations in the Relief camps, is only 205 crores of which Rs. 150 crores was received by the State Government from the Government of India. I reiterate the correctness of the said Factfinding reports referred to in para 3 of the Petition and annexed as Exhibit A thereto.

7. With reference to para 4.3 I submit that the denials made by Respondent No 2 are false and are belied by the record. I submit that infringement of the citizens rights under Arts 14, 19 & 21 have clearly been established. I deny that the State has discharged its obligations / responsibility in public law to pay of just compensation to those affected by its inactivity, passivity and complicity. I say that the approach of the State is exemplified by its cavalier & dismissive response to Exhibit B of the petition which documents in detail the loss suffered by hundreds of its citizens as recorded in panchnamas made by state officials after site inspections/ visits. I deny that the details contained in Exhibit B are not accurate or

discrepant as falsely alleged. I submit that Exhibit R-1A to the said Affidavit is totally unintelligible. I deny that the State proactively provided adequate relief. The bare averment is belied by the record & by the common experience of hundreds of its citizens. I deny that the relief camps were voluntarily closed by the organisers. I submit that the record establishes that the same were forcibly closed by threats & coercion at the time of the visit of the Election Commission team in an attempt to establish that normalcy had been restored. I deny that damage details were recorded by state officials without site visits. The Panchnamas prepared establish that they were prepared after site visits/ inspections. I deny that amounts recorded in the said Panchnamas made by Police/ Government officials in the presence of panchas & reflected in Exhibit B cannot be considered authentic. I submit that this response of the Government to losses recorded in panchnamas prepared by its own officers , exemplifies its approach to the citizens who in the first instance lost their lives, limbs, houses and

property due to the total failure, neglect, inactivity, passivity and even complicity of the Government and its officers and completely belies its claims of having fulfilled its constitutional obligations of compensation. In addition to panchnamas, some FIRs of victim complainants as also the police statements recorded therein also records details of amounts of losses suffered. The so called technical teams visited the business establishments generally exparte (in the absence of the affected persons) and the reports have also never been made available for scrutiny. The amounts paid on the basis of such teams reports are so niggardly and inadequate as to constitute a further insult or injury to those who had lost their livelihood and property in the mob attacks. Ignoring the said Panchnamas prepared by Government officials & requiring hapless victims to prove their losses "conclusively" and by adopting "proceedings in civil courts" - is indicative of the approach of the Government and its failure to fulfil its constitutional obligation to provide just and fair compensation to those who

have suffered so grievously by its inactivity, failure and complicity. I deny that the Petition and / or Exhibit B thereto contain any vague or misleading statements.

8. With reference to para 7 of the said Affidavit I say that the figures of loss of life, houses and property based on what the Government had informed the Womens Parliamentary Committee and the NHRC and the Reports / Affidavits filed by the Additional DG SIB have been set out above. The State Government has paid just Rs. 55 crores and has for the balance utilized the Central Government grant of 150 crores. Moreover the total inadequacy of the compensation given by the Government is evident not only from the paltry sum of Rs. 150,000 given for persons killed, the total failure to provide compensation to women who had been raped & attacked, exhibit B to the Petition, and the fact that while the Government (the Additional DG SIBs Report) estimated the loss suffered to property alone was more than Rs. 600 crores, the total amount given as compensation,

including for deaths, rations to relief camps, etc was only RS 205 crores (from which 119 crores was spent on providing rations at refugee camps and Rs. 17 crores spent as compensation for those killed).

9. With reference to para 8 of the said Affidavit I deny that fixation of a ceiling of Rs. 50,000 for those victims whose houses were destroyed is either reasonable or proper. Moreover the record establishes that paltry sums much less than even this amount have been paid. In fact the figures given by the Government to the Womens Parliamentary Committee indicate that on an average a paltry sum of Rs. 15,000 per house was paid for 4954 houses which had been completely destroyed and only an average sum of Rs. 870 had been paid for 18,924 houses which had been damaged. This is also evident from the extensive data gathered by our team and verified by us in the Collectorates of Ahmedabad and Bharuch in 2004. It is incorrect that we did not carry this verification forward. We have collated data conducted through this verification and data

related to districts of Anand, Kheda, Mehsana, Sabarkantha, Banaskantha, Rajkot, Bhavnagar, Vadodara, Panchmahals, Dahod, Gandhinagar, Patan which establish that the compensation paid was niggardly and totally inadequate. A detailed collation of this data is annexed hereto as Annexure L colly. Affidavits of our team members who conducted this verification along with data that we were unable to verify are annexed hereto as Annexures - M colly. I say and submit that gross discrepancies in the official files can be discerned thus: the official records of compensation records and claims contains FIRs recorded by victim complainants that give facts of the assaults and damage and also often containing police statements thereafter recorded in investigation that too often make mentions of *amounts* of losses. The official records also contain *panchnamas* recorded by police officials at the scene of the crime and damage -often while the victim complaints were still in relief camps- with the evidence of independent *panchas* that also record amounts of losses. Apart from this so-

called technical survey teams were thereafter appointed that also filed their own assessments. I say and submit that at least in Ahmedabad city, the technical teams had to face the victims' ire in or around July-August 2002 when they tried to distribute cheques of pitiably small amounts of compensation. I say and submit that it is ironic that the amount, *in each and every case*, recorded by this technical survey team is a pittance as compared to the earlier officially recorded figures. I say and submit that this is a pattern of behavior and establishes that the Government of Gujarat intends *to deny dignified compensation to the victims of the mass carnage of 2002*. I say and submit that this petition has been assiduously followed up by us, a non-governmental organization. I say and submit that an honest dealing with the data on record, requires an independent comparison between these discrepancies in the official records, the amounts of losses recorded in the FIRs, police statements, *panchnamas* and thereafter by the technical survey team. Significantly the Government had informed

the Womens Parliamentary Committee in August 2002 that almost 5000 houses had been completely destroyed. Even the said para of the said Affidavit deals with those whose houses have been destroyed. Yet the Government seeks to defend the ceiling of Rs. 50,000 and even worse has offered only pittance, absurdly small and totally inadequate amounts to thousands of citizens whose houses have been completely destroyed by the mobs and by government's inactivity and failure to stop such destruction. I say and submit that just to give examples of the extent to which the state of Gujarat has gone *not* to repair the damages inflicted on innocent persons can be seen from the status of the homes of victims of the worst massacres in the state of Gujarat. At Shaikh Vas, Sardarpur village of Mehsana district 19 homes were destroyed. The table no 1 contained in Annexure N colly (table 1) that contains photographic evidence of this reveals a shocking reality. Victim survivors photographed these homes on June 21, 2006. Photographs are annexed hereto as part of Annexure N colly. The extent of

damage can be seen. A total of 19 homes were destroyed and a paltry amount of compensation total Rs. 39, 050/- has been paid to the victims. And this for a mass carnage case that is under the scrutiny of the Hon'ble Supreme Court (trial has been stayed on November 21, 2003). The attitude of the state of Gujarat to hapless victims of a tragedy such as this is self-evident. Similarly at three locales in Ode village of Anand district—Malu Bhagol, Surivali Bhagol and Piraveli Bhagol 275 homes were destroyed. The total damage can be seen. A total of Rs. 23,22,750/- including the miscellaneous expenses of compensation has been paid to the victims of Ode. Victim survivors photographed these homes on June 22, 2006. These photographs as well as photos of 2002 plus the chart showing the extent of damage and actual compensation paid are annexed hereto as photographs are annexed hereto as Annexure Ocolly. It is clear from these annexures that that the amounts paid are woefully inadequate and a deliberate attempt by the state of Gujarat to deny their Constitutional Obligations to its citizenry is

afoot. I respectfully say and submit that para-4.5 of the affidavit-in-reply containing the outer limit of Rs.50,000/- as compensation for complete loss/destruction of a house shows the callous attitude of the State Government towards the sufferers. The petitioner craves leave to annex copy of the photographs of some of the house of the victims destroyed in communal violence between 27.2.2002 and 1.6.2002, is annexed hereto taken by victims at the time. I say and submit that we are attaching herewith as Annexures P (colly) which is a set of 13 photographs and a Table of Analysis and other details of homes of victim survivors of Kheda district. Another compilation of 24 photographs and details is Annexure P-(colly) of Sabarkantha district. Besides we are annexing hereto sets of 24 photographs and a Table of Analysis from Rajpardi in Bharuch district as Annexure Q - colly. The photographs herein were taken in 2002. A scrutiny of all these shows that the damage suffered by these homes of a handful of survivors of the Gujarat carnage of 2002 was immense, as can be

observed from the photos. In contrast the compensation paid pitiful even when FIRs and *panchnamas* were dutifully recorded. I say and submit that whereas ration in the relief camps was given to 1,60,753 persons as per government's own records, *relief money and money for rehabilitation was given to a far reduced number.* I say and submit that this suggests a gross anomaly as those inmates of relief camps were internally displaced persons (refugees) and it is logical and reasonable to assume that each one of these should have been entitled to rehabilitation/compensation. I say and submit that as per the order of this Hon'ble Court, the figures of the actual loss of the property and the actual amount of compensation given by the State Government were verified by a team at our behest consisting of CJP's Field Coordinator, Rais Khan Pathan and advocate Mr. Azim Pathan. The analysis of the inspection report of the team sent by us reveals, starkly, that the State Government had made all efforts to humiliate the victims by giving paltry sum when huge losses have been

suffered by them. Annexed above and marked as Annexure L above is the entire data copy of the inspection report.

10. With reference to para 4.6 of the said affidavit I deny that the Government has acted diligently or that it has not violated the rights of the affected citizens. I deny that the rehabilitation package has been implemented in “right earnest” The Respondents refusal to give additional amounts or to associate a monitoring team is consistent with its intent to evade its constitutional obligations for just compensation to those so grievously affected by its inactivity and complicity.

11. With reference to para 4.7, I say that the Deponent / Respondents response to specific cases listed in paras 1 to 20 (where the victims have received only pittance/ absurdly small sums ranging from 3 to 10,000 - and in some cases: nil - notwithstanding the Panchnamas/ statements recording much larger losses ranging from Rs. 1 to

2 lakhs, is consistent with the Respondents desire to avoid payment of just compensation to the victims. It is significant that the Government which has allowed its citizens to be killed, raped, molested and their houses and property destroyed by mobs, now denies to them their right of just compensation by contending that panchnamas recorded by Government/ Police officers and recording the quantum and extent of loss “ cannot automatically be said to be proved”. I submit that such panchnamas constitute a contemporaneous & accurate Government document on the basis of which compensation is required to be awarded.

12. With reference to para 4.8 of the said Affidavit I reiterate that the NHRC had after considering & noting the response of the Government of Gujarat held its order/ Report dated 31st May 2002 that “ there was a comprehensive failure of the State to protect the Constitutional rights of the people of Gujarat” and that the State was liable to compensate the citizens . I deny that findings & recommendations of the NHRC regarding the

obligation of the State to compensate & rehabilitate & the nature and quantum thereof are “ non germane matters”. I deny that the Concerned Citizens Tribunal Report is irrelevant or non germane. I deny that the Petitioners have sought to create a misleading impression. The facts regarding the conduct of the Government both during and after the riots are prejudicial to its reputation & constitutional duty.

13. With reference to para 5.1 I say that bringing to Ahmedabad & parading/ displaying the dead bodies of the unfortunate Godhra incident (notwithstanding the objections of the Police Commissioner & even the Collector Godhra) , was irresponsible behavior on the part of the Government which was necessarily aware that it would result in heightening of tensions & repercussions.

14. With reference to para 5.2 I say that constituting committees does not result in the State meeting its constitutional obligation of providing just/

adequate compensation. The facts and material set out in the Petition and herein adequately establish a complete failure of the Government to protect the rights of its citizens and also its constitutional obligation to provide just/ fair compensation to those whose right to life, liberty, shelter and livelihood have been infringed by the failure, neglect and even complicity of the Govt.

15. With reference to para 5.3 of the said Affidavit I deny that the panchnamas were “ preliminary” and/or that they were made without visiting the sites/ houses. This is belied by the Panchnamas themselves. The Technical Team visited/ surveyed ex parte and appears to have been constituted with a view to providing some basis to the Government to deny citizens their right to compensation for losses suffered by them and duly contemporaneously recorded in the Panchnamas.

16. With reference to para 5.4 of the said Affidavit I submit that the affidavits filed by the Additional DG Sreekumar before the Commission and the

recordings/ transcripts thereof of his meetings with Senior officers & the Governments Advocates relating to the Commission establish that the Government has been tutoring/ coaching its officers not to disclose damaging facts/ materials regarding the government's failure and complicity. In gross violation of provisions of the Indian Penal Code, Commission of Inquiry Act, Administrative Service Rules of IAS/IPS officers and the Police Acts, the State of Gujarat has been ensuring that senior police officers do not file second affidavits following the expanded terms of reference, and even not depose as one example shows. On occasion, officers have been directly influenced to depose with falsified facts. These are not simply allegations but well documented moves by the state government executed both through its senior bureaucrats, Home Secretary, Murmu and it's advocate Arvind Pandya who appears before the Commission.. All these facts have been gleaned following a detailed and thorough examination of affidavits filed by senior policemen and officials before the Nanavaty-Shah Commission that we

have annexed in translation. We crave leave to annexe as additional documents and further evidence of the same. The copy of the transcript of conversation alongwith the CD revealing the Home Secretary Murmu conversation assisted with state government's advocate in Nanavati - Shsh commission intimidating a serving police officer is also annexed along with Mr. Shreekumar's affidavit. I say that this destroys the credibility & value of the Commissions proceedings. Moreover the Government has victimized those officers like Additional DG Sreekumar who have, notwithstanding the pressure, sought to disclose the correct facts/ situation to the Commission. I say that the said transcripts of attempts to pressurise senior state officials from *not revealing the truth before the Nanavaty - Shah Commission* are shocking and establishes the government's failure/ complicity and its plans to suppress the truth.

17. With reference to para 5.5 of the said Affidavit, of the said amount of Rs. 205 crores, Rs. 150 crores was given by the Central Government- i.e. the

Respondent No 2 has only paid Rs. 55 crores from its own funds. As stated above the total inadequacy of this amount of Rs. 205 crores (which includes 17.90 crores paid to relatives of those killed and Rs. 119 crores spent on rations to inmates of relief camps) is evident from the fact that less than 60 crores appear to have been paid towards houses/ property destroyed although the Respondent No 2's (Additional DG Report dated 24th Feb 2002) estimate of loss was in excess of Rs. 600 crores!

18. With reference to para 5.15 I reiterate that constituting diverse Government committees does not fulfill the states obligations to pay just compensation to those who have lost their lives, limbs, shelter, and livelihood as a result of the inactivity and failure and even complicity of the Government & its officials.

19. With reference to para 5.16 I submit that the inspection offered and the results deduced have been dealt with hereinabove and for the sake of brevity & I reiterate the same. I deny that

assessments made by the technical team were shown to the Petitioners representatives. I deny that the Petitioners were satisfied with what was shown as falsely alleged. I deny that the Petitioners have not made grievances about the cases inspected.

20. With reference to para 5.6 to 5.14 I reiterate what has been stated above & submit that the amounts paid so far (i) to relatives of those killed (ii) to those whose houses were destroyed and damaged - is totally inadequate , and at times even illusory. Moreover no compensation has been provided to women who were raped / molested/ attacked although the Respondents Home Dept had informed the Women's Parliamentary Committee in Aug 2002 that there had been 185 attacks on women & at least 11 cases of rape. In fact rape / molestation was far more pervasive - but a number of the victims were killed / burnt and others have been unwilling to file complaints with the police having regard to their partisan and callous responses. I reiterate that constitutional obligations require that atleast a compensation of Rs 3 lakhs &

interest from 2002 (Rs. 1.5 lakhs) be paid to the relatives of those killed. That amounts pro rata be paid for disabilities & serious injuries. Women who were raped & molested should be given compensation equal to that awarded for persons who were killed. The ceiling amount for house compensation should be raised to 1.5 lakhs in the rural area and 3 lakhs in the urban areas and compensation based on fair assessment of data and records, including the Panchnamas contemporaneously recorded be paid alongwith interest from 2002.

21. I say and submit that on June 8, 2006,

Smt. Zakia Jaffri, widow of the former parliamentarian Shri Ahsan Jaffri has, under section 154 of the CrPC registered an F.I.R. against the chief minister of Gujarat, Shri Narendra Modi, and 62 others, [that includes present and former state cabinet ministers and IAS and IPS officers]. I say and submit that a copy of the said FIR annexed hereto as Annexure- S was sought to be registered for the offences punishable u/s 302 r/w 120-B, of the

Indian penal Code with sections 193 r/w 114 IPC, 186 & 153 A, 186, 187 of the Indian Penal Code and u/s Section 6 of the Commission of Inquiry Act; The Gujarat Police Act and The Protection of Human Rights Act [PHRA], 1991.

22. The complainant states in the said FIR that she was filing the FIR “for aiding and abetting the co-accused persons involved in mass carnage that shook the State of Gujarat and the country between February 2002 and May, 2002..... I beg to bring to your kind notice the deliberate and intentional failure of the State Government to protect the life and property of innocent denizens of this country through a well executed and sinister criminal conspiracy amongst the accused above named that resulted in the breakdown of Constitutional Governance in the State.

(2) I state that within the State of Gujarat, since 2002, when a mass carnage was orchestrated by the most powerful in the State Executive using pressure and connivance of the State Administration and Law and Order Machinery there has been

continued and consistent attempts to further this unlawful and unconstitutional worldview and mandate by using State Terror and Pressure to intimidate victim survivors, marginalise (socially and economically the community they hail from], destroy and/or manipulate evidence to influence the course of justice for victims of Mass Crimes when criminal trials or other such legal procedures have been initiated. In a nutshell the core and substance, letter and law of Constitutional governance has been successfully subverted over four years by and in the state of Gujarat.

(3) The utter failure of large sections of the Gujarat police to fulfill their constitutional duty and prevent large-scale massacre, rape and arson - in short to maintain law and order - has been the subject of extensive debate and discourse, post the Godhra mass arson and subsequent carnage. Paralysis and inaction at best, and active connivance and brutality (shooting dead young men even

minors) at worst were in full public view in Gujarat. The civil service was paralyzed, as was the police machinery, which was influenced, manipulated and bullied into singing the murderous tune of the conspirators who were bent on destroying Constitutional Governance in the state, a style of governance that ensures core principles of equity, justice and non-discrimination.

(4) The blatant and transparent actions of the Gujarat State Executive in using a carrot and stick policy to reward those members of the police and administration who fell in with their illegal and unconstitutional plans to permit [or participate in mass murder and sexual violence and systematic destruction of property] and maliciously punish those who stuck, stoically to their Constitutional Oath is a blatant and continued example of non-Constitutional Governance in the state of Gujarat.

(5) This blatant and continuing subversion of the Indian Constitution that constitutes a criminal conspiracy against the secular, democratic Indian State can be closely observed through the attitude of the elected government of Gujarat instituting a Public Inquiry under the Commission of Inquiry Act to inquire into the outrageous actions of 2002 with limited terms of reference initially. That, when this Commission was first constituted an attempt was made to limit it in scope and to compromise its independence. That thanks to the mass outrage, this was sought to be corrected but still, in 2002, the terms of the reference of the Commission did not include any scope to examine the conduct of the Chief Minister i.e., the present accused no. 1 in this First Information Report. That only in the year 2004, following the change of political leadership of the Centre were the terms of reference expanded. Both terms of reference shall be produced to an independent

investigating agency at the time of investigation of this FIR.

(6) That, as the official rehabilitation reports show, the government has been callous and discriminatory in the rehabilitation of the victims and the disbursement of compensation.

(7) As other official documents, including crime reports of 2002, Missing persons reports etc show the state government has at all levels abdicated its responsibility as the Constitutionally Elected government.

[8] That, in gross and appalling violation of provisions of the Indian Penal Code, Commission of Inquiry Act, Administrative Service Rules of IAS/IPS officers and the Police Acts, the State of Gujarat has deliberately constricted the functioning of the Nanavaty-Shah Commission by directly instructing senior police officers not to file second affidavits following the expanded terms of reference, and even not depose as one example shows. On occasion, officers have

been directly influenced to depose with falsified facts and thereby commit the criminal act of perjury, an unforgiveable act of a Constitutionally elected state government and it's officials. These are not simply allegations but well documented moves by the state government executed both through its senior bureaucrats, Home Secretary, Murmu and it's advocate Arvind Pandya who appears before the Commission. These actions on behalf of the state of Gujarat amount to a direct attempt to stifle and curb, or render to a complete farce, the Nanavaty - Shah Commission of Inquiry. All these facts have been gleaned following a detailed and thorough examination of affidavits filed by senior policemen and officials before the Nanavaty - Shah Commission that we have annexed in translation. We crave leave to annexe these as additional documents and further evidence of the same in future. The copy of the transcript of conversation alongwith the CD revealing the Home

Secretary Murmu conversation assisted with state government's advocate in Nanavati - Shah commission intimidating a serving police officer is also annexed along with this FIR.

[9) The cynical subversion of the law and deliberate non-compliance with known and time-tested measures to maintain public peace began prior to the Godhra mass arson of February 27, 2002. Intelligence silence or failure, and subsequent lack of precautionary measures (including calling in the army as a precaution), in 2002, is shocking and startling given the reported background and potential threat to peace by the provocative behavior by *kar sevaks*, demonstrated repeatedly in their journeys to and from Gujarat in the past (between 1989-2002]. In 1992, such incidents were reported from Palej, Dahod and Godhra soon after the Babri Masjid demolition. With this history, should not the police have kept strict watch and vigil over the departure and return of *kar sevaks*,

especially when the climate in the country was tense and belligerent? Although the police had known of tension between *kar sevaks* and residents of Singal Falia in Godhra, the crucial intelligence failure was in not knowing or communicating to the local authorities, that the *kar sevaks* were returning by Sabarmati Express on February 27. Sources said that the police only had information that *kar sevaks* were returning from March 1 onwards. One may well ask whether this was, actually, a case of intelligence failure on part of the police force, or a deliberate absence of preemptive action against those returning from Ayodhya.

[10] In the Godhra Arson, 58 persons, *not* who were all *kar sevaks* returning from Ayodhya unfortunately lost their lives as they were burnt alive when some miscreants attacked [and presumably then set fire] to the train compartment. This was a very tragic and unfortunate incident and those found guilty through due and exacting process of a

criminal trial, should be severely dealt with. What transpired in the days that followed, began with the chief minister of the state on the evening of February 27, 2002, announcing through Akashwani 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 entire and tragic Godhra killings were used and manipulated to justify pre-orchestrated mass carnage that enjoyed the political sanction of the Constitutionally elected Government in Gujarat. Top level meetings were held between the chief minister, some of his cabinet and top level bureaucrats at which illegal instructions were issued where policemen and bureaucrats were instructed to in fact perform illegal acts. That, proof of this was documented by a Citizens Tribunal constituted and headed by former Judges of the Hon'ble Supreme Court when a former Minister testified about the

details. That this former Minister who deposed was late Shri Haren Pandya. That illegal attempts to influence the police by senior cabinet colleagues of the chief minister were reported by the press when they sat at the Gandhinagar and Shahibaug Control Rooms and actually subverted police rules and protocol by instructing policemen not to function and otherwise also manipulating instructions.

[11) Following February 27, 2002, what transpired in many parts of Ahmedabad [especially Gulberg Society and Naroda Gaon and Patiya], Sardarpur in Mehsana, Vadodara city, Kidiad and Sesan in Banaskantha, Pandharwada and Eral in Panchmahals, Sanjeli and Randhikpur in Dahod and Ode in Anand are incidents that have cast a severe blot on Gujarat and India, of the faith in the ordinary man and woman in the rule of law and fairplay.

[12) What is worse or as bad as the occurrences themselves is the now almost

incontrovertible pointers/evidence [including statements made by a former cabinet Minister of the State of Gujarat, that a high level meeting was convened by the Chief Minister, at which then Chief Secretary Subha Rao and then Home Secretary Ashok Narayan and senior policemen were summoned at which clear instructions were given 'not to deal with the Hindu rioting mobs'. Thereby clear sanction and sponsorship was given by the state to brute violence that included sexual violence of girls and women.

23. I deny that the Petition does not survive or that it requires to be rejected.

24. I say and submit that a close scrutiny and analysis of this voluminous material is not only required but is the order of the day. In the Gujarat carnage of 2002, not only were more than 2,500 massacres in cold blood with state connivance and complicity but by the state of Gujarat's own admission 1,60,000 and more were displaced out

of their homes for over eight months. This more than anything else points to a complete failure of governance and breakdown of law and order. Redressal means that not only are the guilty punished but fair and adequate assessments of the losses suffered, in human and material terms are made. Only then will the wrongs committed hope to be set right.

25. I repeat and reiterate that the State has abysmally failed to discharge its constitutional obligation to give just compensation to those whose fundamental rights under Arts 14 & 21 were infringed and who lost their lives, limbs, shelter, and livelihood due to the inactivity and passivity of the government and the complicity of its ministers and officers. I submit that constitutional obligations require that compensation should be paid as set in para 20 above and the Petition be made absolute in those terms.

26. I say and submit that averments made in para 1 to 25 above of the Rejoinder Affidavit are true to the best of my knowledge and belief.

[Deponent)

Verification:

Verified on this day 3rd October 2006 at Mumbai that the contents of the above affidavit are true and correct.

Identified by me,

[Deponent)