



Mass Crimes -- The Struggle for Justice and Reparation

Our Criminal Justice System, the Media, and Mass Crimes

One of the interesting fallouts of the battle for justice and reparation for the victim survivors of the Gujarat carnage of 2002 has been the systematic attempts by the state government and its representatives, like its counsel in the Supreme Court to go out on a limb to sidetrack the issue of its own involvement and criminal culpability – the Government of Gujarat stands exposed as responsible for the massacre in 19 of its districts ----- and instead, to defame those human rights defenders and organizations who have engaged with India’s Criminal Justice System to punish the perpetrators. In this rather obvious attempt to subvert and derail the justice process, apart from hired representatives of the state, victims and others too have been used for such diversions. While the media on the whole has been an ally in the justice process, often nudging a derailed and delayed delivery of verdicts by reminding us of the implications of the state perpetrated violence in Gujarat in 2002, select persons within the media have also been used by the Bharatiya Janata Party (BJP) and its sympathizers to somehow cloud the issue and ensure that justice is not done. A recent and brazen example is the misuse of the Pioneer by its editorial team headed by none other than Chandan Mitra a vocal spokesperson of the Bharatiya Janata Party. Earlier this year, the pages of the India Today were similarly misused by none less than correspondent Uday Mahapurkar. CJP condemns unequivocally this malignant and selective reportage that is guided by partisan interests of protecting a sullied regime in Gujarat.

We at CJP believe that the recent attempts, this time to use a former employee of the organization who’s services had been discontinued on ethical grounds in January 2008, is part of a clever and vicious move to further derail the process of ensuring justice and accountability especially when the Higher Judiciary at the national and state level is on the brink of delivering verdicts in some of the key carnage cases. The Apex Court will, in weeks, adjudicate on the only criminal complaint made against a chief minister, his cabinet colleagues and select sections of his administration and police on charges of coldbloodedly subverting the Indian Constitution and Indian criminal law and orchestrating a genocide on its own people. In 2002, a Concerned Citizens Tribunal headed by Supreme Court

justices VR Krishna Iyer and PB Sawant had concluded that "Shri Modi was the architect of a cold blooded genocide". The victims across Gujarat were the largest religious minority, the Muslims. CJP has always, proudly functioned within the bounds of the law, while recognising and emphasizing that the Indian system, including our Courts have often failed to deliver justice to the victims of mass crimes. Our task has been onerous and risky, as we humbly seek to remind the system that it must deliver. Two or three issues in this context are relevant.

One, that even the investigation ordered by the apex court in 2008 was found to be faulty and wanting deliberately ignoring key documentary evidence against politically powerful accused and highly placed policemen. SIT failed to book any official or politician for tampering or destruction of evidence, a key component of the subversion of justice charge. To us this poses a challenge to the system itself as it tries to create and recreate non porous and impartial investigating wings, those that cannot be influenced by money or power. Two, the appointment of the Special Investigation Team (SIT) in March 2008 by the apex court came six years after the massacres, five years after the trials had been stayed by the apex court. The inexplicable and intermittent delays were *not* caused not by us, i.e. the petitioners/complainants. Through those six years, we were the ones that kept the matter alive before the apex court. Finally when the verdict was given, in 2008, on behalf of the survivors CJP objected to the composition of the SIT, as proposed by the State of Gujarat and seconded by the Amicus Curiae. The composition was weighted heavily in favour of Gujarat cadre officers. The Court unfortunately did not accept our objections put in writing. Two years later when two of the Gujarat cadre officers were removed after detailed allegations of absence of rigorous investigation were made by us and upheld by the Apex court, our misgivings were proved right. Still one senior officer from Gujarat continues to influence the Naroda Patia, Gaam and Gulberg cases.

Three, the final conduct of the trials after the fresh investigations had been conducted by the SIT has been without effective monitoring or protection for the victims and witnesses. SIT was given extraordinary powers by the Apex Court but no independent system of monitoring was set in place. Two specific proposals for transparent conduct of these trials had been suggested by us in writing (April 22, 2009). The first was that One was that we had specifically stated that like in the Bilkees Bano and Best Bakery Cases, victim/complainants should have been given fair say in choice of the Special Public Prosecutors appointed, that there should be fair representation of law officers from the victim minority community, that women victims of sexual violence should be protected etc. The second was that knowing the difficulties of constantly going before a Special Bench of the Apex Court, we had specifically requested that a Monitoring Mechanism/Committee be set up of Retired Judges from Gujarat who could independently report to the Apex Court on the conduct of the Trials. Both prayers made by us on behalf of the survivors were turned down. The result is that the

only reporting authority to the Apex Court has been the SIT, the SIT itself has come under serious cloud and therefore in a sense a historic process set in motion by the Apex Court stands seriously undermined today.

We say this with responsibility. SIT has positioned itself in an adversarial role vis a vis the victim complainants and the prosecution before the Trial Courts even failing to support our written applications for submission of documentary evidence, arraigning powerful policemen as accused and ensuring there is a rigorous prosecution. SIT has also not supported the Victims/Witnesses Basic Legal Right (under section 24(8)(2) of the Criminal Procedure Code) as also under International Law to engage their own advocates. In each of these instances, victim/witnesses have had to seek onerous recourse to appeal before the High Court or the Supreme Court. Despite this witnesses have been deposing with rigour and courage. We believe that this is what is ultimately causing a hostile investigating agency coupled with an accused state to instigate baseless allegations against us. The allegations on the affidavits filed by victims before the Apex Court have a similarly interesting link. It was the stark content of the affidavits that led to the Apex Court's interventions, the appointment of the SIT on allegations of high level of tampering of evidence and state complicity. The state of Gujarat in May 2009 through its advocates Hemantika Wahi and Mukul Rohatgi tried to distort witness statements before the SIT stating that secretary CJP and their advocate doctored affidavits. Despite these attempts victim witnesses have stood by their affidavits while clarifying their contents. Echoing what some SIT officials and the GOG (government of Gujarat) advocates are saying, a former employee is today being used to make similar baseless allegations. Selective allies in the process were partisan persons or sections of the media. Shri Mukul Rohatgi, a senior counsel even went to the extent of misinforming the Supreme Court that he had not spoken to the media on the issue when he had - <http://ibnlive.in.com/news/gujarat-riots-sit-says-teestas-charges-false/90200-3.html>. CJP reiterates that at the bottom of this calculated and calibrated drive to malign us is the might of the administration and government of Gujarat, unfortunately assisted by some friendly partisan voices within the media. We would like to remind fellow citizens that the GOG has come under severe national and international condemnation for its role not just in orchestrating violence against its own people but destroying evidence, subverting the institution of public prosecutors, committing perjury before the Apex Court (by filing misleading Bail orders indicating that accused had not been let off contrary to our claims-2004). The chief executive of the state has also maligned the Apex Court after justices (including two former Chief Justices) after they retired, simply to escape the possibility of being hauled up for contempt!!

What is at stake is a rigorous challenge spearheaded by victim survivors and witnesses, ably assisted by legal rights groups like the CJP to force the system to deliver. We are convinced that the process set in motion has already yielded

unprecedented results. Truth, acknowledgement justice and reparation are the strong and lasting pillars on which sustainable peace and harmony will thrive. Perpetrators will and must get their due. Victims and Survivors live to tell the tale.

Teesta Setalvad (Secretary) IM Kadri (President)

Nandan Maluste (Vice President)

Arvind Krishnaswamy (Treasurer) Alyque Padamsee, Cyrus Guzder, Javed Akhtar, Javed Anand, Rahul Bose, Cedric Prakash, Ghulam Pesh Imam, Anil Dharker

Key Allegations

2010

Rais Khan a former employee's baseless allegations on affidavits sworn by victims before the Supreme Court

CJP'S Rebuttal

CJP has always functioned lawfully and these allegations similar to those made after the Best Bakery Trial was transferred in 2004 are nothing short of an attempt by the accused and the state to manipulate some victims and others with the motive to demoralize us into not assisting victim survivors and eyewitnesses. We have always functioned lawfully and our actions have been upheld by The Registrar General of the Supreme Court of India.

(See [www. http://www.cjponline.org/SCreport.pdf](http://www.cjponline.org/SCreport.pdf))

Coming as these allegations do at this stage in the trials, one year and nine months after his services were terminated by Citizens for Justice and Peace on ethical grounds, Rais Khan's is clearly a motivated move. What stopped him from making these claims for this whole period?? It is nothing short of a move to discredit the prosecution case in the ongoing trials of the Naroda Gaam, Naroda Patiya and Gulberg Society and other trials pertaining to mass massacre cases in which eyewitnesses and survivors have bravely told the truth on oath.

Rais Khan is being used to discredit those witnesses supporting the prosecution case. We had officially severed our ties with him (Rais Khan Pathan) in January 2008 since we found him responsible for deviant behaviour, actually harassing victim survivors and also a person who had developed close ties with the Vishwa

Hindu Parishad. Let's not forget, that despite all efforts by a malevolent state in Gujarat, thanks to the Supreme Court monitoring of the case, a state general secretary of the VHP, a doctor by profession is key accused in the Gaam and Patiya massacres. We did not want a mole in our organisation and so had even made our de-affiliation with him public by putting newspaper advertisements. We appreciate that larger sections of the media, with the exception of the Pioneer, have published our rebuttal along with the allegations.

India Today falsely claims that ghastly incident of Kauser Bano's womb being slit open was a concoction by the CJP!!

Unmindful of the kind of articles carried by their own publications during the traumatic period of 2002, some mainstream Indian newspapers especially India Today, have echoed the vilification drive launched by the Gujarat state, never once looking back, over their shoulder into their own archives where correspondent after correspondent have used space telling these very horror stories.

A prime example is the case of Kauserbano, a victim of murder at Naroda Patia, accounts of eye witnesses at the time describing how a bloodthirsty mob slit open her womb (carrying a foetus almost nine months old), swirled it on a sword before burning mother and child alive. Not only did The Times of India and The Indian Express apart from the Statesman and the Deccan Herald extensively report the narrative in print, but Women's Visiting teams including one headed by former chairperson of the National Commission of Women Syeda Hamid spoke, and wrote of it extensively. Feminists from Mumbai including lawyer Flavia Agnes assisted women record their affidavits before the official Nanavati Shah Commission and Kauserbano's sad tale was a significant part of the narrative. A few months back when the doctor who did the post mortem denied that such an incident took place, unfortunately none asked the question about quality of post mortem reports during mass crimes in general and 2002 Gujarat in particular. Even when bodies of babies were maimed (hands and legs cut off) the post mortem report is not explicit and does not document the state of the body that can be visually seen in a photograph.

Besides, three witnesses have today deposed and testified to the Kauser Bano incident, Jannatbi Kallubhai Shaikh, Reshma Bano Saiyed among them. Until the evidence is evaluated and the verdict given how can the GOG, which is the prosecution in the case say that such a gory incident was concocted? Equally pertinent, why should it be so overtly keen to deny the Kauser Bano killing when it retains the Constitutional role of holding the prosecution in the Naroda Patia case? Does the GOG still want to shield powerful accused? In which case is the entire prosecution/trials within Gujarat, with overwhelming powers to the SIT

and inadequate monitoring by the Apex Court going to restore the faith of the victim in the administration of justice?

2009

Baseless and Selective Allegations in The Times of India dated April 14 2009 on CJP and its lawyer doctoring affidavits

CJP'S Rebuttal

The report in the The Times of India, Mumbai edition dated April 14, 2009 and reportedly published prominently in all the newspapers editions titled "NGOS, Teesta spiced up Gujarat riots cases: SIT" is clear example of manipulative reportage. It is also a report aimed to deliberately distort and damage the reputation of a citizens' legal rights group working assiduously to ensure legal support to victims of the Gujarat carnage of 2002, (as also the victims of bomb blasts of 2006, 2009 and the Kandhamals victims).

The allegations imputed by reporter Dhananjay Mahapatra who was present in the Supreme Court in the first para of his report to the Special Investigative Team (SIT) appointed by the Supreme Court are in fact extracted from a four page note circulated by Ms Hemantika Wahi for the Gujarat Government, a copy of which is annexed here. It is not a note prepared by the Special Investigation Team led by RK Raghavan. Shri Raghavan was not present in the Supreme Court, yet there is a deliberate attempt by Mahapatra to impute that Raghavan was present in the court and that he as chairperson of SIT, himself, in person, or in writing made these allegations. This is a clever distortion of the proceedings in the Supreme Court aimed to create a public perception that Setalvad and the CJP misled the apex court.

The detailed report of SIT submitted to the Supreme Court on March 6, 2007 has not been available for study either to National Human Rights Commission (NHRC), the petitioners in this case, or the Citizens for Justice and Peace (CJP) who have intervened in this critical matter or to any in the media. In its written note that the Gujarat state circulated in court yesterday, the state has given its brief comments on the SIT report. In para four of this note the Gujarat government note refers to alleged statements made by some witnesses in the Gulberg case before SIT that name accused other than those named by them in the written statements that were (according to the state of Gujarat) given to them by Teesta Setalvad and advocates. This is the version of the Gujarat state. Besides this, Mukhul Rohatgi tried to make a populist speech in court saying that incidents like the Kauser Bano case etc never happened. Justice Pasiath intervened stating that they were not interested in personal allegations and only ensuring that, like in the course of the Zahira Shaikh case, the trials are fair, the truth comes out and the course of justice is served.

It appears that the reporter spoke to Rohatgi outside the court himself and spiced up the story. The result is a report that especially promotes the case made by the Gujarat government itself, It may have been pertinent for the court

reporter of a responsible publication to point out to its readers that:

- The arrests of minister Dr Maya Kodnani and Dr Jaideep Patel in the past weeks were on the basis of SIT re-investigations. Twelve FIRs filed by witnesses naming these accused in 2002 had been clubbed into a magnum FIR by the Ahmedabad crime branch that had dropped the names of these powerful accused;
- The arrests of investigating officer KG Erda in the Gulberg case and of other policemen in the other cases over the past months has meant the claims of witness survivors and legal rights groups, prima facie, are valid;
- That this was one of the issues why the apex court has chosen to appoint SIT, the full scale subversion of the process of justice, from the removal of names of accused who's names appeared in earlier statements simply because they enjoyed political patronage; the appointment of prosecutors with allegiances to the BJP and VHP which meant instead of promoting fair trial they sided with the politically powerful and protected accused;
- More pertinently the tragic slaying of pregnant Kauser Bano at Naroda Patiya after slitting her womb was reported in Deccan Herald,(April 17, 2004) and The Indian Express, (March 23,2005) among others apart from finding place in innumerable reports including the one authored by the Concerned Citizens Tribunal-Crimes Against Humanity 2002 headed by two Supreme Court judges, Justices Krishna Iyer and PB Sawant. Similarly the British national case was similarly documented apart from being covered in The Pioneer, March 3, 2002 and The Hindu, April 23, 2002.

- Besides several reports on the Gujarat genocide of 2002 showed the high level of state complicity in the violence including the "We Have No Orders To Save You"--State Participation and Complicity in Communal Violence in Gujarat (<http://www.hrw.org/reports/2002/india/>)

- Identical allegations were made about Teesta Setalvad and the CJP during the course of the Best Bakery Trial following which Setalvad's application to the apex court for a full fledged inquiry led to a Registrar's investigation that exonerated Setalvad and the CJP triumphantly;

In the interests of fair reportage and to ensure that the reputation of a citizens group committed to equity and justice is not deliberately vitiated before the trials commence, the newspaper should carry this rebuttal in full. A failure to do so will result in the columns of a national newspaper being used to distort facts, shape public perception and seek to influence the outcome of due process of law and justice to the victims of mass murder.

2004

Following the acquittal of the Best Bakery case before a Fast Track Court in Gujarat, the trial was transferred to Mumbai, Maharashtra and re-trial ordered

after star witness Zahira Shaikh spoke the truth about how blatant efforts to influence them were made by BJP's MLA Madhu Srivastava in the Trial Court premises. The historic judgement of the Apex Court dated April 12 2004 is the first speaking verdict of India's higher courts on the scourge of mass communal violence. When the re-trial began in Mumbai, key witness Zahira Shaikh, unfortunately was influenced by the same BJP MLA to make baseless allegations of illegal confinement against secretary CJP. We immediately approached the Apex Court for an independent inquiry and the Registrar general of the Supreme Court BK Gupta's report exonerates secretary CJP and us completely. CJP maintains that the Apex Court's ordering one year simple imprisonment to Zahira Shaikh for perjury was necessary but unjust given the fact that the man on behalf of the GOG who was found to have influenced the witness, Madhu Srivastava did not face any penal action by order of the Apex Court. Later, an Income Tax probe ordered by the Apex Court has reportedly found an unaccounted Rs 12 lakhs vanishing from his account.

We urge that one and all in public life look at the spate of allegations against the CJP against the context of the detailed information provided herein. We also urge that you visit our website www.cjponline.org and related sites for further information. Do also contact us at cjpindia@gmail.com for any clarification or further information.