

Annexure I

Background Facts

1. Mr Rais Khan Pathan, a former employee of the organisation has fallen prey to powerful vested interests in the state of Gujarat who appear to be misusing sections of the administration and police to settle scores simply because our organisation is at the forefront of the battle for justice against the powerful perpetrators of 2002. They are still in power today.
2. Mr Rais Khan was in employment of Citizens for Justice and Peace from April 2002 to January, 2008. He was disengaged by the said organization on 18.1.2008 because of his acts of conniving with the accused in various riots matters, amongst other acts. It appears that subsequent to his disengagement, he started making complaints, filing applications in different court proceedings, authority, etc. We have in this case petitioned the Supreme Court (wherein we have protection) and also filed a Defamation Suit against him in February 2012 of Rs 5 Crores
3. This Mr Rais Khan, silent from January 2008 until September 2010 suddenly started shopping for fora in a vindictive manner suggesting clearly that he is not acting on his own. For 33 months, he was silent but soon after the Critical Trials reached fruition, soon after the Zakia Jafri case in which CJP is a co-petitioner and the chief minister number 1 accused refused to go away, Rais Khan became visible declaring that his aim was to send "Setalvad to Jail" (Times of India, December 30, 2010).
4. The details of malafide actions of Rais Khan as also the nexus between the state of Gujarat and Rais Khan compounded by strictures of the Courts against him (Rais Khan) are as follows:
 - A. April 2010** State of Gujarat filed an affidavit in the Supreme Court in response to our petition asking for a Re-Constitution of the Special Investigation Team (SIT). In its response the government of Gujarat made unfounded and vicious allegations against the secretary, CJP. Interestingly, there is a striking similarity between the submissions of the State and the allegations made by Rais Khan five months later.
 - B. 1.9.2010** Rais Khan Aziz Khan Pathan first files an Application before the Special Investigation Team (SIT) appointed by this Hon'ble Court making vile, baseless and malafide allegations against Teesta Setalvad (They are near identical to those made by the state government earlier).
 - C. 9.9.2010 & 17.9.2010** Rais Khan Aziz Khan Pathan thereafter through a letter to the Commissioner of Police, Ahmedabad, the Crime Branch, Ahmedabad levelled allegations against Ms.Teesta Setalvad and others, apparently to safeguard the interest of the accused. The police did not respond.
 - D. 19.10.2010** An affidavit is filed by Rais Khan Aziz Khan Pathan before the Nanavati-Shah-Mehta Commission to which we filed a response.

E. 28.10.2010-3.12.2011 An application was moved by Rais Khan Aziz Khan Pathan under section 311 of the Code of Criminal Procedure before the Sessions Court, Ahmedabad conducting the trials of Sardarpura, (235/2009) Naroda Gam (Criminal Case No. 203/2009) and Gulberg cases praying that he be examined as a witness in the said case alleging that he was privy to information about how the affidavits of victims/witnesses in the present case were prepared. The said application was filed to take out a grudge against the petitioners and with an ulterior motive. It is also submitted that the application also seems to be filed at the behest of persons who are out to scuttle the trial and stop the delivery of justice to the victims of the communal riots. The Application, in fact, amounted to causing interference in the administration of Justice.

F. November 2010 onwards. Rais Khan himself and two three witnesses of the Pandharwada mass graves case make vile allegations against the secretary and the organisation. He was quoted extensively in the media saying that “he would get Setalvad arrested.”

G. February 2012 onwards. Raiskhan instigates one witness in the Best Bakery case, Yasmeen Shaikh, during the appeal being heard in Bombay to make vile and malafide allegations against myself and the organisation I represent. The Bombay High Court while disposing of the appeal holds that no tutoring of evidence took place.

5. The Trial Courts have used strong words against this interference and at that point the Media does report this. Not only was Rais Khan’s application in the Sardarpura case rejected but the Court went further...on 20.12.2010. By the same order show cause notice under section 195(1) Cr.P.C. was also issued.

(i) The Court ordered as under: “The application filed by the applicant Rais Khan Aziz Khan Pathan invoking the power of the Court under section 311 of the CRPC stands rejected and it is hereby ordered to issue show-cause notice to the applicant under section 340(1) of the CRPC in respect of the offence made under section 177 of the I.P.C. with reference to section 195(1) of the CRPC returnable on or before 27.12.2010.”. The Learned Sessions Court by its Final Order convicting 31 accused of heinous crimes, dated 9.11.2011, has decided the Section 195(1) CRPC issue and found that the Rais Khan was indulging in acts for which he should be prosecuted under Section 177 and 182 IPC. **On page 13 of the Separate Order passed by the Trial Court on 20.2.2010 the Court questions the motives of Rais Khan:**

“From the plain reading of the application and from the above facts and circumstances, it apparently becomes clear that the present application has no sanctity for the on-going process of justice and he has no respect for the truth and, therefore, he cannot be relied upon for just decision of the case. From the contents of the application itself, credibility of the applicant is unreliable and by examining such applicant as court witness, court cannot become part of mockery of administration of justice and the try by the applicant to allow this application, would also amount to

mockery of administration of justice. So, considering the conduct of the applicant and contents of the application, it appears that the applicant is coming with an intention to achieve some unknown goal either to his previous employer or to help the accused with an intention to gain undesirable result in the case

In the main judgment delivered on the same day i.e. 9.11.2011, the Learned Sessions judge also gave a finding that there has been no tutoring of witnesses by Teesta Setalvad. (Paras 56-57 of the Judgement).

Sardarpura Judgement (9.11.2011) Paras 56 & 57

“56. It is submitted on behalf of accused that, eyewitness are tutored by Smt.Teesta Setalvad. The interest of Teesta Setalvad and her organization in the present case is obvious. The witnesses have specifically denied that, Teesta Setalvad has told them as to what evidence was to be given in a case. Considering the evidence and fact in this regard when we consider this fact mere discussion about the case would not necessarily indicate tutoring. It is not an accepted proposition that, the witnesses are never to be contacted by any one or spoken to about the matter regarding which they are to depose. A number of things can be told to the witnesses such as not to be nervous, carefully listen to the question put to them, state the facts before the Court without fear, therefore it does not appear any objectionable morally or legally. Tutoring a witness is quite different from guiding him as to his behaviour. In the present case, the injured witnesses were in such a state of mind that without the active support of someone they might not have come before the court to give evidence at all. The encouragement and the advice if provided by Citizen for Peace and Justice that cannot be considered as tutoring and simply because of that, we cannot infer that the witnesses are tutored. From the matter it transpires that Citizen for Justice and Peace have made allegations before the Hon'ble Supreme Court of India against the State authorities but on that strength it cannot be said that, NGOs. have worked with bad motives. If they had fought for truth what was believed by them as truth. It does not mean that they have tutored the witnesses to falsely identify the accused in the Court.

“57. In this regard when we consider the evidence, witness could be tutored only by a person who knew the facts. It is difficult for a person who was not present at the time of occurrence to tutor an occurrence witness and if at all this can be done, it would be based on the records of the case, which does not seem to have been happened in the present case. Further, more the happenings and the manner in which in the present case took place, is also not much in dispute, so the aspect of tutoring would be confined to the identification only. It is not easy to tutor one to identify another as victims and accused are previously known to each other but not known to tutoring persons. Tutoring of this type would require the persons tutoring, the concerned accused and the concerned witness to be together for a reasonable period or one or more occasion. Further, tutoring in

such cases would be in consonance with police record or prosecution case which does not appear to be happened in this case. Further, it is also important to be considered that, before identification in the Court by the witness accused were asked to sit in the Court as per their own choice, they were not forced to sit at serial number given to them in Charge sheet or any other fix order and their names were never loudly being called out in the court in the presence of witnesses. The identification of accused have taken place under the observation of the Court. So the court can view the actions/reactions of the witnesses. All precautions were taken by the Court while identification of accused were carried out in the Court room. Further, precautions were also taken by the Court whether witness could see the persons sitting in the Court room. Similarly accused were given liberty to sit in the court in any manner, anywhere.”

- (ii) Similar allegations of tutoring were made by defence counsel in the Naroda Patiya case. In the judgement delivered on 29.8.2012, 32 persons were convicted in the Naroda Patiya case by a detailed judgement. The Learned Judge in the said judgement also dealt with the issue of the affidavits which were filed by the victims in this Hon'ble Court and allegation of tutoring of the witnesses, the Learned Judge has given a finding as below:

Excerpt from Naroda Patiya Judgement

Point 14, Pages 305, 306

“14. AFFIDAVIT BEFORE THE HON'BLE SUPREME COURT OF INDIA :

(1) The affidavits filed in the Hon'ble Supreme Court are also another point of cross-examination and arguments. Firstly, it has not been proved that whether this affidavit was produced in the Supreme Court or not. The most important aspect is, it is not elicited from the I.O. as to whether these affidavits were really filed at Hon'ble the Apex Court or not. No certified copy has been secured from Hon'ble the Apex Court. When defence wants to rely upon it, it should highlight reasonable probability of its filing, if not proof. No investigation was carried out admittedly on that and secondly the purpose for filing such affidavit is different from the purpose of giving the testimony and even giving statement before SIT. Hence, two unequals cannot be compared.

(2) Even if it is accepted that such affidavits were in fact filed then also the reason for which the affidavits were filed before Hon'ble the Supreme Court of India that too, in a transfer petition, is absolutely different than giving statement before the Investigating Officer. Hence it cannot be treated as earlier statement of the PW in the sense that it is not the same thing. In the humble opinion of this Court these affidavits cannot be used to challenge credibility of the witnesses as submitted.

(3) It is possible that after six years, when the PW gave statement for the first time in free and fearless atmosphere after getting the security which the PW did not have during previous investigation, the PW could muster courage to state many more true facts. But at times, after coming home from the SIT, one remembers many other things which one has missed while telling it to the SIT. It can happen that the witness would like to tell those left out things in his

testimony. Hence, if something was not told to the SIT and if told only to the Court, then, in such case, it is not proper to believe that the witness is speaking lie only on that count. It is different that the deadline has to be drawn somewhere. In the facts and circumstances of this case, what is not told before SIT and if it is material contradiction or omission in the eyes of the Court then that part has been kept out of consideration as interest of fair trial demands that. Except the uniform, mechanical sentence and such other aspects and such other parts which has not inspired the confidence of the Court even in the investigation of SIT by and large the investigation of SIT is the base of the case.

(4) Even if it is accepted that these affidavits were filed, then it was obviously to support the transfer petition and not to prove or investigate the prosecution case, therefore also, the purpose being different, this cannot be held to be earlier statement made during the investigation.

(5) Who drafts the affidavits, for what, when, who translated the contents of instruction of the P.W. are also all the issues needs to be answered before giving importance to this part of the cross but no such material is on record. It is therefore just and proper not to blow it out of proportion.”

Point 32, Page 332

“32. TUTORING OF NGO, SOCIAL WORKERS, ETC. :

It is notable that it is not alleged that the NGO leaders or lawyers or the social workers have any personal enmity or ill-will against the accused. Hence the suggestion in the cross-examination of PW that they have been speaking as was taught to them, is found very irrelevant. What would be the benefit of such NGO is nowhere suggested except suggesting that it was to defame State of Gujarat. But then, the State of Gujarat is not an accused but is the prosecuting agency which was forgotten it seems. No substance is found in this submission.”

6. We would like to emphasise that in the ten long years repeated attempts by the state of Gujarat and its agents to induce witnesses and turn them hostile have not borne fruit. In 2004 the star witness in the Best Bakery case turned hostile for a second time while she was due to give evidence in re-trial in Mumbai and on November 3, 2004 made malafide allegations against me and my organisation. I moved the Hon'ble Supreme Court praying for an independent inquiry into the allegations. An Inquiry conducted by Registrar General Supreme Court BM Gupta was ordered that completely exonerated me and my organisation. (July 2005)
7. **The Supreme Court of India (March 2006) convicted Ms Shaikh to one year simple imprisonment for contempt of court and the Trial Court for perjury. I submit that subsequently an Income Tax Inquiry ordered by the Hon'ble Supreme Court found an amount of Rs 18 lakhs going to “undisclosed person” from the account of ruling party MLA. Shri Madhu Srivastava (AK Malhotra's Report of the Special Investigation Team presented to the Hon'ble Supreme Court, May 2010).** While as I said before, the allegations have remained the same those who made them have changed. In all these twists and turns, senior advocates belonging to the BJP (Mr Lekhi,

father in law of Meenakshi Lekhi for Ms Zahira Shaikh (2004-2006), Mr Mahesh Jethmalani for Yasmeen Shaikh(2011), VHP advocates like Ankur Oza for Raiskhan Pathan.

8. I include below excerpts from the report of the Registrar General for your easy reference (July 2005):-

Excerpts: Registrar General Supreme Court of India Shri BM Gupta's Report

Pg 28: “Sh. Baria appears to be an independent and believable witness. Nothing is there on record which can suggest any interest of this officer in writing such a statement /complaint on behalf of Ms. Zahira without stating by her. All the five witnesses denied the allegations of Ms. Zahira and against it only the statement of Ms. Zahira cannot be accepted. **Thus, no inducement by tutoring, as alleged is proved”.**

Pg 32: At this final stage, she (Zahira) appears to take this stand by first time that at that time her signatures were obtained on a large number of papers and it may be treated as afterthought. This is also a vague explanation as she has not clarified as to who obtained these signatures of hers and why without any verification she signed this Ex.37, when such document was to be submitted to very highly placed authorities i.e. Hon'ble Chairperson of NHRC and Chief Commissioner. She does not say that whether there was inducement, coercion, threat or pressure of any kind so far as this document is concerned. In this view, **it cannot be said that there was any inducement, coercion, threat or pressure behind this document**

Pg 34: As discussed above, the allegations of Ms. Zahira that there was **inducement by tutoring** by Ms. Teesta and her so called and her so called agents Sh. Mohd. Vora, Sh.Arif Malik and Sh. Munna Malik **does not establish** so far as this document is concerned.

Pg 37: “Ms. Zahira admits the existence of this affidavit dated 20th May, 2002 filed before the Nanavati Commission. Now it is for Ms. Zahira to explain the existence and truthfulness or otherwise of the same. According to the statements made by her in her affidavits and during Inquiry Proceedings, she only puts aforementioned allegations against aforementioned persons and all these persons are examined and they have denied the allegation. Weighing the testimonies put forward by both the parties including the witnesses, the stand taken by Ms. Zahira with regard to this affidavit also is not established or appears not to be true and hence **it cannot be accepted that there was any threat/ inducement/ coercion and pressure** in the root of these four document”.

Pg 45: The allegations of confinement put by her (Zahira) is not believable as not supported by the circumstances as mentioned hereinafter nor by any other witness. “Thus, in view of the above, no inducement, threat, coercion or pressure whatsoever has been established in this part”.

Pg 49: “As discussed above, no coercion through tutoring and putting the words by Ms. Teesta into her mouth and also substitution of statement by another already prepared document do not establish”.

Pg 101: “It may undisputably be said that the phrase ‘to have fruits of heaven out of hell’ has now been established synonymous to Ms Zahira who once earned public sympathy out of her desertion through the condemned tragedy has made concerted efforts and has engaged herself in having cash/comforts from every possible corners... Ms Zahira changed her stand three times as already mentioned in parts A to D and that changing of these stands are well known”.

Pg 102: Allegation of Ms. Zahira of Tutoring by Ms. Teesta or her agents

“In her affidavit dated 20th March, 2005, Ms. Zahira puts an allegation against Ms. Teesta that she or her agents, Mohd. Vora, Arif Malik and Munna Malik tutored her for giving/submitting the statements/affidavits before the various authorities. As against this, the following part of her statement *****

***** **[pages of Vol. II]** shows that there was no influence by tutoring of Ms. Teesta on her or on her family till she went to Bombay and, as such, there is no truth in the said allegation:

“Question” Whether influence, fear or pressure of Ms. Teesta started on you in July 2003 after you went to Mumbai?

Answer: There was no influence of Teesta on me or on my family prior to the period I was taken to Mumbai.”

Difference appears in both the statement.

Pg 103: As per affidavits dated 3rd November, 2004 and 20th March, 2005 of Ms. Zahira, she stated that she was forcefully taken from Vadodara to Mumbai by Shri Rais Khan, agent of Ms. Teesta and kept there in

***** in trial court, Mumbai, she admitted that she was kept very well by Ms. Teesta and the fact of her taking forcefully does not find place in the statement before the trial court, Mumbai.

Speaking truth or lies

For the first time on 6th August, 2005 in her statement **[pages 453 of Vol. II]**, she admitted the fact that “*earlier I used to live with them alone and they got the things done through me as they wished to do, earlier I have told lies also but now I am not telling a lie and I would not do so even in future*”

9. During her examination on 6th August, 2005, Ms. Zahira has said: **[pages 431 of Vol. II]**

Question: If you knew that all these things are false then why did you do so on being tutored by someone?

Answer: They had told me that I would get compensation provided I say so, otherwise not.

Question: It means that you told a lie in order to get compensation?

Answer: I had stated as they wanted me to state.

Apparently, she can even tell a lie for getting compensation for herself”.

Pg: 105: “Looking at the aforementioned status in full including all other circumstances of the case, I feel no hesitation to mention that Ms Zahira is not such a lady who speaks the truth and has developed an image of a self-condemned liar whose statements alone cannot be safely accepted”.

Pg 55: “Mr Chavan, Inspector, Bombay police who recorded the statement of Ms. Zahira on 16th December, 2003, vide his affidavit dated 22nd August, 2005 stated that he had gone to record the statement of Ms. Zahira at the place of Ms. Teesta and recorded the statement of Ms. Zahira as stated by her and it was read over to Ms. Zahira and she signed. For this document same view can be attributed as of affidavit dated 8th September, 2003 the genuineness is not to be seen here and no allegation from any of the parties with regard to the scope of this inquiry is available on record”.

9.. Given this detailed and rich background—and also given the fact that BLP Member of the Legislative Assembly (and Minister) is now convicted of Incitement to Murder, Criminal Conspiracy and Distribution of Arms) we thought it in the fitness of things to place this Communication on record and provide detailed background material to show how despite repeated exonerations by Courts from the Trial Court to the Supreme Court, the propaganda by the party guilty of ruling over the violence in 2002 and stray persons whom they win over are targeting one group that continues to toil for justice for 2002.

10. The ploy in 2012 was now a Criminal Defamation complaint filed by Rais Khan which is being used by sections of the Gujarat Police as a roving Inquiry against not just us but all those who have assisted us and dozens of poor witnesses to intimidate them. We have challenged this in the Gujarat High Court and the matter is still pending.