

has been found that the evidence given by Shri R.B. Sreekumar neither forms part of the same transaction nor the said statements have been made by Shri Sreekumar at the time of occurrence of the incident or at least immediately thereafter and, therefore are not relevant as per Sec. 6 of the Indian Evidence Act. In the instant case, the so called evidence of Shri R.B. Sreekumar, concerning the events before the riots was his own perception as he had no direct knowledge of the same.

Shri R.B. Sreekumar has contended that no follow up action was taken on the reports sent by him on 24-04-2002, 15-06-2002, 20-08-2002 & 28-08-2002 about anti-minority stance of the administration. A letter dated 24-04-2002 addressed to ACS (Home) with a copy to DGP contained an analytical note on current communal scenario in Ahmedabad City, which is general in nature and no specific instance has been cited. In brief, it has been mentioned in this note that of late the minority community was found to be taking an increasingly belligerent postures as they felt themselves as a section of population left at a total mercy of radical communal elements of Bajrang Dal and VHP. It was further mentioned that the Muslim communities being the major victims of the riots developed a major grudge against the Criminal Justice System, which they felt was highly biased. According to Shri Sreekumar, certain VHP and Bajrang Dal leaders had started extorting protection money from the businessmen from both the communities and were pressurising the merchants and general public not to employ the members of the minority community. It was further reported that both Hindu and Muslim communities had been inciting violence by way of distribution of pamphlets.

Shri Sreekumar appeared on the scene 40 days after the riots and whatever has been claimed by him has no direct bearing on the facts in issue. Shri Sreekumar had also reported that the inability of Ahmedabad police to control the violence by the communal mob had eroded the image of police as a law enforcing agency of the society and the media attacks on the police had a

demoralising impact on the police personnel. It was also pointed out that the Inspectors in charge of the police stations had been ignoring the instructions given by the senior officers and complying with the direct verbal instructions from the political leaders of the ruling party who ensured their placement and continuance in their choice postings. He had also suggested the remedial measures such as restoration of faith amongst the minorities in Criminal Justice System, replacement of present incumbents from executive posts at the cutting edge level, the spiritual leaders of Hindus and Muslims should launch a state wide campaign to expose the politicised pseudo religious leaders, action at social level through non-political leaders, intellectuals and NGOs to restore mutual trust between the Hindus and Muslims, improvement of security in the riot affected areas to facilitate the rehabilitation of riot victims and purposeful legal action against publication and distribution of pamphlets inflaming communal passions etc.

According to Shri Ashok Narayan, the then ACS (Home), this letter contained general observations and concrete details were missing. Shri K. Chakravarthi, the then DGP has stated that most of the points and issues raised by Shri R.B. Sreekumar, had been effectively dealt with by him in March-April/2002. He is also of the view that the observations made by Shri Sreekumar were totally general in nature and no specific instance had been cited by him, which could have called for any immediate action on his part.

Shri R.B. Sreekumar had sent a review report of law & order situation on 15-06-2002, in which he had mentioned about an unprecedented degree of revengefulness of the majority community resulting in massive and ghastly violence against Muslims in a period of five days since Godhra carnage and that the communal violence was still continuing, Shri Sreekumar strongly recommended for the implementation of remedial measures to contain communal violence and neutralizing the fundamentalist elements in both majority and minority communities

as suggested in his analytical note dated 24-04-2002. This law & order assessment report was called for in view of Rath-Yatra, which was likely to be held sometime in July 2002. In this report, Shri Sreekumar had expressed the view that on various grounds mentioned by him, the Rath-Yatra should not be taken out in near future till an atmosphere of durable peace and goodwill between the majority and minority communities was established. Shri Ashok Narayan, the then ACS (Home) has stated that the administration did not agree with the views of Shri Sreekumar and the Rath-Yatra was taken on 12-07-2002, under police bandobast and no untoward incident took place anywhere.

Shri R.B. Sreekumar has further stated that he had sent another report on the then prevailing law & order situation vide his letter dated 20-08-2002. According to Shri Sreekumar, even at the time this letter was sent, the communal tension continued and the communal gap between Hindus and Muslims had widened to an unprecedented degree. It was further mentioned that there was latent communal tension in most of the places where incidents were reported and that any minor issue involving members of minority and majority community would reignite communal passions resulting in clashes, as had been witnessed in Dhoraji (Rajkot District) on 17-08-2002. It was further mentioned by Shri Sreekumar that large sections of the minorities being the major victims of the recent riots were still to develop adequate faith in Administration, Police Department and Criminal Justice System. This letter was replied by Shri Ashok Narayan, the then ACS (Home) on 09-09-2002, in which he had clearly informed Shri Sreekumar that his assessment of law & order situation was not in tune with the feedback received from other agencies. Shri Ashok Narayan further mentioned that some apprehension and a feeling of insecurity amongst the members of the minority community was understandable in isolated pockets, from where incidents were reported, but the same do not indicate the feelings of insecurity anymore. Shri Ashok Narayan has also mentioned that Dhoraji's incident was an isolated incident and that communal incidents had

come down drastically during the last few months. Shri Ashok Narayan disagreed with the views of Shri Sreekumar on the ground that no broad based inputs were relied upon by him before arriving at a conclusion.

Shri R.B. Sreekumar had sent another report regarding the emerging law & order vide his letter dated 28-08-2002. In this letter, he had assessed that the social relations between the Hindus and Muslims remained highly strained including the traditional communal pockets as well as new areas where the riots had taken place, due to various reasons. Shri Sreekumar had suggested that District Magistrates/ Commissioners of Police/Superintendents of Police be suitably advised to ensure that the organizers of the public function/political campaign should avoid projecting communal issues that might widen the rift between the two communities and also to abide by the conditions of the license/permission granted to them. Shri K. Chakravarthi has stated that Shri R.B. Sreekumar had given some suggestions and most of it pertained to the Revenue Department and other departments. As far as police department was concerned, he (Shri Chakravarthi) had given directions based on his suggestions.

In view of the aforesaid position, it can not be said that no action was taken by the Govt. on the assessment of situation made by Shri R.B. Sreekumar. Of course, there was difference of opinion between Shri R.B. Sreekumar and the Home Department on certain issues. However, the fact remains that Shri Sreekumar appeared on the scene 40 days after the riots and remained posted as Addl. DG (Int.) for a little more than five months, and therefore, whatever has been claimed by him has no direct bearing on the issue i.e. events of 27/28-02-2002 or subsequently in March, 2002.

➤ **Observation made by Ld. Amicus Curiae:**

- **Another aspect is the fact that VHP General Secretary Jaydeep Patel and Shri Modi were at Godhra on 27-02-2002. The statement of Jaydeep Patel that he did not meet Shri Narendra Modi at Godhra does not inspire confidence. This has to be examined as the Mamlatdar would not have handed over the dead bodies to a non-government person i.e. Jaydeep Patel until and unless somebody very high told him to do so.**

**Result of further investigation:**

Further investigation revealed that Shri Narendra Modi, Chief Minister arrived at Godhra by helicopter around 1645 hrs and was accompanied by Shri Anil Mukim, the then Secretary to CM. He was received at the helipad by Smt. Jayanti Ravi and Shri Ashok Bhatt and he straightaway drove to the Godhra Railway Station. CM inspected the spot and talked to some of the persons gathered there. From Godhra Railway Station, he went to Civil Hospital and saw the persons injured in the Sabarmati Express train burning incident. Since, curfew had been imposed in Godhra town, the Chief Minister then proceeded to Collectorate and held a meeting with the Ministers present there, namely Shri Ashok Bhatt, the then Health Minister, Shri Gordhan Zadafia, the then MoS (Home), Shri Bhupendra Lakhawala, the then MoS (Civil Defence), Shri Prabhatsinh Chauhan, the then MoS for Aviation & Pilgrimage and Shri Bhupendrasinh Solanki, the then MP, Godhra, Collector & District Magistrate, Police Officers and Railway Officers. The Chief Minister had also met the Press thereafter. Smt. Jayanti Ravi has stated to SIT that in the meeting held at Collectorate, a unanimous decision was taken that the dead bodies, which had been identified should be handed over to their relatives at Godhra itself and those bodies whose legal heirs or guardians had not come, could be sent to Sola Civil Hospital, Ahmedabad, since these deceased passengers were heading towards Ahmedabad in Sabarmati Express. The decision to send the bodies to Sola Civil

Hospital was taken in view of the fact that it was situated on the outskirts of Ahmedabad City and thus away from the crowded area for security reasons. It has further come to light that out of 58 burnt and dead bodies, 4 bodies belonging to Dahod, Vadodara, Panchmahal and Anand Districts were handed over to their legal heirs/guardians after identification at Godhra itself. The remaining 54 dead bodies were to be sent with police escort to Sola Civil Hospital, Ahmedabad and Shri Jaydeep Patel, who was present at Collectorate, was to accompany these dead bodies to Ahmedabad.

Further investigation revealed that Shri M.L. Nalvaya, the then Mamlatdar & Executive Magistrate prepared a letter addressed to Dr. Jaydeep Patel of VHP, in which he had mentioned that 54 dead bodies were being sent through five trucks as detailed below:

Sr. No.	Truck No.	No. of Dead bodies carried
1	GJ-17-5055	12
2	GJ-17-T-7557	15
3	GJ-17-X-3225	03,
4	GJ-16-T-9253	12
5	GJ-17-T-7327 (TATA 608 tempo)	12

Shri Hasmukh T. Patel of VHP had acknowledged the receipt of dead bodies. It may be mentioned here that the handing over of the dead bodies to their legal heirs/guardians was the duty of the railway police, which had registered a case in connection with this incident.

On his further examination Shri Nalvaya has stated that these dead bodies were handed over officially to Shri Jaydeep Patel and Shri Hasmukh T. Patel of VHP as per the instructions given by Smt. Jayanti S. Ravi, District Magistrate, Godhra and Late B.M. Damor, ADM, Godhra. Shri M.L. Nalvaya has filed an

affidavit before Nanavati Commission of Enquiry in effect on 05-09-2009. However, Smt. Jayanti Ravi has stated that the instructions were given to Shri Nalaya to hand over the dead bodies to Shri Jaydeep Patel or Shri Hasmukh T. Patel of VHP and that Shri Jaydeep Patel was merely to accompany the dead bodies to Ahmedabad.

Shri Jaydeep Patel visited Godhra on 27-02-2002, and was present at the Collectorate. Further investigation revealed that as per the call detail records of mobile phone no. 9825023887 of Shri Jaydeep Patel, he reached Godhra on 27-02-2002 around 1248 hrs and remained there till 2358 hrs. At Godhra, he had made/received calls to/from Shri Gordhan Zadafia at the latter's mobile phone no. 9825049145. All these calls had been made/received between 2003 hrs and 2113 hrs. It is, therefore, quite possible that Shri Gordhan Zadafia, the then MoS (Home), might have instructed the police authorities to allow Shri Jaydeep Patel to accompany the dead bodies. The aforesaid call detail records establish that Shri Jaydeep Patel remained at Godhra till about 2358 hrs on 27-02-2002.

Shri Jaydeep Patel has stated that he did not meet Shri Narendra Modi, Chief Minister. Since most of the persons, who had died in Godhra carnage were the karsevaks of Vishwa Hindu Parishad, he met some local administrative and police officials, whose names he could not recollect at this stage, and requested them to hand over the dead bodies of the Karsevaks to him for onward transportation to Ahmedabad. The district officials acceded to his request and accordingly a letter was prepared by Mamlatdar and Executive Magistrate, Godhra in his name specifying the details of the dead-bodies and the number of trucks in the same. Shri Hasmukh T. Patel of VHP, who had accompanied him, acknowledged the receipt of these dead-bodies as per his signature appearing on the list. It may be mentioned here that 58 persons had died in this incident out of which 4 persons were identified at Godhra railway station itself by their

relatives. The dead-bodies of these four persons were handed over to their relatives after identification. Five trucks were arranged by the district administration for the transportation of the dead-bodies. Shri Jaydeep Patel has stated to have met the lady Collector of Godhra around 23.30 or 24.00 hours. A police escort had accompanied the dead bodies from Godhra and on the way to Ahmedabad the escorts from the concerned districts joined. The convoy reached Sola Civil Hospital, Sola, Ahmedabad between 0330 hours to 04.00 hours on 28.02.2002. At Sola Civil Hospital, a lady doctor, PI Shri Lathia of Sola Police station, Shri Prajapati, Deputy Collector, Collector and Mamlatdar were present. There were several other administrative and police officials present there, whose names he does not recollect. He handed over the letter to Shri Prajapati, Deputy Collector. Thereafter, the police and administrative officials got busy with the preparation of panchnama and other papers.

Further investigation revealed that the relatives of the persons, who had died in the Godhra carnage, were also present in the hospital. Accordingly, 35 persons were identified and their dead bodies handed over to their relatives by about 1300 hrs on 28-02-2002 by the police after obtaining the receipts from them. It may be mentioned here that 25 dead bodies were claimed by the residents of Ahmedabad, two (2) by the residents of Kadi, Mehsana, five (5) by the residents of Anand, two (2) by the residents of Khedbramha, Sabarkantha and one (1) from Rajkot. The photographs and DNA samples of the remaining unidentified 19 dead bodies were taken by the hospital authorities. These 19 unidentified dead bodies were cremated on 28-02-2002 evening, at Gota cremation ground nearer to the Sola Civil Hospital by the District Administrative and Police officers with the help of Surpanch of Gota village. The cremation was completed by about 1830 hrs on 28-02-2002.

Shri Narendra Modi, Chief Minister had earlier stated that Shri Jaydeep Patel, the then VHP General Secretary was known



to him. However, he does not remember to have met him at Godhra. According to Shri Modi, after the decision was taken to transport the dead bodies to Ahmedabad, it was the duty of the District Administration to chalk out the modalities for its transportation. :

It may thus be seen that the journey from Godhra to Ahmedabad started around midnight and the dead bodies reached Sola Civil Hospital sometime between 0330 to 0400 hrs and there was no one on the highway at that point of time in the night to see them. Further, though a letter had been addressed by Shri M.L. Nalvaya in the name of Shri Jaydeep Patel of VHP and the dead bodies were acknowledged by Shri Hasmukh T. Patel of VHP, yet the dead bodies were escorted by the police upto Sola Civil Hospital, Ahmedabad situated on the outskirts of Ahmedabad City. At Sola Civil Hospital, Shri Jaydeep Patel handed over the letter to the hospital authorities and the local police as well as the hospital authorities took charge of the dead bodies. Subsequently, 35 dead bodies were handed over to the legal heirs/guardians of the deceased by the police after preparing the panchnama and documentation. The 19 unidentified dead bodies were cremated on the same evening by the local administration and police authorities at Gota cremation ground nearby with the help of Sarpanch of Gota village after retaining their DNA samples. Subsequently, 12 dead bodies could be identified after conducting DNA tests, while the remaining seven (7) remained unidentified.

The above facts would go to establish that though a letter had been addressed by Mamalatdar, Godhra to Shri Jaydeep Patel of VHP, yet the dead bodies were escorted by the police from Godhra to Ahmedabad, where the same were taken charge of by the hospital authorities, District Administrative and Police Officers and handed over to the kith and kin of deceased persons after taking proper receipt. Shri M.L. Nalvaya, Mamalatdar had acted in an irresponsible manner by issuing a letter in the name Shri Jaydeep Patel in token of having handed over the dead

bodies, which were case property, and therefore, the Govt. of Gujarat is being requested to initiate departmental proceedings against him.

➤ **Observations made by Ld. Amicus Curiae:**

The positioning of 2 Cabinet Ministers having nothing to do with the home portfolio in the Office of DGP and the State Police Control Room respectively is another circumstance which reflects that there was a direct instruction from the Chief Minister. Though Shri Jadeja says that he had gone to the DGP's office on instructions of Shri Gordhan Zadafia, MoS (Home) this is highly unbelievable. It is obvious that the Chief Minister had positioned these 2 Ministers in highly sensitive places which should not have been done. Infact, these 2 Ministers could have taken active steps to defuse the riots, but they did nothing, which speaks volumes about the decision to let the riots happen. It does not appear that these 2 Ministers immediately called CM and told him about the situation at Gulberg and other places.

- SIT merely relied upon the statement of the police officers to conclude that these 2 Ministers did not give any instructions to Police department, but it appears highly unlikely that 2 Cabinet Ministers of the Government of Gujarat would have not given some kind of directions when CM had directed them to remain present.
- It is obvious that the 2 Ministers were fully aware of the developing situation in Gulberg Society, Naroda Patiya etc. in Ahmedabad City. They were duty bound to convey the situation to the Chief Minister and were required to do everything possible to save loss of lives. If the stand of CM that these 2 Ministers were positioned so as to effectively control the law and order situation is correct, then there

**would have been a far quicker action to control the riots in Gulberg Society and Naroda Patiya atleast.**

**Result of further investigation:**

Further investigation has been conducted into the allegation relating to the positioning of Shri I.K. Jadeja, the then Urban Development Minister in the State Police Control Room, DGP's office and Late Ashok Bhatt, the then Health Minister in the Ahmedabad City Police Control Room.

Shri K. Chakravarthi, the then DGP has stated during further investigation that Shri Ashok Narayan, ACS (Home) informed him that it was decided by the Govt. that Shri I.K. Jadeja, the then Minister would be in his office to secure some information about the law & order situation in the State as State Control Room is situated in DGP's office. Shri Ashok Narayan had further informed him that Late Ashok Bhatt another Minister would sit in Ahmedabad City Police Control Room. Shri Chakravarthi has further stated that he had his own reservations in this matter and, therefore, he advised the ACS (Home) that it would be better, if these Ministers got the information from the Control Room in the Home Department. However, Shri Ashok Narayan informed him that no such facility was available with him in the Home Department and, therefore, the two Ministers would come to the respective Control Rooms.

According to Shri Chakravarthi, Shri I.K. Jadeja, the then Minister came to his office in the forenoon of 28-02-2002 and sat in his chamber for about 15-20 minutes. Shri Chakravarthi could not attend to him, as he was awfully busy with the telephone calls being received by him from all over the State. According to his recollection, he had asked someone to shift the Minister to an empty chamber in his office and this was done. He has also stated that he was not aware as to what Shri Jadeja did while he was in the DGP's office as he was extremely busy with his work on that day as rioting was taking place at many locations. Later, Shri

Chakravarthi came to know that Shri Jadeja had stated that Shri Chakravarthi has categorically stated that his subordinate staff of the State Control Room had revealed that Shri Jadeja did not interfere with the functioning of the Control Room in any manner.

Shri P.C. Pande, the then CP, Ahmedabad City has stated that it was incorrect to say that Shri Ashok Bhatt, the then Health Minister remained stationed at Shahibaug Control Room on 28-02-2002 to guide the police force in controlling the law & order situation. He specifically asserted that Shri Bhatt did not visit CP's office Control Room on 28-02-2002. He has further stated that Shri George Fernandes, the then Union Defence Minister arrived at Ahmedabad on 28-02-2002 night. Shri Fernandes reached CP's office on 01-03-2002 around 1000 or 1030 hrs and asked Shri Pande about the deployment of Army, to which the latter said that he would check up the same from the Control Room. Both of them went to the Control Room downstairs. According to Shri Pande, Shri Ashok Bhatt, who had been waiting for Shri Fernandes in the Circuit House, also came to CP's office to meet Shri Fernandes and entered the Control Room. Shri Pande has also stated that Shri Fernandes and Shri Ashok Bhatt remained in the Control Room for about ten minutes and then left CP's office. According to Shri Pande, during this visit to the Control Room, some of the press and media persons were also present and as such it was somehow made to appear that Shri Ashok Bhatt had come to monitor the Control Room. Finally, Shri Pande has stated that Shri Ashok Bhatt was never deputed to Shahibaug Police Control Room to assist the police.

According to Shri Ashok Narayan, he does not recall any instructions given by the Chief Minister, which were conveyed by him either to the DGP or CP, Ahmedabad City to the effect that Shri Ashok Bhatt and Shri I.K. Jadeja would sit in the Ahmedabad City Police Control Room, Shahibaug and State Control Room, Gandhinagar respectively to assist/ help the police.

Shri I.K. Jadeja, the then Urban Development Minister has stated that it was an established norm in Gujarat State that in case of any natural calamities or serious law & order situation the Ministers of various departments extend their help in handling the crisis. According to his recollection on 28-02-2002, he had volunteered himself, if he could be of any help in the prevalent situation, to which Shri Gordhan Zadafia, the then MoS (Home) had told him to remain present in the Police Bhavan and to see that in case any information was received in the State Control Room about any rioting incident and any information was received seeking extra police force, then the same should be passed on to the Home Department. Consequent to these instructions, he went to DGP's office around 1100 hrs and stayed there for 2-3 hours. He has stated to have interacted with the DGP and informed him that if and when his help was required he could ask him. He has denied to have entered the State Police Control Room and has stated that there was no question of any interference. However, Shri Gordhan Zadafia, the then MoS (Home) has denied to have given any suggestion to Shri I.K. Jadeja. He has further stated to have visited the DGP's office on the next one or two days also, but stayed there for few minutes only. He has also stated that the DGP had not shared any information with him and therefore, he left Police Bhavan in few minutes on both these occasions.

Late Ashok Bhatt had earlier stated that he might have visited Ahmedabad City Control Room for about 5-10 minutes on 28-02-2002. However, he has denied to have interfered with the police work, as being a senior minister he had to maintain his dignity and status. Again on 01-03-2002, he admitted to have visited the Shahibaug Control Room for about 10 minutes to meet Shri George Fernandes, who had gone to CP's office. The call detail records of mobile phone no. 9825039877 of Late Ashok Bhatt show that he returned from Godhra to Ahmedabad on 28-02-2002, at about 05:16:51 hrs. Thereafter, the call details do not show its location till 15:50:43 hrs on 28-02-2002, when the location was traced to Koba Circle, Gandhinagar. During this period, it is

presumed that he was at Gandhinagar. His location on 28-02-2002 at 16:16:37 hrs to 17:47:22 hrs was shown as Shahibaug Kedar Tower, Ahmedabad City, which would conclusively prove that during this period he attended CM's press conference at Circuit House Annexe, Shahibaug, Ahmedabad City. Thereafter, again the location was seen at 17:59:22 hrs at Koba Circle, Gandhinagar, which shows that he was returning to Gandhinagar. These call details would go to show that he did not visit Shahibaug Police Control Room on 28-02-2002.

Shri Sanjiv Bhatt, the then DC (Int.) has stated that he had attended a meeting at CM's residence on 28-02-2002 along with the DGP and ADGP (Int.). After the meeting, he returned to his chamber on the second floor of Police Bhavan at about 1100 hrs and shortly thereafter went to meet the DGP on the first floor of the same building. When he entered DGP's chamber he found that as instructed after the conclusion of CM's meeting, two Cabinet Ministers of Gujarat, namely, Shri Ashok Bhatt and Shri I.K. Jadeja had already arrived and were sitting on a sofa-set in DGP's chamber. He further stated that Shri G.C. Raiger, the then Addl. DG (Int.) and Shri Maniram, the then Addl. DG (Law & order) were also present there. Shri Sanjiv Bhatt briefed DGP and after taking tea, he returned to his chamber. Shortly thereafter, Shri Sanjiv Bhatt happened to go to State Control Room on first floor to collect some documents and saw Shri I.K. Jadeja and his supporting staff sitting in the chamber of Dy.SP, Control Room. Finding this a little odd, Shri Sanjiv Bhatt went to DGP and informed him that it would be improper to permit outsiders in the State Control Room and asked him whether the Minister and his supporting staff could be shifted from the State Control Room. DGP agreed with him and thereafter, Shri Sanjiv Bhatt again went to Control Room and requested Shri I.K. Jadeja to accompany him as his presence in the Control Room would hamper the smooth functioning of the State Control Room during such a critical period, whereupon the latter got up and followed him. According to Shri Sanjiv Bhatt, he took Shri Jadeja, Minister to the chamber of Shri P.C. Thakur, the

then IGP, which was empty at that time and requested him to make himself comfortable and contact them for any assistance/requirement. Shri Chakravarthi was informed about it. Shri Sanjiv Bhatt has also stated that subsequently he learnt that Shri Jadeja left the Police Bhavan sometime in the afternoon, after having lunch. Shri Sanjiv Bhatt is not aware about the visit of Shri Jadeja in the Police Bhavan on the subsequent days.

During further investigation, Shri Nissar Mohammad Malik, the then PSI, who was on duty in the Police Control Room, Ahmedabad City from 28-02-2002 at 0800 hrs to 02-03-2002 at 0800 hrs, has stated that Shri George Fernandes, the then Union Defence Minister and Shri Harin Pathak, the then MoS for Defence had come to Police Control Room, Ahmedabad City at 1005 hrs on 01-03-2002, and left at 1025 hrs. He has confirmed the wireless message in this regard to be under his signatures. He has denied knowledge about the visit of Late Ashok Bhatt, the then Health Minister to the Police Control Room either on 28-02-2002 or 01-03-2002.

Shri V.R. Patel, the then PSI has also denied the visit of Late Ashok Bhatt, the then Health Minister to the Ahmedabad City Police Control Room either on 28-02-2002 or 01-03-2002.

Shri Parbatsinh A. Dholetar, the then PSI, Ahmedabad City Police Control Room, who was on duty on 28-02-2002 from 0800 hrs to 1200 hrs and 2000 hrs to 2400 hrs, has denied the visit of any Minister to the Police Control Room.

Shri Maganbhai M. Limbachia, the then PI, who was on duty from 0800 hrs to 2000 hrs on 01-03-2002 in State Police Control Room, Police Bhavan Gandhinagar, has denied the visit of any Minister in the Control Room.

It may thus be seen that Shri K. Chakravarthi has categorically stated that Shri I.K. Jadeja did visit his office, but did not go to the State Control Room and he was made to sit in an

empty chamber. Shri I.K. Jadeja himself has confirmed that he was shifted to an empty chamber near DGP's chamber and that DGP did not share any information with him. Shri K. Chakravarthi, the then DGP has confirmed that Shri Jadeja did not interfere with their work.

Shri I.K. Jadeja has taken the plea that it is an established practice in Gujarat State that in case of any natural calamities or serious law & order situation the Ministers of the various departments extend their help in handling the crisis. Late Ashok Bhatt had admitted earlier that he might have visited Ahmedabad City Police Control Room on 28-02-2002 for a few minutes, but the call detail records of his official mobile phone show his location at Shahibaug Kedar Tower between 16:16:37 and 17:47:22 on 28-02-2002, when he attended CM's press conference. This would conclusively prove that he did not visit the Police Control Room on 28-02-2002. Moreover, the officials of Ahmedabad City Police Control Room have denied that Late Ashok Bhatt ever visited the said Control Room either on 28-02-2002 or 01-03-2002. In view of the aforesaid position, it is established that Shri I.K. Jadeja did visit DGP's office, but did not enter the State Control Room or interfere with the working of the police and the DGP also did not share any information with him. However, it could not be established that Late Ashok Bhatt visited Ahmedabad City Police Control Room either on 28-02-2002 or 01-03-2002. As per his own admission, he might have visited the Control Room for a few minutes on 28-02-2002 and/or 01-03-2002. Therefore, the allegation that the two Ministers were positioned in the State Control Room and Ahmedabad City Police Control Room by the Chief Minister is not established. Significantly, Shri I.K. Jadeja remained at State Police headquarters for 2/3 hours as per his own admission but did not interfere in the police functioning. Late Ashok Bhatt's presence in the City Police headquarters on the relevant day, if any, was very negligible and it can not be termed of any material value. In the absence of documentary/oral evidence of any directions given by these two Ministers to police officials, it can not be said at this



stage that they conspired in the perpetration of riots or did not take any action to control the riots.

➤ **Observation made by Ld. Amicus Curiae:**

- **No tangible action seems to have been taken by the police high ups in the Police Department, namely Commissioner of Police, to control the riots at Gulberg Society. Gulberg Society is not very far away from the Office of Commissioner of Police, Ahmedabad.**

**Result of further investigation:**

Further investigation conducted about the role played by Shri P.C. Pande, the then Commissioner of Police, Ahmedabad City revealed that on 27-02-2002, Shri Pande remained in the office till late in the night as well as in the early hours of 28-2-2002. During this period, he had informally discussed the law & order situation and the arrangements to be made on 28-2-2002, with Shri Shivanand Jha, the then Addl. CP, Sector-I and Shri M.K. Tondon, the then Jt. CP, Sector-II. On 28-2-2002, Shri Pande came to office around 08:00 hrs. After sometime, he came to know that the dead bodies of victims of Godhra incident had been brought to Sola Civil Hospital and that some kind of dispute/altercation was going on and the atmosphere was tense at Sola Civil Hospital. Accordingly, Shri P.C. Pande went to Sola Civil Hospital around 10:00 hrs and found that the doctors were under pressure to complete the documentation whereas the relatives of the victims were in a hurry to take the dead bodies. However, Shri Pande did not find anything alarming and, therefore, returned to his office at about 11:00 hrs.

On the way, he found that the mobs had assembled at many places in large numbers, but they were not violent and most of them being spectators. While Shri Pande sat in his office, the reports started pouring in from all parts of the city about stone pelting, arson, looting and damaging of properties. He does not

exactly remember, but whenever any information came to him about any incident or any distress call was received from any individual the same was promptly attended and the information immediately passed on to the concerned officer with instructions to attend to it on priority basis. The Control Room was flooded with numerous calls for help and as such with the available force it was not possible to effectively deal with all the situations. It may be mentioned here that on that day many distress calls had been received from Police Station areas like Satellite, Navrangpura, Ellisbridge, Bapunagar, Amraiwadi, Meghaninagar, Naroda and Odhav, which had comparatively faced lesser communal problems in the past. A few calls had been received from walled city as well namely Shahpur in particular, but the extent of damage was much less. Keeping in view the gravity of the situation curfew was declared in many parts of the city from 12:20 hrs onwards.

As far as Shri P.C. Pande recollects, he had instructed Shri M.K. Tandon, the then Jt. CP, Sector-II on 28-2-2002 forenoon, to go to Meghaninagar as some calls of crowd gathering and stone pelting etc were being received in the Control Room Meghaninagar P.S. area. He has stated that he did not know Late Ahesan Jafri, Ex-MP personally and also did not have knowledge that he was residing in Gulberg society till 28-02-2002 afternoon.

Shri P.C. Pande had earlier stated that Shri M.K. Tandon, Jt. CP, Sector-II had reached Naroda Patiya around 12:30 hours and had spoken to him over mobile phone that the situation was alarming and recommended that curfew should be declared in the Naroda P.S. area. He concurred with the advice of Shri Tandon and curfew was declared in Naroda P.S. area at about 12:30 hrs. Shri Pande has also stated that Ahmedabad City was totally disturbed and communication as well as transport system had come to standstill. According to Shri Pande, the additional force wherever sent, was unable to reach in time because the roads had been blocked/obstructed by the rioters by putting different kind of

obstacles and large crowds had collected making movement difficult.

On 28-2-2002 at about 12:20 hrs, a message was sent by PI Meghaninagar P.S. in the Control Room that Gulberg society in Meghaninagar area which is a Muslim society had been surrounded by a mob of 10,000, which was pelting stones and also setting fire to shops nearby and rickshaws. He requested for additional officers, police personnel and SRP immediately. On receipt of this message, Shri P.C. Pande deputed three officers namely Shri G.D. Solanki, Dy. SP, Group-VII, Shri Ajitkumar Gupta, Dy. SP, Group-XII and Shri A.B. Qureshi, PI, CID Crime to go to Gulberg society for the assistance of PI Meghaninagar. At about 13:45 hrs, one section of CISF was also sent to Gulberg society, Meghaninagar. At 14:05 hrs, Shri M.K. Tandon, Jt. CP, Sector-II sent a message to the Police Control Room that Late Ahesan Jafri, Ex-MP and others had been surrounded by the mob in Gulberg society and extra force and PI, Sardarnagar be sent there to shift them. At 14:14 hrs, another message was sent by Senior PI Erda, Meghaninagar P.S. in the Police Control Room that a mob of about 10,000 persons had gathered at Gulberg society/Kalapinagar and was about to set fire to the entire society and as such ACP, DCP along with additional force be sent immediately. At 14:45 hrs, Shri K.G. Erda, Sr.PI Meghaninagar sent another message to the Control Room that in the Gulberg society in Meghaninagar area, the Muslims had been surrounded by a mob of 10,000 persons from all the sides and even the police force had also been surrounded and that the mob was about to set fire to the society. Shri Erda requested for additional SRP and police force to be sent as the situation was critical. Since, two Dy.SsP, One PI and one section of CISF had already been sent to Gulberg society, no additional force was sent as nothing was available as reserves. Shri Pande contacted Shri P.B. Gondia, the then DCP, Zone-IV at 15:16 hrs and told him that Muslims were being burnt in the Gulberg Society and that he should reach there immediately. However, Shri Gondia reached Gulberg Society only

at 1605 hrs. At about 15:45 hrs, Shri M.K. Tandon, the then Jt. CP, Sector-II though fully aware of the situation at Gulberg Society sent a message to Ahmedabad City Police Control Room asking as to whether there was any incident relating to loss of life at Gulberg society at Meghaninagar and thereof a detailed report be sent to him. No other information was available with the Control Room at that time. Shri Pande has also stated that Shri K. Chakravarthi, the then DGP had also informed him that a mob had surrounded the Gulberg Society and that reinforcements should be sent there, to which he had informed him that extra force and officers had already been sent to Gulberg Society in Meghaninagar P.S. area. However, Shri Pande has claimed that he did not know as to when the additional police force sent by him had actually reached Gulberg Society. He has stated that he had come to know about the incident at Gulberg Society sometime in the evening and as such personally visited the society sometime between 19:00 hrs to 19:30 hrs. Shri Pande found that the houses were ransacked and belongings set on fire and some wooden articles/furniture etc. was still smoldering. According to Shri Pande, since the Jt. CP had already shifted most of the inmates of the society in vans to safer places, he gave instructions to the Sr. PI and other staff present over there to go ahead with the inquest and send the dead bodies for post-mortem examination. He returned to office thereafter.

As per Shri Pande, Late Ahesan Jafri, Ex-MP did not contact him either on his landline phone or mobile phone on 28-2-2002, seeking help. No one else from Gulberg society contacted him either on his landline or mobile phone seeking help on 28-2-2002. The call detail records of official mobile phone no. 98250 48303 of Shri Pande have been scrutinised and the same does not show any call from the landline no. 2125166 of Late Ahesan Jafri, Ex-MP. Shri Pande has further stated that as per his information, Late Ahesan Jafri, Ex-MP did not have any mobile phone and there was no other landline in Gulberg Society.

Shri Pande has added that on 28-2-2002, requests were received from different police stations areas seeking additional force/SRP and whatever resources were available with him, the same were dispatched to them. However, he found that no feedback had been received from anyone of them. This led him to presume that the additional force reached them in time and that they were able to control the situation. Shri Pande is also of the view that similar was the case of the Gulberg Society where initially three officers, two Dy.SsP and one PI and subsequently one section of CISF was sent by him.

Shri Pande also stated that on 28-2-2002 around 2 o'clock in the afternoon, he heard a noise outside the CP's office. He immediately checked and found that a dargah adjoining CP office had been attacked by a mob. Since, there was no other force available with him, he personally came down and went to the spot along with his gunman. He has claimed to have dispersed the mob almost single handedly and waited there for sometime to ensure that the mob did not re-assemble. By this timely action, the dargah could be saved from the rioters.

Shri P.C. Pande has stated that the circumstances did not exist on 27-2-2002 or even 28-2-2002 to warrant the imposition of curfew, in Ahmedabad City and any hasty action would have led to the panic in the city. He has further stated that even otherwise with limited force available enforcement of curfew poses serious problems and large scale breach becomes common. According to Shri Pande, as and when the sector commanders reported over phone about the seriousness of the situation at any place, he immediately concurred over telephone and ordered for the imposition as well as enforcement of the curfew. As per Shri Pande, almost the whole of the city was under curfew by noon time. In view of this, there does not seem to be any deliberate and gross negligence on his part.

Shri Nisar Mohd. Malik, the then PSI, Police Control Room, Ahmedabad City, who was on Police Control Room duty from

0800 hrs on 28-02-2002 to 0800 hrs on 02-03-2002, has stated that he was not aware of any communications of Shri P.C. Pande, the then CP, Shri M.K. Tandon, the then Jt. CP, Sector-II, Shri Shivanand Jha, the then Addl. CP, Sector-I or any other officer on 28-02-2002 and 01-03-2002, which might have suggested/instructed for inaction on the part of police while dealing with the Hindu rioters. He has further stated that the instructions/messages of the senior officers, which were passed through Ahmedabad City Police Control Room, were for taking all the required measures to control the riots and prevent any untoward incident. Shri Malik has also stated that Shri P.C. Pande, the then CP had visited the Police Control Room and passed on the instructions personally to the jurisdictional officers to use effective force and control the riots. He does not remember the exact date and time of the said message passed on by Shri Pande, but had noted down the said instructions in the message register of PCR, Ahmedabad City. He has also stated that as and when CP was made aware of messages regarding law & order situation, he had passed necessary instructions such as imposition of curfew and deployment of manpower. Shri Malik has denied the visit of Late Ashok Bhatt, the then Health Minister to the Control Room.

Shri V.R. Patel another PSI, who was on duty in Ahmedabad City Police Control Room from 0800 hrs on 28-02-2002 to 0800 hrs on 02-03-2002 has fully corroborated the statement of Shri Nissarmohmad Malik, the then PSI.

Shri Shivanand Jha, the then Addl. CP, Sector-I, Ahmedabad City had stated that there were no instructions from any of the senior officers not to act or to allow the Hindus to vent their anger.

Shri M.K. Tandon, the then Jt. CP, Sector-II had also stated that no such instructions were given by any of the senior officers to allow the Hindus to vent their anger against Muslims in the light of Godhra carnage and that the police should not act against them.

Shri Tandon has further stated that on the contrary the instructions were given to deal with the situation firmly.

Shri Pande has explained that the mobs had swelled to such an extent that they openly defied the curfew orders and as and when they were challenged by the police, they hid themselves in the lanes and after the police left they regrouped. He is also of the considered opinion that this had happened due to the inadequate number of policemen on duty and those present could not leave the places where they were deputed. He stated that the police force was engaged in a particular area, the mobs concentrated on other areas. Similarly, the fire tenders sent to Gulberg society and Naroda could not reach there in time due to obstacles put on by the rioters resulting in loss of life and property in these areas. He has also mentioned that the Meghaninagar and Naroda P.S. had never been communally sensitive in the past and as such the attacks in Naroda Patiya and Gulberg society were beyond their expectations. In view of the aforesaid position, the allegation that Shri Pande did not take adequate actions to control the situation at Gulberg Society is not established.

➤ **Observation made by Ld. Amicus Curiae:**

- **The observation of Shri Modi in a television interview on 01-03-2002 clearly indicates that there was an attempt to justify the violence against the minority community. This indicates as certain approach. The statement made by Shri Modi cannot be seen in isolation. It has to be seen in conjunction with other facts mentioned hereinabove which provides sufficient justification for a detailed investigation in the matter.**

**Result of further investigation:**

During further investigation, a requisition was sent to the Zee TV to make available a copy of the CD of a television interview of Shri Narendra Modi, Chief Minister, Gujarat conducted by their

correspondent Shri Sudhir Chaudhary on 01-03-2002. Despite two reminders and a notice u/s 91 Cr.P.C. sent to them, the CD has not been made available.

Shri Sudhir Chaudhary has stated that he attended a press conference held by Shri Narendra Modi on 01-03-2002, at a Circuit House on the outskirts of Gandhinagar. He has further stated that Shri Narendra Modi was known to him and that he had interviewed him earlier several times in Delhi. Shri Sudhir Chaudhary has stated to have requested Shri Narendra Modi for a short interview after the conference to which the latter agreed and as such he was interviewed for about 10 minutes. After going through the Editor's Guild Fact Finding Mission report dated 03-05-2002, Shri Chaudhary has stated that the same were only a few excerpts from the said interview and that the original CD of the said interview was not before him. As per his recollection, he had questioned Shri Narendra Modi about the Chamanpura massacre (Gulberg Society Case), in which former Congress MP Late Ahesan Jafri had been killed with many others to which the Chief Minister had replied that the mob had reacted on account of private firing done by Late Ahesan Jafri, Ex-MP. After refreshing his memory from the Editor's Guild report, Shri Sudhir Chaudhary has stated that the Chief Minister was of the view that he neither wanted action nor reaction. He has further stated to have questioned the Chief Minister about the wide spread violence post Godhra, the Chief Minister stated as follows:-

*"Godhra main jo parson hua, jahan par chalees (40) mahilaon aur bacchon ko zinda jala diya is main desh main aur videsh main sadma pahuchna swabhavik tha. Godhra ke is ilake ki criminal tendencies rahi hain. In logon ne pahele mahila teachers ka khoon kiya Aur ab yeh jaghanya apraadh kiya hai jiski pratikria ho rahi hai".*

Shri Sudhir Chaudhary has shown, his inability to elaborate the same as he has not been able to recollect the exact sequence



of events after a span of 9 years and moreover, the CD was not before him.

Shri Narendra Modi had been questioned about the aforesaid interview given to Zee TV on 01-03-2002. He has stated that those who have read the history of Gujarat would definitely be aware that communal violence in Gujarat has a long history and the State had witnessed serious incidents of such communal violence. As regards the Zee TV interview of 01-03-2002 is concerned, Shri Modi has stated that after a period of eight years, he did not recollect the exact words, but he had always appealed only and only for peace. He (Shri Modi) had further stated that he had tried to appeal to the people to shun violence in straight and simple language. He had also stated that if his words cited in this question are considered in the correct perspective, then it would be evident that there is a very earnest appeal for people refraining from any kind of violence. He had denied all the allegations against him in this regard.

Regarding the statement made to the media about post Godhra riots by citing Newton's law that every action has equal and opposite reaction, Shri Narendra Modi had stated that the Times of India had published a news item on 03-03-2002, purportedly as though he had given an interview to them. According to Shri Modi, the truth is that nobody had met him in this regard. He had further stated that the falsehood of his so-called justification "Action-Reaction Theory" is evident from this fact. According to Shri Modi, the State Govt. issued a denial with regard to his not having given any interview and the same was belatedly published in a remote corner of the news paper. He had also stated that it had been his considered opinion that violence can not be replied by violence and he had appealed for peace. As per Shri Modi's version, he had not and would never justify any action or reaction by a mob against innocents. He had denied all allegations in this regard.

The recommendations made in Chart 'B' by the Ld. Amicus Curiae vis-à-vis comments of SIT are given below:-

Chart – 'B'

ALLEGATIONS	FINDINGS	OBSERVATIONS
<p><u>VII</u> : The allegation is that 13 IAS/IPS officers were rewarded for their support during the post Godhra riots.</p>	<p>The finding of the SIT is that there was nothing to indicate that the 13 officers had been rewarded with postings for their support to CM. However, the SIT had concluded that the conduct of Shri M.K. Tandon, the then Jt. CP, Sector-II, Ahmedabad, was not satisfactory and therefore, Departmental Action be taken against them.</p>	<p>1. As regards, Shri M.K. Tandon, the then Jt. CP, Sector-II and Shri P.B. Gondia, the then DCP, Zone- IV it does not appear to be a simple case of mere dereliction of duty, section 304A IPC would be squarely attracted in such a case.</p> <p>2. In so far as promotion of other IAS and IPS officers are concerned, the view taken by SIT seems to be acceptable.</p>
<p><u>IX</u>. The allegation is that the Govt. of Gujarat has been seriously indicted by this Hon'ble Court due to fresh investigation in <i>Bilkisbano case</i> by CBI and retrial of <i>Best Bakery Case</i> outside the State of Gujarat.</p>	<p>1. The SIT has concluded that the trials in both the cases are over. Some accused have been convicted and some accused have been acquitted and the appeals are pending before the High Court.</p> <p>2. The SIT has recommended that the matter requires to the</p>	<p>1. The investigative agencies let off the accused in <i>Bilkisbano case</i>. If the CBI had not stepped in, the accused would have gone unpunished. Similarly, in <i>Best Bakery case</i>, it appears that the prosecution was done in a shoddy manner to protect the accused.</p> <p>2. The</p>

	<p>handled by State of Gujarat to take departmental action for major penalty against Shri K. Kumaraswamy, Jt. CP, Baroda City and Shri Ramjibhai Pargi, former ACP in light of observation of the Ld. Sessions Judge, Greater Bombay. It also recommends setting up of a Committee by Govt. of Gujarat to fix responsibility on the officials.</p>	<p>recommendations of the SIT that the Govt. of Gujarat should set up a committee perhaps needs to be reconsidered. It would be appropriate if these two cases are examined by SIT so as to fix responsibility on the investigating/prosecuting officials and suitable directions can thereafter be issued by this Hon'ble Court to take action, either under the Indian Penal Code (depending on whether it reveals offences under IPC) or departmental action for misconduct. The acts of the investigating/prosecuting agencies may attract Section 201 IPC.</p>
<p><u>X.</u> The allegation is that the investigations were partial in nature and there was prejudice against the riot victims.</p>	<p>The findings of the SIT is that supplementary chargesheets have been filed in Gulberg Society case and Naroda Patiya case, but that by itself cannot be a reason to</p>	<p>The grievance of the Petitioner may not survive after the SIT has conducted fresh investigations, but it would be unjust to spare those people who conducted partisan or</p>

	<p>hold that investigations were conducted in a partial manner.</p>	<p>negligent investigation. Hence, this issues needs to be addressed. The role of the officials in the Crime Branch, especially DCP, Vanzara and ACP Chudasama needs to be inquired into especially in the light of the statement of Shri Rahul Sharma, DCP, Control Room, Ahmedabad. To that extent the finding of SIT is not acceptable.</p>
<p>XV. The allegation is that pro VHP lawyers were appointed as Public Prosecutors, which had adverse effect on the trial of the riot accused.</p>	<p>The finding of the SIT is that though the political affiliation of the advocates weighed with the government in their appointment as Public Prosecutors, there is not specific allegation in showing favour by them to any of the accused persons involved in the riots, either at the time of grant of bail or during the trial.</p>	<p>The issue may not survive because of the intervention by this Hon'ble Court whereby Public Prosecutors have been appointed in an independent manner. However, this may be required to be looked into further in light of the subsequent letter of Ms. Teesta Setalvad.</p>

486

<p><u>XXI &amp; XXII.</u> These allegations relate to inaction against senior police officers as they did not carry out proper investigation of riot related cases, specially the <i>Bilkisbano rape case</i>.</p>	<p>The SIT has stated that the allegations were vague and general and there was nothing against any specific officer. It is further stated that the CBI had not recommended any action against Shri Jadeja, SP Dahbd in the <i>Bilkisbano case</i>.</p>	<p>In so far as Shri Jajeja is concerned, the documents relating to <i>Bilkisbano case</i> need to be scrutinized by SIT. The basis on which the CBI has concluded that no departmental action is required to be taken against Mr. Jadeja has to be examined before any conclusion be drawn.</p>
<p><u>XXIII.</u> The allegation is that the CD relating to telephonic calls of BJP leaders and police officers were not looked into by the Investigating Officers of Gulberg Society and Naroda Patiya.</p>	<p>The SIT has found that Shri Tarun Barot, the Investigating Officer of the case and Shri G.L. Singhal, the ACP, Crime Branch intentionally did not examine the cell phone records, though it was available to them, and therefore, major penalty departmental proceedings should be initiated against them.</p>	<p>The Govt. of Gujarat may be directed to take departmental actions against these two officers immediately within a time bound manner.</p>
<p><u>XXV.</u> The allegation is that the police at Gulberg Society and Naroda Patiya did not take action and acted as mute</p>	<p>The SIT has found this allegation to be incorrect.</p>	<p>1. Shri M.K. Tandon, the then Jt. CP, Sector-II said that he reached Gulberg Society 4.00 pm and ordered CISF firing. It is not clear why</p>

<p>spectators to the acts of lawlessness. Real culprits were not arrested and no preventive action was taken.</p>		<p>CISF could not reach earlier, though it had been sent at 1:45 pm. It is not clear why the other officers, namely G.D. Solanki, Dy.SP etc. could not reach Gulberg Society on time. It appears that nothing was done by the police personnel present at Gulberg Society and Naroda Patiya to dispel the gathering mob. It would appear that the mob was being permitted to gather at these two places. Hence, there is substance in the allegations of police inaction.</p> <p>2. It is not clear what action was taken by Shri. M.T. Rana, the then ACP, 'G' division, who was present at Naroda Patiya to prevent the mishap from happening. This aspect also needs to be looked into.</p>
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▪ **SPECIFIC RECOMMENDATIONS FOR SIT:-**

- (i) Shri M.K. Tandon and Shri P.B. Gondia be prosecuted u/s 304A IPC.
- (ii) The SIT may examine the role of the Investigating Agency in the *Bilkisbano rape* case and make recommendations to this Hon'ble Court, whether it reveals commission of any criminal offence or misconduct.
- (iii) The SIT may be directed to look into the role of the Crime Branch officers, namely DCP Vanzara and ACP Chudasama as to their role in the investigation of Gulberg Society and Naroda Patiya cases.
- (iv) The SIT may examine the role of the prosecuting agency in Best Bakery case and recommend suitable action against those who are responsible.
- (v) SIT may look into the role of police officials in the Gulberg Society and Naroda Patiya cases (apart from those who are already facing charges).

▪ **SPECIFIC RECOMMENDATIONS IN RELATION TO GOVERNMENT OF GUJARAT.**

- (i) Departmental action, as suggested by the SIT, be taken against K. Kumaraswamy, the then Jt. CP Baroda City and Ramjibhai Pargi, former ACP.
- (ii) As recommended by the SIT, departmental action be taken against Shri Tarun Barot, Inspector and Shri G.S. Singhal, ACP Crime Branch for faulty investigation of the riots cases.

The aforesaid recommendations of the Ld. Amicus Curiae would show that he concurred with the findings of SIT with regard to Allegations No. IX & XXIII. Further, as regards Allegation No. XV Ld. Amicus Curiae has opined that the issue may not survive because of the intervention of the Hon'ble Supreme Court, whereby Public Prosecutors have been appointed in a independent manner.

IPC relating to unlawful assembly, murder, Bombay Police Act and Arms Act against 11 named individuals and unknown others. After investigation, 11 charge sheets were filed against 71 individuals while 2 persons were arraigned as accused by the trial Court u/s 319 Cr.PC. Recording of prosecution evidence in the Trial Court is over and arguments are continuing.

(II) Naroda Police Station I. CR No.98/2002( Naroda Gam Case) :

During the above mentioned Bandh on 28.02.2002, an unlawful mob of 5,000 to 7,000 rioters gathered around Naroda Gaam area around 12.00 hours and attacked the houses, shops and vehicles with the inflammable materials killing 8 Muslim individuals. 3 victims went missing. On the complaint of ASI Vala of Naroda Police Station, a case was registered under different sections of IPC and Bombay Police Act. Though only 5 persons were named in the FIR, 86 persons were charge sheeted in 10 different charge-sheets filed over the years. Presently the trial is going-on.

(III) Naroda Police Station I. CR No.100/2002 ( Naroda Patiya) :

In yet another major incident on the above mentioned Bandh day, an unlawful mob of 15,000 to 17,000 attacked the houses of Muslims situated in Hussein-ni Chali, Naroda Patiya and nearby areas between 11.00 hours and 20.00 hours killing 58 Muslim individuals. 15 rounds were fired by the police to control the mob. Later, it was found that total 85 persons were killed including 2 in police firing. On the complaint of PSI V. K. Solanki of Naroda Police station, the above case was registered under different sections of IPC and Bombay Police Act against 5 named individuals and unknown others. 70 persons were charge-sheeted in 8 charge-sheets. The case is presently under trial.



mob, out of which one died later. Police fired 124 rounds to disperse the mob resulting in death of 4 rioters. On the complaint of Police Inspector of Meghaninagar Police Station Shri K. G. Erda, the above case was registered under different sections of IPC relating to unlawful assembly, murder, Bombay Police Act and Arms Act against 11 named individuals and unknown others. After investigation, 11 charge sheets were filed against 71 individuals while 2 persons were arraigned as accused by the trial Court u/s 319 Cr.PC. Recording of prosecution evidence in the Trial Court is over and arguments are continuing.

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• **Facts/Sequence of events established during investigation:**

Enquiry by Shri A. K. Malhotra, Member, SIT / earlier investigation / further investigation has established the following:

(A) Shri M. K. Tandon was Joint Commissioner of Police, Sector-II, Ahmedabad City during the relevant period. Sector-II comprises 3 Zones (Zone-IV, V & VI) and covered 15 police stations including Meghaninagar and Naroda. Certain police stations in his jurisdiction namely Dariapur, Gomtipur, Rakhial and Bapunagar were traditionally communally sensitive while Meghaninagar and Naroda did not have history of serious communal riots though these also had a few Muslim pockets. Each Zone is headed by a Deputy Commissioner of Police (DCP). Shri P. B. Gondia was posted as DCP Zone-IV, who had jurisdiction over Meghaninagar, Naroda, Dariapur, Shahibaug and Sardarnagar Police stations.

(B) Though Shri Tandon had received information regarding Godhra train incident as well as the proposed VHP Bandh on 28.02.2002 on the morning of 27.02.2002 itself, he did not held any formal meeting with DCsP/SHOs or chalked out any plan to handle the law and order situation on the coming day. In fact, no major preventive police action was taken. Similarly, no meeting of SHOs/chalking out of law and order plan was done by Shri P. B. Gondia, DCP.

(C) Shri Tandon was allotted 1 Coy of State Reserve Police (SRP) for the Bandh day, which was distributed among 3 DCsP (1 Platoon each). During his movements on 28.02.2002, Shri Tandon was having a Striking Force comprising 2 Police Sub-Inspectors and a few armed men in 2 vehicles.

(D) In the morning of 28.02.2002, Shri M. K. Tandon left for Dariapur P.S. as it was considered communally very sensitive. On the way around 1035 hours, he received a wireless message from Assistant Commissioner of Police, 'G' division requesting Police

Control Room to send more vehicles to Naroda Patiya area. In view of this message, he changed his route and reached Naroda Patiya. En route, he inquired about the location of Sr. PI of Meghaninagar P.S. and after having learnt that he had gone to Gulbarg Society due to some problem there, he proceeded towards the same and reached there around 1130 hours.

In the meantime, Shri P. B. Gondia, DCP received information regarding trouble at Naroda Patiya/ Naroda Gaam and reached Naroda Patiya at about 1100 hours. Inspector Shri Mysorewala of Naroda P.S. and ACP Shri M. T. Rana were already there to deal with mob which had gathered in large numbers.

(E) Shri M. K. Tandon found a mob of around 1,000 Hindu rioters around Gulbarg Society and ordered for bursting of tear gas shells and lathi charge by his Striking Force. Official records suggest that six tear gas shells were fired by the Striking Force attached to Shri Tandon at that time. As a result, the mob got dispersed in the lanes/by-lanes near Gulberg Society. It is believed that Shri Tandon also met late Shri Ahesan Jafri, ex-MP and certain other residents of Gulberg Society who were assured of strengthening the police presence there. Though witnesses claim that Late Ahesan Jafri had met the Commissioner, investigation has revealed that Shri P.C. Pande, the then CP, Ahmedabad City had not visited the Gulberg Society at that time. So most likely, Late Jafri had met Shri M. K. Tandon, the then Jt. CP, Sector-II. However, Shri Tandon denies this fact. Around 1150 hours Shri M. K. Tandon left for Naroda Patiya.

(F) On reaching Naroda Patiya area around 1220 hours, Shri Tandon found the situation to be very explosive and requested Commissioner of Police for imposition of curfew in Naroda Patiya. The Commissioner of Police, Ahmedabad City agreed with the request made by Shri Tandon and curfew was imposed at 1230 hrs.

(G) Significantly, Shri P. B. Gondia received a call at 1235 hrs from Sr. PI, Meghaninagar about the grave situation at Gulberg Society where a mob of around 5,000 had reportedly gathered.

(H) Around 1240 hours, Shri M. K. Tandon left Naroda Patiya for Dariapur police station area ostensibly on the ground that it was communally hyper sensitive. Incidentally, Shri Tandon did not take any concrete action at Naroda Patiya except requesting for imposition of curfew. As per call detail records he was in Bapunagar-Rakhial area between 1241 hrs and 1325 hrs. Further, he remained in Dariapur and Kalupur Police Stations area between 13.51 hours and 15.42 hours.

(I) At about 1220 hrs and 1238 hrs, Sr. PI Erda of Meghaninagar P.S. sent alarming messages to Police Control Room about the critical situation at Gulberg Society requesting for reinforcements.

(J) Around 1405 hrs, Shri Tandon sent a message to Control Room to send additional force for shifting Late Ahesan Jafri and others who had been surrounded by a mob in the Gulberg Society. Shri Tandon did not bother to inquire about the latest position till 1545 hrs when he asked Control Room to check-up as to whether there was any incident relating to loss of life in Gulberg Society. By that time, the Society had been set ablaze and lot of lives including that of Late Ahesan Jafri had been lost.

(K) Shri P. B. Gondia sent Shri V. S. Gohil, IInd Police Inspector, Naroda P.S. to Naroda Gaam around 1300 hrs due to critical situation there. He also ordered police firing in Naroda Patiya area, which resulted in death of 1 Hindu and 1 Muslim miscreant. As per police records, during this period, 48 rounds (22 rounds of 9 mm + 26 rounds of .303) as well as 95 tear gas shells were fired by the Striking Force of Shri P. B. Gondia. He left Naroda Patiya at 1420 hrs ostensibly to go to Pithadiya Bambha (Dariapur P.S.) in view of some trouble there. (However, in a signed statement made earlier

in point of time to Shri A. K. Malhotra, Member, SIT during inquiry, he has claimed that he had left for Hotel Moti Manor owned by a Muslim and Rosary School in Shahibaug area, which were being set on fire).

(L) On way to Pithadiya Bambha, Shri P. B. Gondia received instructions from CP Ahmedabad City at 1516 hrs to go to Gulberg Society and he reached there sometime around 1600 hrs. Shri M. K. Tandon arrived at Gulberg Society thereafter and arranged for prisoner vans, ambulances etc. for safe shifting of 150 survivors of Gulberg Society to Shahibaug police station.

(M) Late after the departure of Shri M. K. Tandon, Shri P. B. Gondia, ACP Shri M. T. Rana and PI Shri K. K. Mysorewala from Naroda Patiya area, a major incident of rioting took place between 1800 hrs and 1830 hrs there in which 85 persons were killed and 13 persons went missing. Five VHP activists were named as accused in the FIR.

(N) Shri M. K. Tandon was in touch with certain accused persons of Naroda Patiya/ Naroda Gaam cases. He had received 2 telephone calls on 01.03.2002 at 1137 hrs for 250 seconds and 1256 hrs for 161 seconds from accused in Naroda Patiya case Jaydeep Patel of VHP and 2 calls on 01.03.2002 at 1458 hrs for 32 seconds and 1904 hrs for 61 seconds from accused Dr. Mayaben Kodnani.

(O) Shri P. B. Gondia was also in touch with some accused persons of Naroda Patiya/Naroda Gaam cases. He had received 3 calls on his Mobile phone from Dr. Mayaben Kodnani on 28.02.2002, 01.03.2002 and 02.03.2002 at 1039 hrs, 1339 hrs and 1249 hrs respectively. He had also received 3 calls on 28.02.2002 at 1140 hrs, 1152 hrs and 1220 hrs, 2 calls on 01.03.2002 at 1004 hrs and 1135 hrs and 2 calls on 02.03.2002 at 1156 hrs and 1848 hrs from accused Shri Jaydeep Patel.

### Role of Shri M. K. Tandon :

During further investigation efforts were made to ascertain whether Shri M.K. Tandon could be part of the conspiracy of these offences. However, no evidence has come on record to establish that he was a party to criminal conspiracy hatched by the rioters. Normally conspiracy is hatched secretly and only circumstantial evidence is available to establish the same. In case of Shri Tandon, certain actions on his part suggest his bonafide intentions to control the riots. Initially he visited Gulberg society and lobbed tear gas shells and dispersed the mob. Subsequently he proceeded to Naroda Patiya and on his advice curfew was imposed in Naroda Patiya area by the Commissioner of Police. Further, from Naroda Patiya area, he went to Dariapur which was communally very sensitive.

As far as telephonic contact with accused persons namely, Dr. Mayaben Kodnani and Shri Jaydeep Patel is concerned, it has come to light that Dr. Kodnani was MLA from Naroda constituency and Shri Jaydeep Patel was Joint General Secretary, VHP, Ahmedabad Unit. These individuals were interrogated but they expressed inability to recollect the conversations and claimed that the same must be about the prevailing law and order situation. As regards the telephone calls made a day after the offence, from certain local leaders who were later prosecuted in the offence by itself does not make an individual a part of the conspiracy unless the contents of the conversation are known. In view of this, it would not be appropriate to conclude just on the basis of telephone calls that he was part of the conspiracy.

Investigation has revealed that Shri Tandon got the mob dispersed outside Gulberg Society around 1130 hrs. However, he did not take any step to strengthen the hands of Shri K.G. Erda, Sr. PI by providing him some additional force as requested by the latter despite the fact that he had assured late Ahesan Jafri and others.

Investigation has revealed that 1 platoon of SRP was allotted to DCP Zone-IV and that had reported at Naroda Patiya at about 1245 hrs and was deployed there. As cremation of 12 Karsevaks who had died on previous day in Godhra train incident was also to take place in Hatkeshwar cremation ground, which was also in the jurisdiction of Shri M. K. Tandon, he had some justification to leave Naroda Patiya for communally hyper sensitive areas in his jurisdiction. Furthermore, DCP Shri P. B. Gondia, along with ACP M T Rana, were already there at Naroda Patiya for handling the situation.

Investigation revealed that Dariapur was traditionally communally hyper sensitive. On the day between 1215 hrs and 2100 hrs, one person had been killed in police firing and one Masjid was heavily damaged, besides setting of Lunsawad police post on fire by miscreants. However, records of that period do not reveal any action taken by Shri M. K. Tandon at any of the locations in Dariapur. Further, there is no mention of any firing done at any of the places under his orders. The objective assessment of the situation reveals that Shri Tandon did not appreciate the circumstances professionally and acted in a negligent manner by not taking any appropriate action about the grave situation at Gulberg Society/Naroda Patiya area. It would not be out of place to mention here that Shri M.K. Tandon was very well aware about the situation at Gulberg Society in as much as he had sent a message to the Police Control Room at 1405 hrs on 28.02.2002, that late Ahesan Jafri and others had been surrounded by a mob and were required to be shifted immediately. Despite the fact that he was well aware of the inflammatory situation at Gulberg society, yet he chose not to go there. However, it is pitiable to note that he sent a message at 1545 hrs asking there was any loss of life at Gulberg society and if so, a detailed report should be given to him. As Joint Commissioner of Police, he was expected to monitor and keep a track of developments throughout his jurisdiction especially when he had left the locations at Gulberg Society and Naroda Patiya which

were by no means peaceful at that time. The actions at the mercy of concerned PI (in the case of Gulbarga Society, DCP (in the case of Naroda Patiya) and did not bother to inquire/take corrective actions though he had come to know of the gravity of the situations.

### **Role of Shri-P. B. Gondia**

Investigation revealed that Shri P. B. Gondia had received 3 calls on his Mobile phone from Dr. Mayaben Kodnani on 28.02.2002, 01.03.2002 and 02.03.2002 at 1039 hrs, 1339 hrs and 1249 hrs respectively. He had also received 3 calls on 28.02.2002 at 1140 hrs, 1152 hrs and 1220 hrs, 2 calls on 01.03.2002 at 1004 hrs and 1135 hrs and 2 calls on 02.03.2002 at 1156 hrs and 1848 hrs from accused Shri Jaydeep Patel. Dr. Mayaben Kodnani, Shri Jaydeep Patel and Shri P. B. Gondia have taken the plea that they were unable to recall the exact contents of these phone calls and claimed that these must be in connection with law and order situation. Notably, all these calls were incoming as far as Shri P. B. Gondia is concerned. As Dr. Kodnani was the local MLA and Shri Jaydeep Patel, a local leader, the reason given by them is probable. Shri Gondia claimed that 7 rioters had been killed as a result of police firing ordered by him. Police records show that 110 rounds of bullets and 183 teargas shells were fired by the police personnel under him on 28.02.2002 though it did not show any firing resorted to personally. Furthermore, from Naroda Patiya he went towards Pithadiya Bambha from where some incidents of rioting had been reported. In any case, he was instrumental in controlling a riot situation at Moti Manor Hotel and Rosary School on the way.

Investigation has further revealed that he had left Naroda Patiya at 1420 hrs despite the fact that a huge mob of Hindu and Muslim rioters had gathered there while the curfew was in force. His leaving the location for Pithaliya Bambha was totally unjustified, especially when there was no information of any situation being graver there than at Naroda Patiya. In case Shri



Gondia realized that he was in a position to leave the location, then he should have gone to Gulberg Society and not to Pithaliya Bambha. Shri Tandon has stated that on receipt of a message from Shri K.G. Erda at 1445 hrs that the Gulberg society had been surrounded by a mob and was about to be set fire to the same, he had directed Shri P.B. Gondia to reach Gulberg society immediately. Though this fact has been mentioned by Shri M.K. Tandon in his affidavit filed before the Nanavati Commission in July, 2002, yet he has not been able to explain as to how this direction was given to Shri Gondia as there is no Control Room message or mobile phone call to Shri Gondia at this point of time. However, Shri Gondia has denied having received any such instructions from Shri Tandon.

As indicated earlier, sufficient evidence has not come on record regarding involvement of these two police officers in the conspiracy/abetment of the offences. However, they demonstrated profound lack of judgment that seriously undermined their credibility and damaged their effectiveness in dealing with the situations. All the three major incidents took place in area under their control and they left the locations for handling by the junior officers. They did not take any preventive action on 27.02.2002, while any police officer worth the name could imagine the seriousness of the situation.

Ld. Amicus Curiae has recommended prosecution of aforesaid two officers u/s 304A IPC. In view of this recommendation, available evidence was analysed to assess whether the inaction on the part of these two officers, was of the nature of Criminal negligence or professional misconduct.

The basic requirements for prosecution under the above section are that the acts (including omission) must be rash or negligent. Here the issue is whether the acts of Shri M.K. Tandon and Shri P.B. Gondia would amount to criminal negligence justifying their prosecution. Their actions need to be seen and analysed in the proper perspective and situation prevalent on that

day. The following actions would analyse the role played by Shri M.K.Tandon:

- a. In the morning of 28.02.2002 he had left for Dariyapur Police Station (communally hyper-sensitive). On the way at 1035 hrs, he had heard a wireless message of ACP 'G' Division requesting control to send more vehicles to Naroda Patiya. In view of this message, he proceeded towards Naroda Patiya. En-route he asked location of Senior Police Inspector of Meghaninagar Police Station and after having learnt that he was at Gulberg Society, he proceeded there and reached Gulberg Society at about 1130 hrs. At that time, a mob of around 1000 Hindu rioters had gathered there. Shri Tandon had ordered bursting of tear gas shells and lathicharge through his striking force. As a result of this action, the mob was dispersed in the lanes and by-lanes near Gulberg Society.
- b. Around 1200 hrs., Shri Tandon left for Naroda Patiya. At 1220 hrs he had made a phone call to Commissioner of Police and requested for imposition of curfew in Naroda Patiya. Curfew was imposed in Naroda Patiya area at 1230 hrs.
- c. He had informed Commissioner of Police, Ahmedabad City regarding the situation at Naroda Patiya through a phone call at 1237 hrs. He also informed CP regarding the funeral procession of Kar-sevaks. The Commissioner of Police instructed him to go to Dariapur, as the Dariapur Police Station is communally hypersensitive. As ACP of Dariapur was on leave and presence of senior officer was required there, he had left for Dariapur. Therefore, his leaving the spot for a known communally hyper-sensitive place does not amount to criminal negligence though it could be an error of judgment/ poor appreciation of the situation.
- d. During the investigation of offence at Naroda Patiya, it has been established that the incident took place after 1800 hrs. When Shri Tandon left Naroda Patiya around 1240 hrs, then Senior Police Inspector of Naroda Police Station along with

his force, ACP 'G' Division along with his force, DCP Zone IV and his striking force and one platoon of State Reserve Police were present there. Therefore, it was not possible to envisage that such an incident might take place at Naroda Patiya.

- e. Shri M.K.Tandon has stated that first wireless message regarding the situation at Gulberg Society was received at 1414 hrs on his wireless handset. He has further stated that he had not received the messages passed by Senior Police Inspector of Meghaninagar P.S. at 1225 hrs and 1238 hrs as the situation was very noisy in Naroda Patiya area and he was using public address system of his vehicle for declaration of curfew and ordering the mob to get dispersed.
- f. Regarding the situation at Gulberg Society, Shri M.K. Tandon has stated that he was informed by an unknown Muslim individual that late Ahesan Jafri, Ex MP and other Muslims of Gulberg Society need to be shifted immediately. However, his enquiries with Control Room revealed that additional force of two DySsP, one inspector and one section of CISF had been sent to Gulberg Society, as per orders of Commissioner of Police.
- g. Shri M.K. Tandon has claimed that he had called Commissioner of Police on his mobile phone at 1425 hrs and discussed the situation. As per his statement, taking the communal sensitivity of Dariapur in consideration, leaving Dariapur without any senior police officer could have lead to drastic consequences as ACP was on leave and DCP was busy in handling the law & order situation elsewhere.

Following actions by Shri P.B.Gondia are relevant to decide as to whether he was liable for criminal negligence:-

- a. As per call details of mobile phone of Shri P.B.Gondia for 28.02.2002, he was in Dariapur Police Station area (which is communally hypersensitive) since 0830 hrs. Further, on receipt of an information regarding trouble at Naroda Patiya/ Naroda Gaam, he had reached there around 1100 hrs. He

was allotted one platoon of State Reserve Police, which he had deployed at Naroda Patiya and Naroda Gaam. Curfew was imposed at Naroda Patiya at 1230 hrs.

- b. He had ordered police firing at Naroda Patiya which had resulted in death of one Hindu and one Muslim rioter. Shri P.B. Gondia had left Naroda Patiya at 1420 hrs on receiving message regarding trouble at Pitadiya Bamba in Dariapur. Pitadiya Bamba had a history of serious communal violence in the past.
- c. At 1516 hrs, he had received instructions from Commissioner of Police, Ahmedabad City to go to Gulberg Society where he reached around 1600 hrs and took measures to disperse the mob and rescue the survivors.
- d. During the investigation of the case, it has been established that the incident at Naroda Patiya, in which major loss of lives took place occurred after 1800 hrs. i.e., approximately four hours after Shri Gondia had left the spot. In any case, the killings had taken place at a corner location in the lane which was away from the main road where police personnel were stationed and handling the mobs belonging to the two communities. In view of this, there does not appear to be any direct nexus of these killings with Shri P.B. Gondia, who had left the spot at about 1420 hrs.
- e. On 28.02.2002, he had ordered firing of 110 rounds of bullets and 183 tear gas shells to disperse the rioters at different locations which lead to killing of 7 rioters (including 6 Hindus).

Section 304A means an act which is the immediate cause of death and not an act or omission which can be said to be a remote cause of death. It is necessary to show an immediate nexus between the wrongful act of an accused and the injuries received by another. In order to constitute the offence, the death should have been the direct result of a rash and negligent act that must be proximate cause without intervention of any third factor. Furthermore, in case of criminal negligence, it must be gross and

not which is merely an error of judgment or arises because of defect of intelligence.

Therefore, considering all the circumstances, evidence on record and the defence available with the suspect police officers namely Shri M.K. Tandon and Shri P.B. Gondia, it may not be viable to prosecute them for the offence u/s 304-A IPC as proposed by Ld. Amicus Curiae. It is worth mentioning here that inspite of best efforts, no additional evidence (other than already available) which could help in fixing criminal liability u/s 304A IPC of these two individuals could be brought on record during further investigation. However, the conduct of Shri M. K. Tandon, the then Joint CP. Ahmedabad City (since retired) and Shri P. B. Gondia, the then DCP, Ahmedabad City was unprofessional and unbecoming of senior police officers.

➤ **Observation made by Ld. Amicus Curiae:**

- **The SIT may examine the role of the Investigating Agency in the *Bilkis Bano* rape case and make recommendations to this Hon'ble Court, whether it reveals commission of any criminal offence or misconduct.**

**Result of Further Investigation:**

The *Bilkis Bano rape case* was investigated by the CBI under the orders of Hon'ble Supreme Court of India. The case has ended in conviction of 12 accused persons and acquittal of 8 accused persons. The appeals against conviction are now pending in the High Court. CBI had already recommended Regular Departmental Action for major penalty against five police officers for the lapses on their part.

➤ **Observation made by Ld. Amicus Curiae:**

- **The SIT may be directed to look into the role of the Crime Branch officers, namely DCP Vanzara and ACP Chudasama**

as to their role in the investigation of Gulberg Society and Naroda Patiya cases.

**Result of Further Investigation:**

Departmental action has been recommended against Shri S.S. Chudasma, the then ACP, Crime Branch (since Retd.). The role played by Shri D.G. Vanzara, the then DCP, Crime Branch (now under suspension), who is in judicial custody in "*Sohrabuddin fake encounter case*" since 2007 has been re-examined with a view to ascertain the lapses, on his part. However, no fresh material has come on record to establish the same.

➤ **Observation made by Ld. Amicus Curiae:**

- **The SIT may examine the role of the prosecuting agency in Best Bakery case and recommend suitable action against those who are responsible.**

**Result of Further Investigation:**

The Best Bakery case was investigated by the Gujarat Police and the same ended in acquittal of all the accused persons in a trial conducted at Baroda in Gujarat. However, subsequently the case was remanded by the Hon'ble Supreme Court of India for a retrial under the jurisdiction of Bombay High Court and the same ended in the conviction of 9 accused persons and the acquittal of 8 accused persons.

➤ **Observation made by Ld. Amicus Curiae:**

- **SIT may look into the role of police officials in the Gulberg Society and Naroda Patiya cases (apart from those who are already facing charges).**

**Result of Further Investigation:**

Govt. of Gujarat would be requested to initiate appropriate action against the concerned officials for various administrative lapses on their part.

**SPECIFIC RECOMMENDATIONS IN RELATION TO GOVT. OF GUJARAT :**

➤ **Observations made by Ld. Amicus Curiae:**

- Departmental action, as suggested by the SIT, be taken against K. Kumaraswamy, the then Jt. CP, Baroda City and Ramjibhai Pargi, former ACP.
- As recommended by the SIT, departmental action be taken against Shri Tarun Barot, Inspector and Shri G.L. Singhal, ACP, Crime Branch for faulty investigation of the riots cases.

**Result of Further Investigation:**

As discussed above the recommendations made by the Ld. Amicus Curiae, have been agreed upon and further necessary action in the matter is being recommended to the Govt. of Gujarat.

The recommendations made in Chart 'C' by the Ld. Amicus Curiae vis-à-vis comments of SIT are given below:-

**Chart – 'C'**

<b>ALLEGATIONS</b>	<b>FINDINGS OF SIT</b>	<b>OBSERVATIONS MADE BY AMICUS CURIAE</b>
II: Alleged decision of the CM to transport dead bodies from Godhra to Ahmedabad with a view to parade them.	The allegation is not established.	The findings of the SIT appear to be justified.

<p>It is alleged by Shri Sreekumar that there were a number of verbal instructions given by Chief Minister, which were illegal.</p>	<p>The SIT had stated that there is doubt about the genuineness of the entries, in view of the fact that this register was revealed for the first time in 2005 (after the supersession of Shri Sreekumar by the Govt.) and there is further no corroboration of the statements made by Shri R.B. Sreekumar from any other source.</p>	<p>It may not be possible to prove the absence of any other material, except the statements of Shri R.B. Sreekumar himself. Hence, though the finding of the SIT be accepted, it may not be appropriate to say that the register is motivated.</p>
<p>The allegation is regarding transfer of 6 police officers by Hon'ble Chief Minister during the thick of riots to facilitate placement of pliable officers.</p>	<p>The finding of the SIT is that this allegation could not be proved.</p>	<p>We may accept SIT's recommendations. There are 3 instances which are far too remote to lead to any conclusion.</p>
<p><u>VIII.</u> The allegation is that no follow up action was taken up by the Gujarat Govt. on the reports sent by Shri R.B. Sreekumar</p>	<p>The finding of the State Govt. relating to the concerned subject had not been produced, and therefore, it is not clear how the Govt. dealt with the letters of Shri R.B. Sreekumar. The SIT further observes that from the evidence of witnesses, it is incorrect to say that the letter of</p>	<p>The findings of the SIT may be correct. The letters of Shri R.B. Sreekumar were written after the riots had got over. Secondly, the contents of these letters appear to be of general nature. The subsequent developments have</p>



	Shri R.B. Sreekumar were not acted upon by the Govt.	supported the findings of the SIT that some action was taken by the Govt. Hence, we may accept SIT's recommendation.
<u>XIII.</u> The allegation is that Shri Narendra Modi did not give a direction declaring as <i>Bandh</i> called by VHP on 28-02-2002 illegal.	The SIT has found that the <i>Bandh</i> was not declared illegal by the Govt. of Gujarat and hence the allegation is proved.	This issue is not having very material bearing. Nothing would turn upon the fact whether the <i>Bandh</i> was declared illegal or not.
<u>XIV.</u> The allegation is that there was undue delay in deployment of Army.	The SIT has come to a conclusion that there was no undue delay in deployment of the Army.	The factual records are the matter of investigation and if the records are correct, than the SIT finding may also be correct.
<u>XVI.</u> The allegation is that police officials were not transferred until the arrival of Shri KPS Gill.	The SIT has found this allegation is not correct.	The finding of the SIT may be accepted.
<u>XVII.</u> The allegation is that no action was taken against media for publishing communally inciting reports.	The SIT has found that the allegation is true.	Action should have been taken against the Media, but due to lapse of more than 8 years, it is not advisable to pursue this matter any further.
<u>XVIII.</u> This allegation relates to	The SIT has concluded that the allegation is not	This issue may not survive any further

<p>misleading reports submitted by the State Home Department regarding normalcy in the State so as to persuade the Election Commission to hold early elections.</p>	<p>conclusively established in view of the fact that the elections were subsequently held within 3-4 months in December, 2002 and passed off peacefully.</p>	<p>and it would not serve any purpose to examine this issue in detail. Hence, it is recommended that this issue be dropped.</p>
<p><u>XIX &amp; XX.</u> That Shri G.C. Murmu, Home Secretary, was deputed to tutor the witnesses who were to depose before Nanavati Commission.</p>	<p>The SIT has found this allegation is not established as the version given by Shri R.B. Sreekumar is motivated and cannot be relied upon.</p>	<p>The allegation is found not proved by SIT, which recommendation be accepted. It may not be justified to say that the version of Shri Sreekumar is motivated.</p>
<p><u>XXIV.</u> Allegation is that the Gujarat Govt. did not provide conducive atmosphere for rehabilitation of riot victims.</p>	<p>The SIT has found this allegation is not correct as it is believes that the Govt. did everything for rehabilitation.</p>	<p>This conclusion may be accepted.</p>
<p><u>XXVI.</u> This allegation relates to non-preparation of minutes of meeting.</p>	<p>SIT has found that in Gujarat Govt. no minutes of meeting are prepared in case of law &amp; order review meets.</p>	<p>Since the minutes of the meeting have not been prepared, nothing would come out in further investigation. In any event, the minutes of the meetings would</p>

		never be prepared to implicate any Minister / official directly or indirectly. Therefore, this issue can be closed.
<u>XXXVII.</u> This allegation relates to not taking action against officers for filing incorrect affidavits before the Nanavati Commission.	SIT has concluded that this matter has to be dealt with by the Nanavati Commission which has still to submit its report.	The view taken by the SIT appears to be correct.
<u>XXVIII.</u> It is alleged that the review of post trial cases was slack and the officers acted according to the political interests of BJP and the CM.	SIT has held that this allegation is not established.	The recommendations of the SIT be accepted.
<u>XXIX.</u> The allegation regarding nepotism in posting, transfer etc.	The SIT has found that this allegation is very vague and general and it is not possible to conduct any inquiry in the said allegation.	The finding of the SIT seems to be correct and may be accepted.
<u>XXX.</u> That only Muslims were victims of riots and police firing due to collaboration between rioters and	SIT has found that this allegation is not substantiated.	This aspect may get covered if the request for further investigation is accepted by this Hon'ble Court.

the administration.		
<u>XXXI.</u> It is alleged that there was a secret meeting in Lunawada where 50 top people allegedly met and made out a plan for rioting and use of violence.	The SIT has examined this issue in detail and found that the information was a figment of imagination of some interested elements, based on rumors and therefore, not established.	The view taken by SIT may be accepted.
<u>XXXII.</u> It is alleged that on 28-02-2002, 5000 Bajrang Dal activists met at village Borvai in which attack on minorities was planned.	SIT has conducted investigation in detail and found that this is a cooked up story and the information given by Shri Mahboob Rasool was correct.	The view taken by the SIT may be accepted.

It may thus be seen that the Ld. Amicus Curiae has agreed with the findings of SIT in respect of Allegations No. II, III, VI, VIII, XIV, XVI, XIX, XX, XXIV, XXVII, XXVIII, XXIX, XXXI & XXXII and has recommended to the Hon'ble Supreme Court of India that the recommendation of SIT may be accepted in respect of these allegations. Further, as regard Allegations No. XIII, XVII, XVIII & XXVI the Ld. Amicus Curiae is of the view that the issues were not very material and, therefore, recommended the same to be dropped. However, as regard the Allegation No. XXX, the Ld. Amicus Curiae opined that the allegation would get covered in case the request for further investigation was accepted by the Hon'ble Supreme Court of India. The Ld. Amicus Curiae has also opined that the further investigation conducted by the SIT u/s 173 (8) Cr.PC about the involvement of Shri Gordhan Zadafia has

revealed that there is lack of evidence to suggest his involvement in the riots and that this findings of the SIT appears to be acceptable.

As ordered by the Hon'ble Supreme Court of India, the matter was listed for hearing on 05.05.2011, when the following order was passed:-

*"Pursuant to our order dated 15<sup>th</sup> March, 2011, the Chairman, Special Investigation Team (SIT) has filed report on the further investigations carried out by his team along with his remarks thereon. Statements of witnesses as also the documents have been placed on record in separate volumes. Let a copy of all these documents along with the report of the Chairman be supplied to Mrs. Raju Ramchandran, the Learned Amicus Curiae.*

*The learned Amicus Curiae shall examine the report; analyse and have his own independent assessment of the statements of the witnesses recorded by the SIT and submit his comments thereon. It will be open to the learned Amicus Curiae to interact with any of the witnesses, who have been examined by the SIT, including the police officers, as he may deem fit.*

*If the learned Amicus Curiae forms an opinion that on the basis of the material on record, any offence is made out against any person, he shall mention the same in his report.*

*List on 28<sup>th</sup> July, 2011 at 3:00 p.m."*

Pursuant to the aforesaid order passed by the Hon'ble Supreme Court of India the Ld. Amicus Curiae submitted his report dated 25.07.2011. In his report, Ld. Amicus Curiae agreed with the findings of the SIT on the following issues and opined that the same are acceptable:-

- I. That though he had observed in his note dated 20.01.2011 that late Haren Pandya, the then MoS for Revenue could have been present in the meeting on 27.02.2002, yet considering the material gathered by the SIT and that further investigation report of the SIT, he agrees with the SIT that late Haren Pandya could not have been present in the meeting on 27.02.2002 and therefore, his (late Haren Pandya) statement

regarding the alleged statement made by Shri Modi in the aforesaid meeting may be disregarded.

- II. That he would also agree with the findings of SIT that the statement made by Shri R.B. Sreekumar, the then Addl. DG (Int.) to Shri K. Chakravarthi, the then DGP would be hearsay evidence not saved by *res gestae* and therefore, would be inadmissible in evidence.
- III. That as far as SIT's conclusion with regard to the steps taken by Shri Narendra Modi to control the riots in Ahmedabad City is concerned, the same may be accepted.
- IV. That as far as the observations of the Chairman, SIT on the handing over of the bodies of the Godhra victims to Shri Jaydeep Patel are concerned, the same may be accepted.
- V. That as far as the observations of the SIT with regard to the Chief Minister's statement on television on 01.03.2002, are concerned the same may be accepted
- VI. That as far as SIT's observations with regard to the alleged inaction of Shri P.C. Pande, the then Commissioner of Police, Ahmedabad City are concerned, no comment is necessary at this stage as an application u/s 319 Cr.PC has been filed in respect of Shri P.C. Pande also, and the same may be dealt with by the concerned Court in accordance with law, in the same manner as suggested in respect of Shri M.K. Tandon and Shri P.B. Gondia.

Shri Raju Ramchandran, Amicus Curiae has come to the conclusion that at this prima facie stage offences *intra-alia* u/s 153 A(1)(a) & (b), 153B(1)(c), 166 and 505(2) IPC are made out against Shri Narendra Modi. He has further stated that it would be for the Court of competent jurisdiction to decide whether Shri Modi has to be summoned for any or all of these offences or for any other offences. These findings are based on the following grounds:-

- a. That Shri Sanjiv Bhatt has brought his former driver Shri Tarachand Yadav and had submitted .....  
17.06.2011, which supports Shri Bhatt's version .....  
gone to the residence of the Chief Minister on 27.02.2002.
- b. That Shri Sanjiv Bhatt submitted an affidavit of Shri K.D.Panth Constable affirmed on 17.6.2011 supporting the version of Shri Bhatt about going to Chief Minister's residence on the night of 27.02.2002.
- c. That Shri Rahul Sharma, DIG submitted an analysis of the call records of senior police officers, which according to Shri Sharma corroborates the statement of Shri Bhatt.
- d. That though Shri Sanjiv Bhatt has been contending that he would speak only when under a legal obligation to do so, his conduct after making a statement u/s 161 Cr.PC has not been that of a detached police officer, who is content with giving his version.
- e. That it does not appear very likely that a serving police officer would make such a serious allegation against Shri Narendra Modi, Chief Minister without some basis.
- f. That there is no documentary material of any nature whatsoever, which can establish that Shri Bhatt was not present in the meeting on 27.02.2002 and in the absence of the minutes of the meeting, there is again no documentary evidence is available, as to the participants in the meeting and what transpired at the said meeting. Therefore, it is the word of Shri Sanjiv Bhatt against the word of other officers senior to him.
- g. That it is difficult to accept that Shri Bhatt's statement is motivated because he has an axe to grind with the State Govt. over issues concerning his career and it may not be proper to disbelieve Shri Sanjiv Bhatt at this stage only because the other officers have not supported his statement.
- h. That the delay in making the statement can not be the sole ground to disbelieve the statement at this stage especially in view of his explanation that as an Intelligence Officer, who was privy to a lot of sensitive information, he would make a statement only when he was under a legal obligation to do so.
- i. That Shri G.C. Raiger, Addl. DG(Int.) was on leave on 27.02.2002 and DGP Shri K. Chakravarthi does not state that he had gathered intelligence from the office of Shri Raiger.

Further, Shri P.C. Upadhyay, the then DCI (Political & Communal) was on leave on 27.02.2002 and Shri Bhatt was looking after his work. Also Shri Raiger has stated that Shri Bhatt had accompanied him in the past to meetings called by the Chief Minister, though he used to wait outside with files or information and therefore, it is quite possible that Shri Bhatt was directed to attend the meeting on 27.02.2002 at the residence of Chief Minister.

- j. That the phone calls records do not contradict the statement given by Shri Sanjiv Bhatt to the SIT and considering the important and emergent nature of the meeting, the relative juniority of Shri Bhatt need not have come in the way of his attending the meeting especially since Addl. DG (Int.) Shri Raiger was not available and Shri O.P. Mathur, the IGP (Security & Admn.) who was next in seniority was not called for the meeting and that this aspect was of little significance in the context of an emergency meeting called at short notice in response to an escalating situation.
- k. That the discrepancies about the exact language used or the time of meeting, at the Chief Minister's residence at Gandhinagar on 28.02.2002, are inevitable considering the lapse of time.

As regard the assessment of the role played by Shri M.K. Tandon, the then Jt. CP, Sector-II, Ahmedabad City and Shri P.B. Gondia, the then DCP, Zone-IV, Ahmedabad City, the Ld. Amicus Curiae has recommended that it would be appropriate for the Hon'ble Supreme Court of India to direct the trial Court to consider an application u/s 319 Cr.PC filed by the victims in Gulberg Society Case on the evidence brought before it and also consider the further investigation report submitted by Shri Himnshu Shukla, DCP to the Hon'ble Supreme Court of India on 26.11.2010 and the statements recorded by him and to pass appropriate orders in accordance with law. The Ld. Amicus Curiae has also submitted to the Hon'ble Supreme Court to consider whether an offence u/s 304A IPC is made out. The Ld. Amicus Curiae has finally come to the conclusion that since the SIT has conducted a statutory investigation u/s 173 (8) Cr.PC, the report is required to be filed in the Court and



it is for the competent Court to pass necessary orders after hearing the concerned parties. However, the Hon'ble Supreme Court has refrained from passing any order in this regard except that Chairman, SIT has been directed to forward a Final Report along with entire material collected by it to the Court, which had taken cognisance of Cr.No. 67/2002 u/s 173(2) Cr.PC.

Shri Raju Ramchandran, the Ld. Amicus Curiae has agreed with the findings of the SIT on all the major issues. Whereas the complainant has made an allegation that Shri Narendra Modi, Chief Minister sponsored the riots, the Ld. Amicus Curiae has come to the conclusion that sufficient steps were taken by the Chief Minister to control the riots. The Ld. Amicus Curiae did not allege any conspiracy or abetment on the part of Chief Minister. He has further agreed with the recommendations of SIT that the statement made by Shri R. B. Sreekumar that Shri K. Chakravarthi had informed him about the utterances made by the Chief Minister on 27.02.2002 night would not be admissible as the same amounted to hearsay evidence and therefore, inadmissible. He is also of the view that the recommendations of the SIT about the steps taken by the Chief Minister to control the riots may be accepted. He has also agreed with the recommendations of Chairman, SIT about handing over the dead bodies of Godhra victims to Shri Jaydeep Patel. About the Chief Minister's alleged statement on television on 01.03.2002, by referring to the Newton's third Law of Motion also the Amicus has agreed the recommendations of the SIT.

Shri Raju Ramchandran, Ld. Amicus Curiae is of the view that a prima facie case u/s 153 A(1)(a) & (b), 153B(1)(c), 166 and 505(2) IPC is made out against Shri Narendra Modi, Chief Minister. However, he is further of the view that it would be for the Court of competent jurisdiction to decide whether Shri Modi has to be summoned for any or all of these offences or for any other offence. This recommendations of Ld. Amicus Curiae is based on the sole testimony of Shri Sanjiv Bhatt, the then DCI (Security), who has

claimed to have attended a meeting called by the Chief Minister on 27.02.2002 night at his residence. It may be mentioned here that seven (7) other participants of the said meeting have categorically stated that Shri Sanjiv Bhatt did not attend the said meeting. According to the Ld. Amicus Curiae, Shri Sanjiv Bhatt produced his driver Shri Tarachand Yadav, a dismissed constable driver of Gujarat Police along with his affidavit dated 17.06.2011, who supports Shri Bhatt's version that he had gone to the residence of the Chief Minister on 27.02.2002. In this connection, Shri Sanjiv Bhatt has stated that he had gone along with Shri K. Chakravarthi, the then DGP in the latter's staff car to CM's residence from DGP's office and that Shri K.D. Panth, the then AIO, State IB followed him in his staff car driven by Shri Tarachand Yadav. The Ld. Amicus Curiae has wrongly projected that Shri K.D. Panth, constable has supported the version of Shri Sanjiv Bhatt about the latter's visit to CM's residence on 27.02.2002, in as much as Shri K.D. Panth has lodged a complaint on 17.06.2011, against Shri Sanjiv Bhatt for wrongful confinement and also for getting an affidavit signed from him under duress and threat and a case I CR No.149/2011 was registered u/s 189, 193, 195, 341, 342 IPC has been registered against Shri Sanjiv Bhatt on 22.06.2011 in Ghatlodia P.S., Ahmedabad City. Shri Raju Ramchandran has relied upon a copy of this affidavit which was handed over to him by Shri Sanjiv Bhatt on 17.06.2011.. In fact, Shri K.D. Panth had sent a letter to Chairman, SIT in this regard on 17.06.2011 itself along with another affidavit sworn before the Dy. Collector, Gandhinagar to the effect that he was on leave on 27.02.2002, and that his statement made before the SIT in this regard was correct. It would not be out of place to mention here that a copy of the said letter along with the affidavit submitted to SIT by Shri K.D. Panth with its English translation were handed over to Shri Raju Ramchandran by Shri Y.C. Modi, Member, SIT and Shri A.K. Malhotra, Member, SIT personally on 21.06.2011, but the same has been conveniently ignored by the Ld. Amicus Curiae. The claim of Shri Sanjiv Bhatt has been dismissed by Shri K.

Chakravarthi, the then DGP, who has denied that Shri Bhatt accompanied him in his staff car to CM's residence on 27.02.2002. Significantly, log book of the vehicle of Shri Chakravarthi shows only PSO accompanied him and there is no mention of Shri Sanjiv Bhatt in the same. Further, Shri Dilip Ahir and Shri Dharampal Yadav the then PSOs to the DGP and Shri Panchusinh Yadav and Shri Mangilal Kala, the then drivers attached to the DGP have categorically denied that Shri Sanjiv Bhatt ever travelled in DGP's staff car. The observation made by the Ld. Amicus Curiae that Shri K.D. Panth had supported the version of Shri Sanjiv Bhatt is, therefore, incorrect. Further, keeping in view the version of Shri K.D. Panth that he was on leave on 27.02.2002, would falsify the statement made by Shri Tarachand Yadav, driver to the effect that he had followed the DGP's vehicle with Shri K.D. Panth, Constable.

It is significant to note that the Ld. Amicus Curiae has admitted that

*"I am conscious of the fact that though Shri Bhatt has been contending that he would speak only when under a legal obligation to do so, his conduct after amking his statement u/s 161 Cr.PC has not been that of a detached police officer, who is content with giving his version. I am left with no double that he is actively "strategising" and is in touch with those, who would benefit or gain mileage from his testimony".*

The Ld. Amicus Curiae has also mentioned that Shri Rahul Sharma, DIG submitted an analysis of the call records of senior police officers, which according to Shri Sharma corroborates the statement of Shri Bhatt. Shri Rahul Sharma never stated anything like that before the SIT. Shri Rahul Sharma has not stated that in what manner the call details of the senior officers corroborate the statement of Shri Sanjiv Bhatt. The Ld. Amicus Curiae has accepted the contention of Shri Sanjiv Bhatt that as an Intelligence Officer, he was privy to some information and would speak only, when he was legally bound to do so. In this connection it may be stated that the alleged meeting called by the Chief Minister in the

night of 27.02.2002 was essentially a law and order review meeting which was attended by the various officials of State Administration and therefore the question of oath of secrecy or application of the Official Secrets Act does not arise because it was neither a secret meeting nor would the revelation of the contents of the said meeting jeopardized the public interest. Shri Sanjiv Bhatt has used the Official Secrets Act as a pretext to justify a long delay of nine years and the fact that an official of the intelligence unit attended a law & order meeting, the same does not become a secret meeting for which a privilege of secrecy is being claimed by Shri Sanjiv Bhatt. The view of the Ld. Amicus Curiae that it does not appear very likely that a serving police officer would make such a serious allegation without some basis appears to be erroneous in as much as Shri Sanjiv Bhatt had been all along a delinquent in his career and had been trying to bargain with the government. The very fact that three departmental enquiries against Shri Sanjiv Bhatt were dropped in 2006-07 and he was given three promotions on a single day would by itself go to show his service career progression. Again his promotion to the rank of IGP was due for quite sometime but he did not get the same because of other departmental enquiries as well as court cases pending against him. This reason by itself is sufficient to bring a motive on the part of Shri Sanjiv Bhatt to make a statement against the Chief Minister. Further, it is true that no minutes of the meeting were maintained and there is no documentary evidence available to show as to what transpired in the said meeting. However, the evidence of seven senior officers can not be ignored to the effect that Shri Sanjiv Bhatt was not present in the said meeting and claim of Shri Sanjiv Bhatt about his having attended the said meeting and also about some alleged utterances made by the Chief Minister is not acceptable. The observation made by the Ld. Amicus Curiae that Shri Sanjiv Bhatt can not be disbelieved because his statements were motivated and he has an axe to grind against the government over issues concerning his career and also that his statement was not supported by other officers, is

absurd. The further observation of Ld. Amicus Curiae that in the absence of Shri G. C. Raiger, the then Addl.DGP (at the time) and Shri P.B. Upadhyaya, the then DCI (Political & Communal) being on leave, it was quite possible that Shri Sanjiv Bhatt was directed to attend the meeting on 27.02.2002 is based on conjectures and surmises. The contention of Ld. Amicus Curiae that the phone call records do not contradict the statement of Shri Sanjiv Bhatt is without any basis in as much as the same do not even support his statement. The call detail records show the location of Shri Sanjiv Bhatt at Ahmedabad and the last call was received by him at 20.40 hours, which do not establish that Shri Sanjiv Bhatt had gone to Gandhinagar to attend a meeting around 22.30 hours.

Significantly, the claim of Shri Sanjiv Bhatt of having attended the meetings on 27/28.02.2002, becomes false and unacceptable as according to his call detail records he could not have been present in the alleged meeting that took place at CM's residence on 28.02.2002 at 1030 hrs. Another claim of Shri Sanjiv Bhatt that he left the meeting of 27.02.2002 night halfway is suggestive of the fact that in reality he did not attend the meeting. This meeting was of a very short duration and it was practically impossible for a junior officer of the level of Shri Bhatt to leave the meeting midway.

Further, the view of Ld. Amicus Curiae that the exact language allegedly used by the Chief Minister in the said meeting on 27.02.2002 is not material, can not be accepted in as much as there are atleast three versions available on record in this regard. Smt. Jakia Nasim in her complaint has claimed that a high level meeting was convened by the Chief Minister at which Chief Secretary Subba Rao, Home Secretary Ashok Narayan and senior police men were summoned at which clear instructions were given 'not to deal with the Hindu rioting mobs'. Further, Shri R. B. Sreekumar has claimed that Shri K. Chakravarthi had informed him on 28.02.2002 that Shri Narendra Modi, CM had convened a meeting of senior officers on 27.02.2002 late in the evening on

return from Godhra and had said that 'in communal riots police takes action against Hindus and Muslims on one to one basis. This will not do now – allow Hindus to give vent to their anger'. As against this, Shri Sanjiv Bhatt claims that the Chief Minister allegedly impressed upon the gathering in the meeting that 'for too long the Gujarat Police had been following the principle of balancing the actions against the Hindus and Muslims while dealing with the communal riots in Gujarat. This time the situation warranted that the Muslims be taught a lesson to ensure that such incidents do not recur ever again. The Chief Minister Shri Narendra Modi expressed the view that the emotions were running very high amongst the Hindus and it was imperative that they be allowed to vent out their anger.' It is not understood as to whose words should be relied upon because none of them i.e. Smt. Jakia Nasim, Shri R. B. Sreekumar and Shri Sanjiv Bhatt were present in the said meeting. Another factor worth consideration at this stage is that there is no evidence available on record that any instructions on these lines were passed on to the police formation down below thereby ruling out the possibility of such utterances as alleged were made by CM in the meeting.

Based on the aforesaid three versions Amicus Curiae has arrived at a conclusion that the same would attract the offences u/s 153A (1) (a) & (b), 153B (1) (c), 166 and 505 (2) IPC.

Section 153A (1) (a) IPC states that 'whoever, by words promotes or attempts to promote disharmony or feelings of enmity, hatred, or ill will on the ground of religion between different religious communities. In other words, Section 153A (1) (b) IPC can be paraphrased as 'whoever commits any act which is prejudicial to the maintenance of harmony between different religious communities and which is likely to disturb the public tranquility'. Even if any of the aforesaid three versions allegedly made by Chief Minister, the ingredients of section 153A (1)(a) & (b) are not attracted. The facets of the allegations attributed to Shri Narendra Modi can not fall under sub-class (a) or (b) of the section

153(A) (1) IPC. At this juncture, it would not be out of place to mention that the Chief Minister made four statements within 24 hours on 27/28.02.2002. At Godhra on 27.02.2002 evening the Chief Minister publicly said that burning of karsevaks in a train at Godhra was unparalleled in the history and assured the people that the culprits would be punished. He also said that the Government would ensure that the peace was maintained in the State and the Government would not be lacking in discharging its duty. On 28.02.2002 morning, he spoke in the assembly after obituary reference that the State government has taken this cruel, inhuman, heinous and organised crime very seriously and is committed to take symbolic strict steps and to punish the culprits in such an exemplary manner that such an incident may not recur in future. On 28.02.2002 afternoon in his press conference in Circuit House Annexe, Ahmedabad, Shri Narendra Modi reiterated that Government of Gujarat has taken this heinous train burning incident at Godhra very seriously and that people should help the government to ensure that the culprits are punished. Shri Narendra Modi also told the press that those who had acted in retaliation and anger after the incident shall also not be spared. Further, he appealed made to the people of Gujarat on Doordarshan on 28.02.2002 evening to keep restrain and maintain peace and harmony. He also said that the Government was determined to bring these culprits to justice and give them unimaginable punishment. It may thus be seen that the thrust of CM's speech everywhere was that the incident was heinous, organised and that the culprits would be brought to strictest punishment.

Similarly, section 505 (2) IPC can be paraphrased as 'Whoever makes any statement with intend to create (or permit to create (or is likely to create or permit to create) feelings of enmity or hatred or ill will between different religious community. In view of the reasons enumerated above a case u/s 505(2) IPC is also not made out.

Also, section 153B (1) (c) IPC can be paraphrased as 'Whoever by words makes any assertion concerning the obligation of any class or person by reason of their being members of a religious community and such assertion is likely to cause disharmony or feeling of enmity or hatred or ill will between such members and other persons'. As regards the application of this section, it may be mentioned that it is not the case that the Chief Minister made any assertion concerning the obligation of any religious community to do such acts, as are likely to cause disharmony. He did not make any appeal to Hindus or Muslims to take up arms against each other. On the other hand Shri Narendra Modi made an appeal on 28.02.2002 that both the communities should desist from doing any act by physically attacking each other. This appeal was broadcasted by the Doordarshan intermittently. In view of this no offence u/s 153B (1) (c) IPC is made out.

As regards section 166 IPC, it deals with the public servants disobeying any direction of law as to the way in which he is to conduct himself as a public servant. It can not be extracted from the statement attributed to Shri Narendra Modi that he was thereby disobeying any directions of law as to the way, in which he is to conduct himself as Chief Minister. No such directions can be quoted from law as for the Chief Minister to disobey it. In view of this there is no application of section 166 IPC at all against Shri Narendra Modi.

Thus recommendations of Amicus Curiae and evidence collected during further investigation u/s 173 (8) Cr.PC have been examined in detail to see, if the ingredients of the suggested sections for prosecution are attracted or not. On such assessment it is reasonably concluded that no utterances on part of Shri Narendra Modi could be attributed suggestive to any intended promotion of hatred ill-will etc. amongst religious groups. The settled legal position is that mensrea is required for offences u/s 153A IPC. In view of the same and evidence discussed in



preceding paras, there is no evidence to prima facie allege commission of suggested offences by Shri Narendra Modi.

Shri Sanjiv Bhatt, DIG (under suspension) has sent a letter dated 30.12.2011 to the Secretary, Hon'ble Justice Nanavati & Justice Mehta Commission of Inquiry enclosing therewith an Annexure 'D', which is a copy of fax message No. D-2 / 2-COM / ALERT / 174 / 2002, dated 28.02.2002, which he claimed to have sent to different authorities under his signature. The same Annexure 'D' has been uploaded on website [www.twocircle.net](http://www.twocircle.net). It is reproduced below:

ANNEXURE - D

FAX MESSAGE  
(PRIORITY: CRASH)

TO	PS to CM Gandhinagar PS to MOS (Home)	
INFO	Home Sec Gandhinagar Police Gandhinagar CP Ahmedabad	
FROM	Addl. D.G.P., Intelligence, G.S., Gandhinagar	
O.No.	D-2/2-COM/ALERT/174/2002	Date: 28.2.2002
Text		

As informed telephonically to the Hon'ble CM Ex-MP Ehsan Zafri and his family members residing at Gulmarg Society, Chamanpura, Meghanagar have been surrounded and are being attacked by a Hindu Mob in the presence of Police Bandobust (.). The lives of Ehsan Zafri and other family members are in imminent danger (.)

CP Ahmedabad is requested to take immediate effective action and provide a situation report to SCR under intimation to this office at the earliest (.)

(Sanjiv Bhatt)

Dy. Commissioner (Communal)  
For Addl. D.G.P., Int., G.S., Gandhinagar

FFP  
A.D.  
28/2

Subsequently, on 04.01.2012, Shri Sanjiv Bhatt forwarded to Chairman, SIT a copy of his letter No. SRB/COI/120104/01, dated 04.01.2012 addressed to Secretary, Justice Nanavati Commission of Inquiry enclosing therewith a copy of fax message No. D-2 / 2-COM / ALERT / 100 / 2002, dated 27.02.2002, claiming to have

sent the same under his signature. A copy of the said fax message is also reproduced below:

**FAX MESSAGE**


**(PRIORITY: CRASH)**

**To: CP Ahmedabad**  
**Info: PS to CM Gandhinagar**  
**PS to MOS (Home) Gandhinagar**  
**Home Sec Gandhinagar**  
**Police Gandhinagar**  
**From: A.D.G.P. Intelligence, G.S., Gandhinagar**  
**No. D-2/2-COMWALERT/100/2002** **Date: 27.2.2002**

**TEXT:**

Pursuant to the meeting held by the Hon'ble Chief Minister it has become clear that the State Government wishes to go ahead with the decision of bringing the dead bodies of Kar Sevaks to Ahmedabad by road under Police escort (.)

The dead bodies will be brought to Sola Civil Hospital in your jurisdiction before being taken out for cremation (.) Local cadres of BJP/Bajrang Dal are being massively mobilized for enforcing the VHP/BJP supported Gujarat Bandh (.) Widespread retributory communal violence is anticipated in your jurisdiction (.) Request appropriate preventive action (.)

  
c/c  
(Sanjiv Bhatt)  
Dy. Commissioner (Security)  
For. Addl. D.G.P., Int., G.S., Gandhinagar

On receiving Shri Bhatt's communication dated 04.01.2012, a notice u/s 91 Cr.PC was issued to Shri Sanjiv Bhatt on 13.01.2012, to produce the original/ office copy of the fax message dated 27.02.2002. However, Shri Sanjiv Bhatt refused to accept the said notice. Instead, he sent a letter dated 15.01.2012 contending that the aforesaid document had already been handed over to Shri A.K. Malhotra of SIT in the year 2009 and IO Shri Himanshu Shukla in 2011. Shri Sanjiv Bhatt further contended that, in the normal course of investigation, the Investigating Officer should have called for the original and/or office copy of the aforesaid fax message from the State IB, Gandhinagar and the offices of the respective recipients of the said fax message.

In this connection, it may be emphasized that the statement of Sh Sanjeev Bhatt was recorded by Shri A. K. Malhotra Member, SIT during Enquiry on 25.11.2009 & 26.11.2009, and the same

was signed by Shri Bhatt. However, the same did not contain any reference to the aforesaid two messages, which Shri Bhatt now claims to have sent on 27.02.2002 & 28.02.2002, despite the fact that copies of all others messages duly mentioned by him in his statement were handed over by Shri Bhatt to Shri Malhotra. Similarly, the statement of Shri Sanjiv Bhatt was recorded u/s 161 Cr.PC by the IO Shri Himanshu Shukla on 21.03.2011 & 22.03.2011, and the same also did not contain any reference to the aforesaid two messages. This raises very serious doubts about the authenticity of the claim that these messages had in fact been sent to the concerned addresses. Significantly, the statements recorded by Shri A.K. Malhotra and the IO (Shri Himanshu Shukla) were submitted to the highest Court of country (Supreme Court) at the relevant point time.

Apart from the aforesaid position, the following points would go to show that Shri Sanjiv Bhatt had the full opportunity to produce these messages if they had in fact been prepared and sent to concerned authorities, and did not produce before SIT:

1. Shri Sanjiv Bhatt did not file any affidavit before the Nanavati Commission of Inquiry, and in case, he was in possession of these documents, he should have filed the same as per the instructions given by Govt. of Gujarat in the year 2002.
2. Shri R.B. Sreekumar, formerly Addl. DGP (Int.), in his letter dated 27.12.2011 addressed to Secretary, Nanavati Commission of Inquiry, has categorically stated that he had requested all the senior officers of the State IB in the rank of SP and above including Shri Sanjiv Bhatt (who had assisted his predecessor Shri G.C. Raiger, Addl. DG (Int.) from 27.02.2002 to 08.04.2002) to submit any affidavit covering the terms of reference of the Commission, but none of them filed any affidavit. Shri Sreekumar further stated in his letter to the Nanavati Commission that he had asked all the senior officers of State IB to provide him all the relevant documents in their possession relating to riots. Accordingly, all these documents

received by him from his officers were appended by him to his first affidavit filed before the Commission on 15.07.2002. However, Shri Sanjiv Bhatt did not produce any such message before Shri Sreekumar.

3. Shri Sanjiv Bhatt did not produce any of the aforesaid messages, either before Shri A.K. Malhotra, Member, SIT during the course of the preliminary inquiry conducted by him under the orders of Hon'ble Supreme Court of India or before Shri Himanshu Shukla, DCP, Crime, Ahmedabad City, who had conducted further investigation u/s 173 (8) in this case (Cr. No. 67/2002 of Meghaninagar P.S. (Gulberg Society Case)). He did not also refer to either of these two fax messages in his statements made before Shri A.K. Malhotra, Member, SIT on 25.11.2002 & 26.11.2002 and before Shri Himanshu Shukla on 21.03.2011. As already highlighted above, both these statements were submitted to the Hon'ble Supreme Court of India on 14.05.2010 and 25.04.2011 respectively.
4. Shri Sanjiv Bhatt, suo moto, filed an affidavit dated 14.04.2011 before the Hon'ble Supreme Court of India in SLP (Cri.) 1088/2008 filed by Smt. Jakia Nasim. In that affidavit also he did not mention anything about the two aforesaid fax messages.
5. Shri Sanjiv Bhatt was summoned before the Nanavati Commission in May, June & July, 2011 for his deposition and cross examination. However, he did not mention anything about the aforesaid two fax messages to the Commission.
6. Shri Sanjiv Bhatt was called by Shri Raju Ramchandran, Amicus Curiae for personal interaction at Gandhinagar on 18.06.2011. On that occasion also, Shri Sanjiv Bhatt did not mention anything about the aforesaid two fax messages to the Amicus Curiae and confirmed his statements recorded during the SIT's Preliminary Inquiry as well as subsequently recorded u/s 161 Cr.PC by the IO.

7. Shri R.B. Sreekumar, in his letter dated 28.12.2011 addressed to Shri Sanjiv Bhatt (copy sent to SIT), has clearly stated that the 'plethora' of incriminating information against the Govt., which he (Sanjiv Bhatt) claimed to possess now, had not been put up to him at the time of filing his first affidavit on 15.07.2002. Further, if it had come to his (Sanjiv Bhatt) notice that such material had not been included in his affidavit, nothing stopped him from filing a separate affidavit bringing these relevant inputs to the notice of the Commission. Shri Sreekumar also highlighted that nearly 12 intelligence reports produced before him by Shri Sanjiv Bhatt were included in it, and the same did not contain anything about 'the role of the Govt. officials in the alleged planning and execution of the anti-minority genocide and subsequent prolonged subversion of the criminal justice system and delayed justice to the riot victims'.

It may thus be seen that Shri Sanjiv Bhatt produced claimed two fax messages for the first time before Nanvati Commission of Inquiry only in the month of December, 2011, and subsequently before the SIT in January, 2012.

A perusal of the photo copy of the office copy of fax message No. D-2 / 2-COM / ALERT / 100 / 2002, dated 27.02.2002 claimed to have been sent by Shri Sanjiv Bhatt, the then DCI (Security) on behalf of Addl. DGP (Int.) to CP, Ahmedabad with information to PS to CM, PS to MoS (Home), Home Secretary and Police Gandhinagar, would go to show that there was no security classification of the said message. The dispatch register of the D-2 section of the State IB does not show any dispatch of the said message as the dispatch number on the said date was under serial number 90. Investigation revealed that actually a letter No. D-2 / 2-COM / BNAO / 100 / 2002, dated 02.03.2002 was sent on behalf of Addl. DG (Int.) to ACS (Home), Govt. of Gujarat with information to Police Gandhinagar, PS to CM and PS to MoS (Home) and the same related to I Cr. No. 9/02 u/s 302, 114 etc. of Khanpur P.S., Distt. Panchmahals. The said

message bears a typed dispatch number, which is very unusual, because all the dispatch numbers on the messages sent by State IB on 27.02.2002 were hand written. It is not understood as to what prompted Shri Sanjiv Bhatt to send such a message, when all the individuals to whom this message had been addressed were present in the meeting held at the CM's residence on the night of 27.02.2002, and it was known to all of them that the Govt. had already decided to bring the dead bodies to Ahmedabad, for which the necessary bandobast was required to be made. The said message had not been marked to IGP (P&C), but was allegedly put up to Shri O.P. Mathur, the then IGP (P&C) who allegedly initialled the same in token of having seen the same on 28.02.2002. Surprisingly, this message was not put up to Shri G.C. Raiger, the then Addl. DG (Int.), who was very much in the office on 28.02.2002. Further, Shri O.P. Mathur, the then IGP (P & C), also did not mark it to Addl. DG (Int.), a fact which raises serious doubts about the genuineness of the message in question.

A perusal of the photo copy of the office copy of fax message No. D-2 / 2-COM / ALERT / 174 / 2002, dated 28.02.2002, now claimed to have been sent by Shri Sanjiv Bhatt, the then DCI (Security), on behalf of Addl. DGP (Int.) to PS to CM and PS to MoS (Home) with information to Home Secretary, Police Gandhinagar and CP, Ahmedabad, would go to show that there was no security classification of the said message. The dispatch register of the D-2 section of the State IB also does not show any dispatch of the said message, as the dispatch number on the said date was under serial number 100. Investigation revealed that O.No. D-2 / 2-Com / 174 / 2002, dated 16.03.2002 was sent by Addl. DG (Int.) to Shri B.K. Haider, Jt. Secretary (NI), MHA, New Delhi and related to the daily report about the communal incidents up to 16.03.2002 (1800 hrs) in Gujarat State. This message was allegedly put up to Shri G.C. Raiger, the then Addl. DG (Int.), for favour of perusal, and the same allegedly bears the initials of Shri Raiger dated 28.02.2002. Interestingly, the message in question had been addressed to PS to CM and PS to MoS (Home),

whereas the same was actually actionable by Commissioner of Police, Ahmedabad City. Further, Shri Sanjiv Bhatt had signed a fax message No. C/ D-2 / BNAO / 178 / 2002, dated 28.02.2002, which was received by Shri E.L. Christian, the then PI, State IB Control Room and written by Shri Bharatsinh Rathod, the then AIO, to the dictation of Shri Christian, who subsequently took it personally to Shri Bhatt for his signature. In this message, it had been mentioned that, based on received information, Gulberg Society located in Chamanpura, Meghaninagar had been attacked by a mob of Hindu rioters and late Ahesan Jafri, Ex-MP along with his family members and 18 others had been killed, and that the attack was still continuing and this incident was likely to have Statewide repercussions. This message would clearly show that no earlier intimation prior to the attack on Gulberg Society had been sent by Shri Sanjiv Bhatt, as the same did not contain any reference to the earlier message claimed to have been sent by Shri Sanjiv Bhatt vide message No. D-2 / 2-COM / ALERT / 174 / 2002, dated 28.02.2002. The information contained in the message No. 178 dated 28.02.2002 had actually been received over telephone by Shri E.L. Christian, PI who had dictated the same to his AIO Shri Rathod and not by Shri Sanjiv Bhatt as claimed by him. Undoubtedly, at the time of signing this message, Shri Sanjiv Bhatt had marked the message as "MOST URGENT" in his own handwriting. Efforts were made to locate the dispatch register and fax register of State IB Control Room, but the same had been reportedly destroyed. Further efforts were made to locate the so called message No. 174 dated 28.02.2002 with the persons to whom the said message had been shown addressed, but without any success till date.

During the course of further investigation, the persons who are supposed to have received the two messages dated 27.02.2002 & 28.02.2002 as well as the concerned officials of State IB, who were present in the office as also in the Control Room on the aforesaid two dates, were examined and the evidence collected is discussed in subsequent paras.

Dr. P.K. Mishra, the then Principal Secretary to Chief Minister, has denied having received or seen the message dated 27.02.2002, purportedly sent by Shri Sanjiv Bhatt. He is of the view that there was no occasion for Shri Sanjiv Bhatt to send such a message, because every participant at the law & order review meeting called by the Chief Minister on the night of 27.02.2002 was aware of the fact that the deadbodies of kar-sevaks who were killed in Godhra train carnage incident, were being brought to Ahmedabad by road under police escort. Dr. Mishra denied receiving or having seen the fax message No. D-2/2-COM/ALERT/174/2002, dated 28.02.2002. He added that the claimed message was quite alarming, and that had he received any such message, he would certainly remember the same. On being shown fax message No. C/ D-2 / BNAO / 178 / 2002, dated 28.02.2002 handwritten in Gujarati and signed by Shri Sanjiv Bhatt on behalf of Addl. DG (Int.) and addressed to Home Secretary, Gandhinagar with information to PS to CM, PS to MoS (Home), Police Gandhinagar and Ahmedabad City. Dr. Mishra stated that the language/expression of this message clearly indicated that the information about the said incident was being sent for the first time, as there was no reference to the message No. 174, which Shri Bhatt now claims to have sent earlier during that day. Finally, Dr. Mishra stated that the aforesaid two fax messages dated 27.02.2002 & 28.02.2002 in English allegedly sent by Shri Bhatt were false and fabricated documents.

Shri Gordhan Zadafia, the then MoS (Home), denied having received or seen the two typed fax messages No. D-2 / 2-COM / ALERT / 100 / 2002, dated 27.02.2002 & D-2 / 2-COM / ALERT / 174 / 2002, dated 28.02.2002 in English now claimed to have been sent by Shri Sanjiv Bhatt, the then DCI. He further stated that both these messages were false and bogus, and had never been received in his office. According to Shri Gordhan Zadafia, these messages have been fabricated and have been introduced for the first time after a lapse of about 10 years of the events mentioned therein, and that this appears to be a deliberate attempt on the



part of Shri Sanjiv Bhatt to involve him in the Gulberg Society incident. He does not remember receiving message No. C/ D-2 / BANA0 / 178 / 2002, dated 28.02.2002 in Gujarati bearing the signature of Shri Sanjiv Bhatt. However, Shri Gordhan.Zadafia has stated that the fact that this message does not contain any reference to the earlier message No. 174 allegedly claimed to have been sent by Shri Sanjiv Bhatt on the same day, would show that the earlier message was a fabricated one. He has stated that he came to know about the Gulberg Society incident late in the afternoon of 28.02.2002, and that on receipt of the said information, necessary instructions were given to the concerned police officers to deal effectively with the situation.

Shri V.P. Patel, the then Private Secretary to MoS (Home) has denied receiving or having seen the two typed fax messages No. D-2/2-COM/ALERT/100/2002, dated 27.02.2002 and D-2/2-COM/ALERT/174/2002, dated 28.02.2002 in English claimed to have been sent by Shri Sanjiv Bhatt, the then DCI. He further stated that he did not remember to have received the handwritten fax message No. C/D-2/BANA0/178/2002, dated 28.02.2002 in Gujarati bearing the signature of Shri Sanjiv Bhatt

Shri Ashok Narayan, the then ACS (Home), denied having received or seen the typed fax message No. D-2/2-COM/ALERT/100/2002, dated 27.02.2002, claimed to have been sent by Shri Sanjiv Bhatt. Shri Ashok Narayan is of the view that such a message was not required to be sent by Shri Sanjiv Bhatt, because as a decision to bring the dead bodies of the kar-sevaks to Ahmedabad by road had already been taken by the Chief Minister at Godhra itself sometime in the evening of 27.02.2002, and this fact was well within the knowledge of DGP and CP, Ahmedabad. He further denied having received or seen a typed fax message No. D-2 /2-COM/ALERT/174/2002, dated 28.02.2002 purportedly sent by Shri Sanjiv Bhatt on behalf of Addl. DG (Int.) to PS to CM and PS to MoS (Home) with information to Home Secretary, Gandhinagar. According to Shri Ashok Narayan, the

message was rather unusual. He added that both these fax messages are not genuine and are false and fabricated documents. He denied having received any information about the attack on Gulberg Society, and he came to know about the killing of late Ahesan Jafri, Ex-MP through Shri Nityanandam, the then Home Secretary some time after the incident. After going through the message No. C / D-2 / BANA0 / 178 / 2002, dated 28.02.2002 handwritten in Gujarati, Shri Ashok Narayan stated that he does not remember to have received such a message after the incident, and has stated that the same does not contain any reference to any earlier message vide No. 174 claimed to have been sent by Shri Sanjiv Bhatt.

Shri K. Chakravarthi, the then DGP, Gujarat has stated that the fax message in English bearing No. D-2 / 2-COM / ALERT / 100 / 2002, dated 27.02.2002 purportedly sent by Shri Sanjiv Bhatt as DCI (Security) was not received or seen by him on 27.02.2002 night, though a copy of the same is shown to have been marked to Police Gandhinagar. He has further stated that in all such law & order matters normally senior officers of State IB were expected to inform their superior telephonically and thereafter follow it up with such written message. He has also stated that Shri Sanjiv Bhatt did not contact him telephonically or in person on the night intervening 27/28.02.2002 in this regard. He has denied to have received any intelligence report about the massive mobilization of local cadres of BJP for the VHP supported Gujarat Bandh. After going through a photo copy of another fax message bearing No. No. D-2 / 2-COM / ALERT / 174 / 2002, dated 28.02.2002, Shri Chakravarthi has denied to have received any such message at the relevant time. According to Shri Chakravarthi, a member of a minority community from Ahmedabad had telephoned him at about 1400 hrs on 28.02.2002, about an attack on late Ahesan Jafri, Ex-MP's house and that he had immediately telephoned CP, Ahmedabad City in the matter, to which CP, Ahmedabad city had informed that he had already sent officers and additional reinforcements to deal with the situation. Shri Chakravarthi has

also stated that a fax message was also sent by the State Control Room to CP, Ahmedabad City at 1405 hrs on 28.02.2002 in this regard. On looking into the photo copy genuine of handwritten fax message bearing No. C/ D-2 / BNAO / 178 / 2002, dated 28.02.2002 in Gujarati, Shri Chakravarthi has stated that the language of the said fax message shows that the Gulberg Society incident was reported for the first time through this message after the occurrence of the incident on 28.02.2002, which proves the falsity of earlier message No. No. D-2 / 2-COM / ALERT / 174 / 2002, dated 28.02.2002 claimed to have been sent by Shri Sanjiv Bhatt.

Shri P.C. Pande, the then CP, Ahmedabad City, has stated that it was well within his knowledge after the meeting of 27.02.2002 night held at CM's residence, that the dead bodies of the kar-sevaks killed in the Godhra incident were being brought to Ahmedabad City with a view to facilitate the relatives of the deceased to identify and claim the dead bodies. As such there was no need for Shri Sanjiv Bhatt to send a fax message No. D-2 / 2-COM / ALERT / 100 / 2002, dated 27.02.2002 to him. He denied having received any such fax message in his office on the night intervening 27/28.02.2002, as he remained in his office in Shahibaug till about 0100 hrs on 28.02.2002. He further denied seeing any such message. He has also denied having received or seen fax message No. D-2 / 2-COM / ALERT / 174 / 2002, dated 28.02.2002. He has given the details of the additional force/officers sent by him on receipt of the messages from Sr.PI, Meghaninagar regarding the surrounding of Gulberg Society by a mob. He has also stated that the DGP might have spoken to him about the situation in Gulberg Society and also about the declaration of curfew, to which he was informed that the curfew had been declared in Chamanpura Chowky area around 1220 hrs. Shri Pande is of the view that both these fax messages now claimed to have been sent by Shri Sanjiv Bhatt, the then DCI, are false and fabricated documents. According to Shri Pande, this message was only marked to him for information, though he was

required to take action on the same and send a situation report. Shri Pande has denied sending any situation report with regard to the Gulberg Society matter to the SCR, Gandhinagar as the message was never sent to him. As regards the message No. C/ D-2 / BNAO / 178 / 2002, dated 28.02.2002 handwritten in Gujarati and signed by Shri Sanjiv Bhatt, Shri Pande has stated that this message could have been sent only after the incident had taken place at Gulberg Society, and the very fact that it did not contain any reference to the alleged earlier message No. 174 claimed to have been sent by Shri Sanjiv Bhatt would go to show that the said message was not a genuine one and appears to have been manipulated subsequently.

Shri O.P. Mathur, the then IGP (Political & Communal), has stated that fax message No. D-2 / 2-COM / ALERT / 100 / 2002, dated 27.02.2002 does not have any security classification, and in case it passed through the Control Room, it should have contained details about the time and date. Further, the fax message does not bear the date and time at which it was passed on to the authorities, and as such it can not be said as to whether the said message was actually passed on to the concerned authorities or not. Also, according to Shri Mathur, the language of the fax message does not show as to under whose instructions the said message was sent and who informed Shri Sanjiv Bhatt as to what had transpired in the meeting, because in the said message did not say that Shri Sanjiv Bhatt had himself attended the said meeting. Had Shri Sanjiv Bhatt attended the said meeting, he was duty bound to submit a report in writing to Addl. DG (Int.) on 28.02.2002, when Shri G.C. Raiger, the then Addl. DG (Int.) was very much in the office. Shri Mathur has further stated that the said fax message had not been marked to anyone including himself. After looking into his alleged initials dated 28.02.2002 on the office copy of the typed fax message dated 27.02.2002 claimed to have been sent by Shri Sanjiv Bhatt, Shri Mathur has stated that the said initials were not his, and the same had been fabricated by someone, as the message was not marked to him. Shri Mathur

has also stated that had it been genuine paper, he would have marked the same to Addl. DG (Int.) for his information (being the overall Head of Intelligence wing) as Shri G.C. Raiger was very much in the office on 28.02.2002. Shri Mathur finally stated that the said fax message was a forged document, which had been fabricated subsequently by someone with a vested interest. He has denied receiving the message No. D-2 / 2-COM / ALERT / 174 / 2002, dated 28.02.2002 in English allegedly sent by Shri Sanjiv Bhatt to different authorities.

Shri G.C. Raiger, the then Addl. DG (Int.) has stated that the typed fax message No. D-2 / 2-COM / ALERT / 174 / 2002, dated 28.02.2002 was never put up to him on 28.02.2002 for perusal, and his initials dated 28.02.2002 on the said message are fabricated. He has stated that the said message was never seen by him and that it was a fabricated document. He has also stated that another typed fax message No. D-2 / 2-COM / ALERT / 100 / 2002, dated 27.02.2002 claimed to have been sent by Shri Sanjiv Bhatt to different authorities was neither put up to him for his information nor shown to him. He was also not orally informed about the same by Shri Sanjiv Bhatt. However, Shri Raiger has stated that, on 28.02.2002 afternoon, Shri Sanjiv Bhatt came to his chamber and conveyed a message based on a report from local IB unit, Ahmedabad City about the collection of a mob outside Gulberg Society, where late Ahesan Jafri, Ex-MP was residing and also about the inadequate presence of police on the spot. Shri Raiger has stated that the said message was passed on to the Ahmedabad City Police Control Room. Further, according to Shri Raiger, he along with Shri Sanjiv Bhatt, met the DGP immediately and informed him about the developing situation at Gulberg Society. Shri Raiger further stated that the DGP was requested to impress upon the CP, Ahmedabad City to declare curfew in the area. To this, DGP immediately responded by telephonically speaking to Shri P.C. Pande the then CP, Ahmedabad City to ascertain the factual position. CP, Ahmedabad. Shri Pande informed the DGP over phone that a curfew had already been

imposed. Shri Raiger has also stated that, after meeting the DGP, there was no reason for Shri Sanjiv Bhatt to send such a fax message on 28.02.2002. After going through the message No. C/D-2/BANAO/178/2002, dated 28.02.2002 handwritten in Gujarati and bearing the signature of Shri Sanjiv Bhatt, Shri Raiger has stated that the said message does not contain any reference to message No. No. D-2 / 2-COM / ALERT / 174 / 2002, dated 28.02.2002 claimed to have been sent earlier during the day by Shri Sanjiv Bhatt. This would go to show that the message No. D-2 / 2-COM / ALERT / 174 / 2002, dated 28.02.2002 was not a genuine one.

Shri P.B. Upadhyay, the then Deputy Commissioner in charge of Communal section, has stated that he had proceeded on leave on 26.02.2002. However, Shri O.P. Mathur, the then IGP (Admn. & Security), who held the additional charge of the post of IGP (P & C) spoke to him over phone and cancelled his leave, with instructions to report immediately for duty in the light of Godhra train carnage incident. Shri Upadhyay accordingly reported for duty in the office on 27.02.2002 evening around 1700 hrs or so. He has further stated that Shri Sanjiv Bhatt, the then DCI (Security) looked after his work in his absence and had sent some messages during the day (27.02.2002). He has also stated that he remained in the office till late hours of 27.02.2002 as he stayed in Gandhinagar and that Shri Sanjiv Bhatt left the office earlier than him as he used to live in Ahmedabad City. He has denied complete knowledge about the two typed fax messages No. D-2 / 2-COM / ALERT / 100 / 2002, dated 27.02.2002 and D-2 / 2-COM / ALERT / 174 / 2002, dated 28.02.2002 in English, and has stated that neither Shri Sanjiv Bhatt informed him about it nor these messages were shown to him. According to Shri P.B. Upadhyay, these messages do not appear to be genuine, as the dispatch number had been typed, which was quite unusual as all dispatch numbers used to be put down in hand by the dispatcher. According to Shri P.B. Upadhyay, had such message been issued either on 27.02.2002 or 28.02.2002, the same would have

definitely been put up to him for perusal, as he used to handle the 'Communal' subject in the office as per the then division of work. He has also stated that the initials dated 28.02.2002 of Shri O.P. Mathur on the fax message dated 27.02.2002 do not appear to be genuine. Shri P.B. Upadhyay has also stated that the very fact that the message dated 28.02.2002 was addressed to PS to CM and PS to MoS (Home) and on which CP, Ahmedabad City was to take action, to whom only a copy was marked, would go to show that the message was not a genuine one. He has denied knowledge about a meeting at CM's residence on 27.02.2002 evening and that Shri Sanjiv Bhatt also did not inform him on 28.02.2002 of having attended any meeting with the CM in the night of 27.02.2002.

Shri Iftexhar Ahemad V. Pathan, AIO, who is posted to D-2 section (Communal section) of State IB since 2000, has stated that the office copies of fax messages No. D-2 / 2-COM / ALERT / 100 / 2002, dated 27.02.2002 and D-2 / 2-COM / ALERT / 174 / 2002, dated 28.02.2002 typed in English are not available on records of D-2 section and that he had never seen the same. He has further stated that these messages were not dispatched from the dispatch register from the office of State IB and proved that the dispatch No. 100 related to a letter dated 02.03.2002 sent by Shri P.B. Upadhyay to ACS (Home) regarding I Cr.No. 9/02 u/s 302 IPC of Khanpur P.S., Distt. Panchmahals, and dispatch No. 174 related to a fax message sent by Addl. DG (Int.) to Shri B.K. Haldar, Jt. Secretary, MHA, New Delhi on 16.03.2002 regarding communal incidents reported up to 16.03.2002. According to Shri Pathan, the very fact that the dispatch numbers had been typed would show that the messages are false and bogus. He has further stated that Shri Sanjiv Bhatt did not come to State IB office late in the evening of 27.02.2002 while he was in the office till quite late. He has proved that fax message No. C / D-2 / BANAO / 178 / 2002, dated 28.02.2002, handwritten in Gujarati, to be in the handwriting of Shri Bharatsinh Rathod and signed by Shri Sanjiv Bhatt, was a genuine message and a copy of the same was available in D-2

branch. The same does not contain any reference of earlier message No. D-2 / 2-COM / ALERT / 174 / 2002, dated 28.02.2002 claimed to have been sent by Shri Sanjiv Bhatt, which appears to be bogus.

Shri V.M. Sonar, the then PI and Shri S.R. Shukla, the then IO of State IB, who were posted to D-2 Branch and were present in the office on 27.02.2002 & 28.02.2002 have corroborated the statement of Shri I.V. Pathan, AIO, D-2 branch, State IB.

Shri Bharatsinh Rathod, the then AIO, State IB Control Room, who was on duty from 0800 hrs to 2000 hrs on 28.02.2002, has stated that the fax message No. C/D-2/BANAO/178/2002, dated 28.02.2002 was in his hand writing and was written to the dictation of Shri E.L. Christian, the then PI, State IB Control Room, who had received the said information over telephone from IB, Ahmedabad Region. Shri Rathod has stated that Shri Christian took this message personally to Shri Sanjiv Bhatt, who signed the same in Gujarati. He has further stated that he put down the dispatch No. 178 from the Control Room dispatch register in his hand writing and passed on the same to the fax operator for transmission to the concerned authorities. However, he does not recollect the exact time of the receipt of the said message, but it was certainly after the incident had taken place at the Gulberg Society. On looking into the photo copy of the office copy of fax message No. D-2 / 2-COM / ALERT / 174 / 2002, dated 28.02.2002 in English, he has stated that the message does not bear State IB Control Room dispatch number, which was essential had the same been dispatched from D-2 branch. He has denied having seen or passed on the said fax message. His version has been corroborated by Shri E.L. Christian, the then PI, State IB Control Room.

Shri A.S. Kasiri, the then PI, State IB Control Room has stated to have sent the Control Room messages No. D-2 / 2-COM / ALERT / 172 / 2002, dated 27.02.2002 and D-2 / 2-COM / ALERT / 173 / 2002, dated 27.02.2002 during his day duty hours



from 0800 hrs to 2000 hrs on 27.02.2002 and has confirmed his signature thereon.

Shri N.M. Gohil, the then AIO, State IB Control Room has confirmed writing the fax messages No. D-2 / 2-COM / Kar-Sevak / 78 / 2002, dated 28.02.2002 & D-2 / 2-COM / Kar-Sevak / 80 / 2002, dated 27.02.2002 and has identified the signature of Shri V.J. Solanki, the then PI, State IB Control Room on the same. Shri V.M. Solanki could not be examined, because he is unable to speak or walk following a paralytic attack.

To sum up, on the basis of the further investigation conducted into the two typed fax messages No. D-2 / 2-COM / ALERT / 100 / 2002, dated 27.02.2002 and D-2 / 2-COM / ALERT / 174 / 2002, dated 28.02.2002, it is conclusively established that Shri Sanjiv Bhatt, the then DCI, did not produce the same or copies thereof before any of the authorities before December, 2011 though a number of opportunities arose for him to do so. From the records of D-2 section, it is conclusively established that none of these fax messages were issued/dispatched from the said section of State IB dealing with the communal affairs. Besides that Shri P.B. Upadhyay, the then DCI (Communal) and Shri I.V. Pathan, AIO, who is posted to D-2 section since the year 2000 till date, have categorically stated that neither of these two fax messages was issued from their section and that copies thereof are not available in the records of State IB. Shri O.P. Mathur, the then IGP (P & C) has categorically stated that fax message No. D-2 / 2-COM / ALERT / 100 / 2002, dated 27.02.2002 was a fabricated document and that his initials thereon are not genuine. Shri G.C. Raiger, the then Addl. DG (Int.) has denied his initials on the fax message No. D-2 / 2-COM / ALERT / 174 / 2002, dated 28.02.2002 and has stated that the same have been forged by someone and that no such fax message was ever sent by Shri Sanjiv Bhatt. Shri Gordhan Zadafia, the then MoS (Home), Shri V.J. Patel, the then PS to MoS (Home), Dr. P.K. Mishra, the then Principal Secretary to Chief Minister, Shri Ashok Narayan, the then ACS (Home) and Shri P.C. Pande, the then CP, Ahmedabad City,

to whom the aforesaid fax messages were claimed to have been sent by Shri Sanjiv Bhatt, all have denied having received any such fax messages. The very fact that there is no reference to fax message No. 174 dated 28.02.2002 by Control Room in fax message No. 178 actually sent on 28.02.2002 after the Gulberg Society incident, would conclusively prove that no such message was sent earlier on 28.02.2002. The oral and documentary evidence available on record would therefore conclusively prove that these fax messages now produced by Shri Bhatt have been fabricated subsequently with an ulterior motive, and have been produced by Shri Sanjiv Bhatt for the first time before the Nanavati Commission of Inquiry and subsequently before SIT in January, 2012. No reliance can, therefore, be placed upon both these fax messages.

To sum up, Shri A.K. Malhotra, Member, SIT has conducted an inquiry into the complaint made by Smt. Jakia Nasim as per the orders of the Hon'ble Supreme Court of India passed on 27.04.2009. In compliance to the said order a report was submitted by the SIT to the Hon'ble Supreme Court of India on 13.05.2010, in which further investigation u/s 173(8) Cr.PC was suggested to be conducted in respect of Shri Gordhan Zadafia, Shri M.K. Tandon, Jt. CP and Shri P.B. Gondia, DCP, Zone-IV, Ahmedabad City. Further investigation in the matter was conducted by the undersigned (Shri Himanshu Shukla, DCP, Crime Branch, Ahmedabad City) under the supervision of Shri Y.C. Modi, Addl. DG & Member, SIT and a report in the matter was submitted to the Hon'ble Supreme Court on 17.11.2010. Both the aforesaid reports were given to Shri Raju Ramchandran, Sr. Advocate, who had been appointed as Amicus Curiae in the matter by the Hon'ble Supreme Court of India. The Ld. Amicus Curiae submitted his Interim Report in the matter to the Hon'ble Supreme Court of India on 20.01.2011, vide which he suggested further investigation in respect of some of the issues.

In compliance to the order passed by the Hon'ble Supreme Court of India on 15.03.2011, to conduct further investigation into

the matter u/s 173(8) Cr.PC, Shri Himanshu Shukla, DCP, Crime Branch carried out further investigation under the overall supervision of Chairman, SIT Shri R.K. Raghavan, Shri Y.C. Modi, Addl. DG & Member, SIT and Shri A.K. Malhotra, Member, SIT and another report was submitted to the Hon'ble Supreme Court of India on 25.04.2011. The Hon'ble Supreme Court of India handed over the said report to the Ld. Amicus Curiae for his examination and independent opinion.

The Ld. Amicus Curiae accordingly examined the SIT reports and also interacted with some of the witnesses including the police officers and submitted his report to the Hon'ble Supreme Court of India on 25.07.2011. The Hon'ble Supreme Court of India after careful consideration of the matter passed an order on 12.09.2011, directed the Chairman, SIT to forward a Final Report along with the entire material collected by the SIT to the Court which had taken cognisance of FIR of I.CRNo. 67/2002 of Meghaninagar P.S., as required u/s 173 (2) Cr.PC of the Court.

It may be mentioned here that the Ld. Amicus Curiae has agreed with the various recommendations made by the SIT on the different issues inquired into /investigated by the SIT. However, the Ld. Amicus Curiae is of the view that at this *prima facie* stage offences u/s 153A(1)(a)& (b), 153B (1)(c), 166 and 505 (2) IPC are made out against Shri Narendra Modi regarding the statement made by him in the meeting on 27.02.2002. In this connection, as discussed, above SIT is of the view that the offences under the aforesaid sections of law are not made out against Shri Narendra Modi.

In the light of the aforesaid facts, a closure report is being submitted for favour of perusal and orders.

Sd/-

(Himanshu Shukla)  
DCP & IO, SIT  
Gandhinagar