

The Terms of Reference of the K.G. Shah Commission of Enquiry

On March 6 2002, the Government of Gujarat announced the setting up of a one-man commission headed by retired Justice K.G. Shah to look into the recent communal violence in Gujarat. The terms of reference of this commission of enquiry are compared below with those of the Justice Jaganmohan Reddy commission of enquiry into the Ahmedabad riots of 1969 and those of the Justice Srikrishna commission of enquiry into the Mumbai riots of 1992.

Shah Commission: Terms of Reference (2002)

To ascertain

- a. The facts, circumstances and the course of events of the incidents that led to setting on fire of some coaches of the Sabarmati Express train on February 27, 2002 near Godhra railway station.
- b. The facts, circumstances and course of events of the subsequent incidents of violence in the State in the aftermath of the Godhra incident.
- c. The adequacy of administrative measures taken to prevent and deal with the disturbances in Godhra and subsequent disturbances in the State.
- d. To ascertain as to whether the incident at Godhra was pre-planned and whether information was available with the agencies, which could have been used to prevent the incident.
- e. To recommend suitable measures to prevent recurrence of such incidents in future.

Second Terms of Reference (July 20, 2004)

On 20-7-2004, the Government amended that notification of 6th March and widened the scope of inquiry.

The following two clauses were added:

“(d) Role and conduct of the then Chief Minister and/or any other Minister(s) in his council of Ministers, Police Officers, other individuals and organizations in both the events referred to in clauses (a) and (b);

(e) Role and conduct of the then Chief Minister and/or any other Minister(s) in his Council of Ministers, Police Officers (i) in dealing with any political or non-political organization which may be found to have been involved in any of the events referred to hereinabove; (ii) in the matter of providing protection, relief and rehabilitation to the victims of communal riots (iii) in the matter of

recommendations and directions given by National Human Rights Commission from time to time.” By that notification the Government also included within the scope of inquiry the incidents of violence that had taken place till 31-5-2002.

(Govt. Legal Deptt. Notification No. GK / 07 / 2002 – COI / 102002 / 797 /D, dated: 6.3.2002 and Notification No. GK / 07 / 2002 – COI / 102002 /797 – A, dated: 20.7.2004)

We humbly submit that over the past eight years,

1. In addition to about 4,000 affidavits relating to issues of loss of life and damage filed by victim survivors before the Nanavati-Shah Commission, senior police officers in Gujarat have also filed their affidavits before the public commission of enquiry. An analysis of the latter tells its own two-pronged tale. On the one hand we see courage in the face of adversity from a handful of officers who have laid bare the nitty-gritty of state connivance and planning not to mention several subsequent attempts at subverting the truth. In stark contrast are the testimonies by the majority of officers, many of whom assisted the government in whitewashing its dastardly role in and after the carnage of 2002.

2. The Gujarat government first announced the establishment of a commission of enquiry to probe the Godhra and post-Godhra carnage in March 2002. The initial announcement itself was seen as a partisan act. In its first official announcement on the matter, the state government declared that the commission would be headed by a single judge, Justice KG Shah, a man whose secular credentials were already somewhat suspect. The appointment of a single judge to investigate a volatile issue in a lawless state, one moreover who had been suspected of biased conduct in previous matters related to communal violence in Gujarat, led to nationwide protests that ultimately forced the government to modify its decision. Justice GT Navavati's inclusion on the enquiry panel was a corrective step.

3. The Government of Gujarat's partisan approach was also reflected in the declaration of two distinct and discriminatory compensation packages for the families of victims who had died in the Godhra fire and those who had been massacred thereafter. Under the Gujarat government's original plan, the families of victims of the Godhra train fire were to receive Rs two lakh each while the families of those who had died in the post-Godhra violence would receive Rs one lakh – half the amount. Protests finally corrected this blatant discrimination.

4. Thus the second terms of reference of the Navavati-Shah Commission, issued under a government notification dated July 20, 2004, requested the commission to enquire into "the role and conduct of the then chief minister (Narendra Modi) or any other ministers in his council of ministers, police officers, other individuals and organisations" relating "to the facts, circumstances and course of events of the subsequent incidents in the aftermath of the Godhra incidents".

5. Even after the commission's terms of reference were expanded and the enquiry necessitated a detailed scrutiny of their actions, Modi and his officials have done their best to subvert its proceedings. A majority of the key players in the planning and execution of the carnage and subsequent attempts to subvert

the process of justice have *not* filed their second affidavits before the commission under its new terms of reference.

6. Specific directives by the then DGP, AK Bhargava, through his letters dated September 16 and 29, 2004, instructing all police officers who had filed their first affidavits under the commission's initial terms of reference to also submit affidavits under the second terms of reference, were ignored. In fact, Bhargava's orders even stated that it was the duty of the current incumbent in a post to ensure that his predecessor had filed the second affidavit.

7. The chief secretary is the bridge, the key link between the political echelons of government and the bureaucracy, including the police. He is thus a crucial player who could provide a critical account of events relating to that period of time. Strangely, however, the former chief secretary, G. Subbarao, has not filed any affidavits before the commission so far as per best of my knowledge.

8. Evidence placed before the commission is unambiguous. And the absence of statements under oath, from key officials of the bureaucracy and the police, revealing. The affidavit and testimony of Rahul Sharma, SP, Bhavnagar, in 2002, is a telling account of the pressures faced by an officer of the law who beat down the efforts by fanatical elements to attack a boarding school that housed over 400 Muslim children and burn them alive. Data that Sharma subsequently revealed before the commission in 2004 included mobile phone records of incriminating calls made and received by policemen between February 28 and March 5, 2002.

9. R.B. Sreekumar's Five Affidavits represent the persistent efforts of a police officer to document the dark reality behind the violence of 2002 and its aftermath. They reveal the role of intelligence agencies in the build-up to the Godhra incident and the genocide of 2002, and the response of the political class, policemen and bureaucrats. His personal register is a minutely documented

narrative of the Gujarat administration's barefaced acts of collusion and subversion, his affidavits are substantive revelations of official records of the time. This officer was denied promotion and chargesheeted by the government for standing by his Constitutional duties. He has since been exonerated by the Central Administrative Tribunal in two separate and lengthy orders.

10. Role of State Intelligence

The Five Affidavits filed by R.B.Sreekumar before the nanavati-Shah-Mehta Commission between 2002-2010 record startling details of sheer brazenness and collusion. The first affidavit, filed in July 2002, documents the assiduous attempts by the state intelligence bureau (SIB) to warn of the consequences of the rabid communal mobilisation undertaken by cadres of the BJP, RSS, VHP and Bajrang Dal on their way to Ayodhya. Sreekumar has stated that the SIB issued regular warnings about the likely threats to public peace that could be expected because of unruly mobilisation by communal outfits. It was the executive wing of the police – influenced no doubt by Modi, key cabinet colleagues and the top echelons of the Indian Administrative Service (IAS), including the chief secretary, G. Subbarao, and the principal secretary to the chief minister, PK Mishra – who simply did not translate these into strict directives for preventive action. The then DGP, K. Chakravarti issued no special instructions for the maintenance of law and order and no strict instructions on how mobs should be dealt with.

11. The affidavit also records a significant aspect of the post-Godhra genocidal violence in Ahmedabad, one of the areas worst affected by the violence. The attacks in Ahmedabad did not take place in communally sensitive areas and ghettos but in areas where minority communities live(d) in isolation surrounded by Hindus. In para 17 of his first affidavit, Sreekumar states that as far back as February 13, 2002, in response to a message received from the inspector general (IG) (CI) of the UP intelligence department in Lucknow, the SIB in Gujarat requested the superintendents of police from all districts and

commissioners of police from all cities and towns in Gujarat to: “inform the SP, Faizabad, about the movement of *kar sevaks* from their respective jurisdictions. Following this missive (the) SP, Western Railways, Baroda had informed (the) IGP (communal intelligence), UP, Lucknow, through his fax message...dated February 16, 2002 that Prahlad J. Patel, president of Bajrang Dal, Mehsana, would be leading a group of 150-200 Bajrang Dal activists of Mehsana for the Ayodhya Maha Yagna by 9165 DN Sabarmati Express on February 22, 2002. It was also mentioned in the said fax message that the Bajrang Dal activists travelling to Ayodhya would be carrying *trishuls* with them. Similarly, SP, Mehsana, also sent a...message to IGP (communal intelligence), intelligence department, Lucknow, UP...dated February 19, 2002, stating, among other things, that a group of 150 Ram *bhakts* armed with *trishuls* would be leaving Ahmedabad by train for Ayodhya on February 22, 2002 under the leadership of Prahlad Jayantibhai Patel, president, Bajrang Dal, Mehsana and would be arriving at Ayodhya on February 24, 2002.”

It was some of these *kar sevaks* who, on their return journey from Ayodhya, became victims of the Godhra arson incident on February 27, 2002, and this has also been mentioned in the affidavit.

12. Failure of central intelligence

Sreekumar’s first affidavit also records the utter failure of both the UP state intelligence department and the central intelligence bureau (IB) to forewarn local authorities about the *kar sevaks*’ movements. In para 18, of this affidavit there was no intimation from (the) intelligence branch of UP police or central Intelligence Bureau, which has an extensive nationwide network to collect intelligence on developments relevant to internal security, about the return journey of these *ram sevaks* who had gone to Ayodhya.” (It is perhaps significant to note that during this period, while the BJP-led NDA coalition ruled at the Centre, in UP it was Rajnath Singh’s BJP government that was in power until March 8, 2002, following which president’s rule was imposed in the state.)

13. There was also no information from the central IB or any inputs from any other agency about the possible attack on Ram *sevaks* returning from Ayodhya by fundamentalist and militant elements among the minority community or other antisocial elements. Worse, in para 19, Sreekumar records that the UP police did not inform the Gujarat state intelligence department or the police about the unruly behaviour of Ram *sevaks* on their return journey even though there had been an altercation between some Ram *sevaks* and Muslims when the latter tried to board the train at Rudauli railway station in UP at around 9 a.m. on February 24, 2002. A note dated February 27, 2002, addressed to all DGPs of the country from the IG, intelligence department, UP, about the return journey of *ram sevaks*, was received a day later, post facto, at 8.15 a.m. on February 28 – that is, *after* the arson incident on the Sabarmati Express took place.

In this connection, Sreekumar states in this affidavit that: "Though there were intelligence inputs pertaining to the movements of *kar sevaks* to Ayodhya from Gujarat state, there was no specific information about the return of *kar sevaks* from Ayodhya, from (the) UP police or central intelligence bureau, which has the onerous responsibility of timely forewarning the law enforcement officers in the state about nationwide or interstate emerging trends so that suitable precautionary countermeasures can be taken. The only message about the return of *kar sevaks* sent by the Uttar Pradesh police was received (by the) Gujarat police only on February 28 i.e. after the incident on February 27, 2002. No intelligence input either from the government railway police (GRP), the Godhra district LIB or central intelligence was available about the possibility of any conspiracy or planning by Muslim militants or any antisocial elements to attack or cause harm to the Ram *bhakt*s returning from Ayodhya. The only intelligence received from the GRP indicated that the Ram *bhakt*s, led by Prahlad J. Patel, president of Bajrang Dal, Mehsana, (were) to start from Ayodhya on February 26, 2002 at night and return to Ahmedabad on February 28, 2002."

Maintenance of internal security is a fundamental if unwritten component of the central intelligence bureau's charter of duties. And this is precisely what the central IB so singularly failed to do. In not providing advance preventive intelligence with regard to the Godhra incident and its aftermath, the bureau compromised internal security and put thousands of people in mortal danger.

14. Failure of the Central IB to Maintain Peace and Tranquility.

Standard IB practice and procedure requires that whenever there are nationwide activities involving large numbers of organised groups, such as the communal mobilisation of *kar sevaks*, IB agents travel with these contingents. Through the detailed analysis provided in RB Sreekumar's first affidavit it appears that this procedure was not followed in the case of *kar sevaks* travelling from Gujarat to Ayodhya in February 2002. If this procedure had been followed, the Gujarat police and intelligence network would have been alerted to the belligerent behaviour of the *kar sevaks*, their altercation with vendors and others at railway stations, their return to Gujarat a day earlier than scheduled and other related information. Sreekumar's affidavit states that the central IB did not provide such intelligence to the local police. This ruled out any likelihood of the Gujarat police arranging effective police deployment at railway stations on the *kar sevaks'* route.

However, given the communal mobilisation that had been under way from early February 2002, the absence of any deployment of army or paramilitary forces in Godhra, a communally sensitive spot, was conspicuous and even suspicious. This is a task that rests with the state's home ministry.

15. State IB's Role Sreekumar's first affidavit also reveals that the SIB had alerted all police commissioners and SPs in all districts of Gujarat to take precautionary steps to prevent likely communal clashes in their jurisdictions. In effect it was the perverse will of the chief minister, imposed through a supine bureaucracy and top police leadership, which disregarded systematic warnings

from its own intelligence bureau. The SIB had sent out as many as three separate notes in this regard on February 27, 2002 itself. In addition to these messages, on February 27, specific information was also sent to the CP, Ahmedabad city, about the VHP's call for a Gujarat *bandh* (on February 28) to protest against the Godhra train burning and a meeting being held by the organisation in that connection at 4 p.m. that afternoon.

The affidavit also records that these warnings continued unheeded. Even after the initial outbreak of genocidal violence, the SIB periodically provided specific data to jurisdictional police, particularly to the CP, Ahmedabad city, where incidents of communal violence persisted. For instance, a written report dated April 15, 2002 was sent to the CP, Ahmedabad, by the ADGP (int.), informing him about the move by extremist and fundamentalist elements among Muslims to resist large-scale house-to-house search operations ("combing") conducted by the police. The same missive also warned of the plan by radical Hindu elements to organise a major assault in Juhapura, a predominantly Muslim colony. In another despatch to the CP, Ahmedabad city, dated April 26, 2002, the SIB provided information on the (1) The plan by Bajrang Dal leaders to distribute lethal weapons (2) The migration of Muslim families from certain areas in Ahmedabad city (3) The plan by Islamic militants from within and outside the country to distribute sophisticated weapons to local Muslim militants.

16. The central IB unit in Gujarat is called the subsidiary intelligence bureau, Ahmedabad. Strangely, it was Rajendra Kumar, the then joint director, central IB, (subsidiary intelligence bureau, Ahmedabad), who, within hours of the train arson, came out with the theory of an 'ISI conspiracy' behind the Godhra incident. On the afternoon of February 27, 2002 itself, the then DGP, K. Chakravarti, had informed Sreekumar that Rajendra Kumar had advised and even tried to persuade the DGP to pursue investigations into the Godhra incident along those lines. This officer has however not filed an affidavit before the Nanavati Commission.

17. Interestingly, on March 28, 2002, as significant political moves were afoot to project an ISI conspiracy behind the Godhra tragedy, a 'secret' fax message, signed by GK Naicker, section officer, home department, was received from the union home ministry, suggesting "counter-aggression by radical Muslim youth organised by the banned SIMI (Students Islamic Movement of India) in Juhapura" and that the administration was not firmly dealing with these developments.

Although it is the central IB that is responsible for reporting on internal security, Rajendra Kumar, as joint director, central IB, has not filed any affidavits before the Nanavati-Shah Commission. This amounts to a significant abdication of duty. It is especially significant given the fact that the IB has filed affidavits before other commissions investigating other catastrophes in the past, including the assassination of Indira Gandhi (the Thakur Commission of Inquiry), the assassination of Rajiv Gandhi (the Verma Commission of Inquiry) and so on. Not surprisingly, when on September 6, 2005 the Gujarat government served a charge sheet on RB Sreekumar, Rajendra Kumar, who is currently joint director, IB, at the IB headquarters in New Delhi, under the UPA's home ministry, offered to be a witness on behalf of the state government despite being a Central Government employee!

18. RB Sreekumar filed his second affidavit before the commission in October 2004, after the commission's terms of reference had been expanded.

This document contains a minefield of information especially with regard to the internal discussions held with KPS Gill, former DGP, Punjab, who was brought in by the NDA regime to 'bring normalcy to Gujarat'. The affidavit records the first meeting with the 'supercop' on May 4, 2002, at which, in keeping with their proclamations to the world, blatant attempts were made by the chief secretary and principal secretary to suggest that 'normalcy' had indeed returned to Gujarat.

A few officers present at the meeting, including ADGP Maniram and Sreekumar himself, contradicted this by presenting the true picture. They also offered their suggestions on what could be done to improve the status quo. Among other things, Sreekumar gave Gill a copy of the report on Ahmedabad and other communally sensitive areas that he had prepared. His "Analysis of the Communal Situation" dated April 24, 2002, carried with it an unsigned note containing certain points of action that could be implemented to defuse the communally explosive situation.

The suggestions included: "(1) Restoration of the faith of the public, particularly the minorities, in the criminal justice system (2) Replacement of the present incumbents in executive posts at the cutting edge level from those places where the police did not act conscientiously during the riots (3) Effective action to unearth stock of arms and booking of criminal and communal elements of both majority and minority communities (4) Action through non-political spiritual and religious leaders to de-communalise those under the spell of fundamentalist/extremist sections (5) Action at the social level to bring together both communities by proliferating interaction at various facets (6) Action against radical groups (7) Measures to improve the security ambience in the riot affected areas for facilitating the refugees to go back to their pre-riot residential areas (8) Purposeful legal action against publication and distribution of pamphlets/handbills, etc./reports in the vernacular press, etc. fomenting animosity between different groups on grounds of religion."

The report also warned that alarming tendencies could grow and flourish (within the minorities) if such measures were not taken.

Inexplicably, Chief Minister Modi's personal intervention after this report was recorded and circulated thwarted constructive suggestions from policemen like Maniram and Sreekumar. Gill, in fact, even 'instructed' policemen not to try and reform politicians.

Sreekumar's second affidavit records that, at this time, the SIB had also issued detailed communications (through this report) on signs that the Gujarat police should watch out for: i) some information that about a dozen communal elements from the minority community were trying to instigate violence (May 2, 2002); similar attempts were being made by minority communal elements in the Panigate area of Vadodara (May 4, 2002); likelihood of violence in the Dhobhighat area of Ahmedabad (May 5, 2002); Thakor Hindus trying to foment violence in the Ranip area of Ahmedabad city (May 6, 2002); likelihood of communal violence in the Vadaj and Vasna areas of Ahmedabad city (May 7, 2002); certain tribal sections violently instigated to oppose rehabilitation of Muslims in Panwad and Kanwat areas of Chhotaudaipur in Vadodara Rural district (May 7, 2002); plans by extremist Hindu elements to create disturbances in the Paldi Muslim colony and peripheral areas of Ahmedabad city such as Juhapura, Kagadiwad, etc. (May 9, 2002); miscreants moving in specific vehicles with a view to cause explosions in Danilimda and other areas of Ahmedabad city (May 11, 2002); communal elements trying to violently prevent the rehabilitation of Muslims in Tejgadh and Kadwal areas of Chhotaudaipur in rural Vadodara (May 13, 2002).

It is significant to note that other senior officers of the SIB who met Gill on May 10, 2002 and presented their own assessments of the scenario concurred with the ADGP (int.)'s assessment of the situation in his report of April 24. OP Mathur, IGP (administration & security), E. Radhakrishnaiah, DyIGP (communal branch), Sanjiv Bhatt, SP (security) and RB Sreekumar all attended the meeting. Interestingly, Rajendra Kumar, joint director (central IB), was also present.

19. Subversion of Intelligence Reports by the Executive.

Through May and June 2002, as head of state intelligence, Sreekumar continued to alert his men to the potential dangers on hand. Following Sreekumar's detailed missives, which included maintaining a strict watch on aggressive Hindu and

Muslim communal elements, in June 2002, PS Shah, additional secretary, home department, asked for a report assessing the communal situation in Gujarat. In response to Shah's request, an assessment of the prevailing situation was prepared (on June 15, 2002) in which it was emphasised that the measures suggested in the April 24 communication needed to be implemented so as to achieve total normalcy on the communal front.

Subsequently, following a further request by PS Shah, a review of the law and order situation dated August 20, 2002 was prepared. This report covered aspects regarding the rehabilitation of riot victims wherein it was observed that about 75,500 persons who had migrated from various districts in the state had not returned to their original habitats owing to a feeling of insecurity. Not surprisingly, the additional chief secretary (home), Ashok Narayan, who was clearly a part of Modi's core group, had responded to this report with a report of his own dated September 9, 2002, stating that he did not agree with most aspects of the assessment.

20. Subversion of the NHRC Recommendations. The state executive was similarly inclined to disregard the NHRC strong report of May-July 2002. In its report titled "Run up to the Assembly Poll – Emerging Law and Order Trends" dated August 28, 2002, the SIB, under Sreekumar's jurisdiction, stated that the non-implementation of the NHRC's recommendations was also a key factor responsible for the delay in normalisation of the communal situation. This assessment was based on feedback from riot affected parties. Not content with a mere assessment, Sreekumar's report recommended certain administrative measures. Among these was the suggestion that senior policemen and bureaucrats should issue comprehensive instructions in tune with various police manuals and compilations prepared by former Gujarat policemen. He said that it was time that a brochure on step by step measures to be taken in specific situations was issued by the state of Gujarat, and followed stringently. The brochure should be supported by a detailed drill on actions that need to be taken.

Despite this wealt of information, well documented in these affidavits, contained in RB Sreekumar's second and third affidavits before the Nanavati-Shah Commission, filed in October 2004 and April 2005 respectively, Commission has not taken any action on this alarming evidence. The commission did not call Sreekumar for further enquiry, nor did it order/conduct an independent enquiry into the allegations made and the facts revealed in his affidavits. The commission is empowered to summon documents from state government files before it comes to its final conclusions. It can also order investigations.

21. Conduct of Government Advocates

The behaviour of government advocates is another aspect that warrants attention. The conduct of Arvind Pandya, government counsel before the commission, contravenes the fundamental process of law and far overreaches his duties as an advocate. Pandya's conduct, both inside and outside the commission, raises serious ethical questions. Instead of assisting the commission to arrive at the truth, he has been an active agent in Modi's machinations; he formed part of the trio who, in August 2004, openly tried to intimidate former ADGP, RB Sreekumar, 'not to tell the truth before the commission'. His conduct, however, has not elicited even a mild reprimand from the learned judges. Besides, since this Court's indictment in the Best Bakery Case, the role of the public prosecutors who were acting as defence counsel has been everely rebuked. That not much has changed from from Shri Pandya's behaviour with Shri Sreekumar and his on camera interview in the *Tehelka* sting operation.

22. Threats and Intimidation to Policemen to Commit Perjury

It was Rahul Sharma and RB Sreekumar who, suo motu, guided by their own conscience, submitted crucial documents and data from state government records. Even the startling revelations contained in these have not moved the Nanavati-Shah Commission to take any action or order any enquiry.

In his third affidavit, Sreekumar encloses more startling evidence. A tape recorded conversation with Dinesh Kapadia, undersecretary of the Gujarat government, and an equally revelatory set of conversations with GC Murmu (secretary, law & order), both of whom were trying to persuade and then intimidate an honest officer into perjuring himself before a commission of enquiry. These meetings, which took place on August 21 and August 31, 2004, constitute the most blatant attempts by officers of the Gujarat state and even its own lawyer, to subvert the commission by intimidating officers.

At the first meeting Kapadia observed that newspaper reports conveyed the impression that Sreekumar was pro-Muslim and anti-Hindu. Sreekumar replied that he stood for the Indian Constitution and the ideals of citizenship. Kapadia then changes track, accusing him of being biased against the government and the ruling party. Sreekumar replied that it was not a question of community, party, office or regime. As a police officer, he failed to see the difference between majoritarian or minoritarian communalism. The undersecretary listens to Sreekumar earnestly explaining his position about the hate filled mindset that has resulted in such violence. Kapadia then asks him to 'moderate his position', requesting that 'some circumspection be shown'. He also suggests that Sreekumar be 'totally objective' by 'withholding ideology'. Responding to this, Sreekumar draws a clever comparison between Bhavnagar and Jamnagar, where violence was controlled, and other parts of Gujarat, including Ahmedabad, where it was not.

Kapadia then tries to be more specific, saying that it was Modi, not the Gujarat police, who was the target of criticism everywhere. Kapadia says: "What if...Narendra Modi is removed? This Supreme Court, media, all elements making hue and cry, will become silent." He stresses, "You may place this on record. If Narendra Modi is removed, all these elements, self-proclaimed champions of secularism, will be totally silent. The main target is Modi." Kapadia then goes on to laud Sreekumar's honesty and integrity but suggests that the commission is

not the forum for interventions. He further adds that although many police officers were quite critical of the government this had not appeared in public. He states that the then CP, Ahmedabad, PC Pande, was the model of officialdom. Incidentally, Pande told the commission that he did “not recollect, remember and recall many relevant things” pertaining to the time he was commissioner.

The subsequent meeting with Murmu was in response to a direct summons. Murmu is accompanied by state government pleader before the commission, Arvind Pandya, who begins the conversation. Pandya remarks that he is surprised by the attention that Sreekumar’s affidavits have attracted considering that when the affidavit was first filed in 2002, it was one of 5,000 documents and no one noticed it

Sreekumar has placed tape recordings and transcripts of both these conversations before the Nanavati-Shah Commission but no action has been taken so far. During his testimony and subsequent cross-examination before the commission, however, crucial questions are not put to him by either the government advocates or other advocates. This was and is a glaring deficiency. The state responds by filing, on September 6, 2005, a set of nine charges against Sreekumar, simultaneously initiating a departmental enquiry against him. The charges for misconduct relate mainly to his depositions before the Nanavati-Shah Commission. These include the fact that he maintained a private diary of official behaviour which he then claimed was an official diary, conduct that is unbecoming of an officer. Second, that he had not obtained permission to do this. Third, that the unofficial diary contained secret information that had been clandestinely released to the press. Finally, the charges allege that Sreekumar had failed to obtain permission to place certain documents before the commission. Sreekumar challenged this action before the central administrative tribunal and arguments by both parties have just concluded and orders are in his favour. Hence the Commission needs to summon this officer again.

In his fourth affidavit, Sreekumar replied forcefully to these charges, contending that an officer's loyalty was to the Constitution and not an elected government.

23. In the Fifth Affidavit Filed Before the Commission recently R.B. Sreekumar's Informs of Certain Issues Related to both the Central IB and UP IB deploying Personnel to Observe the Conduct of Kar Sevaks. The Commission would do well to Direct Central IB and Uttar Pradesh IB to File Affidavits in this Regard and Also Sommon them for Depositions in this Crucial Connection.

24. Despite all this evidence, the Nanavaty Shah Commission, we find that some crucial questions have not come on record through the critical depositions.

Under section 5(5)(b) of the Rules of the Commission of Inquiry Act, the Commission is empowered to recall witnesses.

5 (5) (b) if after all the evidence is recorded under clause (a), the Commission is satisfied that it is necessary for the proper determination of any relevant fact to do so, it may recall any witness already examined or examine any new witness.]

In fact since the Central IB has chosen not to appear before the Commission, we urge that they be summoned.

We therefore pray that the officers of the Central IB are directed to file an affidavit before the Commission on thr crucial issues of "conspiracy behind the Godhra incident."

25. Rahul Sharma Affidavit and Submission of Cds

Rahul Sharma, in February 2002 superintendent of police (SP), Bhavnagar led his men from the front to prevent an attack on a boarding school that housed more than 400 Muslim children on March 1, 2002. Needless to say, he was transferred out of Bhavnagar soon thereafter. Sharma filed an affidavit before the

Nanavati-Shah Commission in July 2002 and testified before the commission in October 2004.

His affidavit narrates the tale of collusion between sections of the law and order machinery and communal elements from the ruling BJP, RSS, VHP and Bajrang Dal. He annexes a letter that he had written to the then state DGP, K. Chakravarti, on March 24, 2002. This relates to an incident that took place in Bhavnagar on March 23, 2002 when a local madrassa was under attack by a mob, following which 21 accused were arrested by the police.

“Following the arrest of the 21 accused in connection with the offence, about 200 women went to the police station that very evening along with the local leaders demanding that the accused be presented before the magistrate immediately and well before the 24 hours that the police could keep them in custody. The city DySP and the PI (police inspector) of ‘A’ division police station assured the leaders and the womenfolk that they would be presented before the magistrate on the same day.”

Sharma remarks that there was something peculiar about the entire incident. A day before (i.e. on March 22, 2002) an unfounded rumour that some Hindu children had been kidnapped by a Muslim from the school had caused tension that led to all business establishments being closed down. The next day, on March 23, as things began to return to normal, a sudden incident disrupted the tenuous calm. Sharma says he was convinced the incident “was pre-planned and premeditated.” He says in his letter that he also feared that these antisocial elements could be operating at the behest of some political masters who had assured them of all legal aid, including an early release from custody. Sharma felt “it was a well thought of plan to keep the communal issue alive till such time elections were to be announced”. (On March 21, a BJP leader told Sharma that elections were now a “near certainty”.)

In his letter to the DGP, Sharma goes on to firmly state that “a message should not be conveyed to the public in general that you can indulge in rioting, arson and stone pelting and can get away with it if you know someone well enough in the government, or, worse still, if you are acting at the behest of those persons. Such an impression about the police would be catastrophic for the district. In Bhavnagar, till date, there is no charge of a partisan role being played by the police.”

Sharma put his foot down and insisted that the accused would have to spend a day in the lock-up. Again, he was approached by “some prominent political figures urging me (Sharma) to assist in securing an early bail for the accused”. Sharma did not oblige.

The affidavit puts down in detail the repeated attempts made by politically powerful persons to attack and burn down the Akwada Madressa in Bhavnagar and also to attack other Muslim dominated areas of the city from March 1, 2002 onwards. Sharma states clearly that if necessary action had not been taken and adequate use of force not been deployed by him and his men, the number of deaths would have been enormous and “innocent people would have lost their lives”.

Concerned with placing all the facts before the commission, Sharma has enclosed, with his affidavit, a list of persons who died during the communal incidents, a list of persons who died or were injured in police firing, detailed reports and records of police firings and records of messages received and sent by wireless. Put together these contain a minefield of information on the extent to which the political class and sections of the bureaucracy and the police went in their attempts to subvert the law and enact the genocide.

In his deposition before the commission, Sharma states (as he did earlier in his affidavit) that he had recommended action against the *Sandesh* newspaper for

publication of inflammatory material on February 28, 2002. He also stated that he had ordered the arrest of Kishore Bhatt, Bhavnagar's Shiv Sena chief, who was among those who made inflammatory speeches in Bhavnagar. For his courage and for being true to his professional calling, Sharma was transferred out of Bhavnagar to Ahmedabad city, as DCP (control room).

In his new post he was entrusted with the work of assisting in the investigations being conducted by the crime branch of the Ahmedabad police commissionerate. He was specifically asked by PC Pande, then police commissioner (CP) of Ahmedabad, to assist in the investigation of Naroda Patiya and Gulberg Society cases which were being handled by SS Chudasama, then assistant commissioner of police (ACP) in the Ahmedabad crime branch. (Chudasama, incidentally, is one of the policemen who have been implicated in the Sohrabuddin Sheikh and Kauserbi encounter cases.) Sharma states that in all these sensitive cases, "more and more political leaders were being involved". It was in the course of these investigations that the joint CP (JCP) (crime branch), PP Pandey, had ordered investigations into the telephone records.

Sharma then told the commission that on the night of May 27/28, 2002 some accused involved in the Naroda Patiya and Gulberg Society incidents were arrested. By now, KR Kaushik had been brought in as CP, Ahmedabad. Sharma was not kept informed of the arrests, to which he objected. Thereafter, Kaushik issued instructions to PP Pandey that Sharma should be kept informed. Neither Kaushik nor Sharma were happy with the first charge sheet that was filed in the Gulberg Society case on June 3, 2002 and the CP communicated this to Pandey immediately.

The very next day, on June 4, Pandey called Sharma for a meeting. He then called for the Naroda Patiya case papers. Sharma was shown all the investigation papers and the JCP asked him to assess whether the investigation was being conducted properly. Initially Sharma said he needed time to make an

assessment but Pandey insisted he should do it right away. According to the charge sheet, the violence in Naroda took place “because one person ran over a person of another community by a truck, whole mob got provoked and thereafter serious incidents had happened”. This did not seem convincing to Rahul Sharma. The charge sheet filed in the Gulberg Society case claimed that the gruesome massacre was precipitated by Ahsan Jaffri’s firing on the mob that had collected outside the building.

He stated on oath: “There was serious difference of opinion between me and Mr Pandey and other investigating officers i.e. Mr Vanzara and Mr Chudasama and the discussion had lasted for about two hours... I had told them that since they were the investigating officers and Mr Pandey was superior, it was for them to decide what to do. Whatever difference I had was put in writing by me and handed over to Mr Kaushik by way of a letter dated June 4, 2002.” Sharma produced this letter before the commission.

Police Commissioner Kaushik, who was not satisfied with the charge sheet that had been filed, called Sharma about 10 to 15 days later. He told Sharma to scrutinise the case papers of both cases thoroughly and point out the discrepancies to him. Kaushik instructed Pandey to send the case papers of these two cases to his office. After Pandey had brought the case papers and produced them before Kaushik, photocopies were prepared and they were handed over to Sharma.

Sharma then makes some startling assessments about the case papers. He says he noticed that the FIR and the charge sheet were mutually inconsistent. This was true of both the Gulberg massacre case as well as the Naroda Patiya and Gaon carnage cases. Sharma states on oath that in his assessment the firing by (Ahsan) Jaffri was not the cause for the subsequent attack on residents of Gulberg Society. In his assessment of the Naroda Patiya case, the incident with the truck was not the reason for the violence that followed. Sharma says that his

assessment was based on a close reading of the FIRs and the case papers that were supplied to him.

On July 5, 2002, Sharma was once again transferred because, no doubt, of his honesty and candour. He could not therefore communicate this assessment to the then CP, KR Kaushik.

26. Pande's memory loss before the commission

Deposing before the Nanavati-Shah Commission on August 18, 2004, former CP, Ahmedabad city, PC Pande said he only heard about the Naroda Patiya violence at 9.30 p.m. on February 28, 2002, when "I received information that some persons had been killed there". And it was only when he went there at around 10 or 11 p.m. that he realised the "gravity" of the situation.

However, by 9.30 p.m., the Naroda massacre was long over. Eighty-three persons had already been killed and Pande's cellphone records show that right through the afternoon, from 2.30 to 9 p.m., he was, in fact, in regular touch with two police officers in charge of the areas under which both Naroda Patiya and Gulberg Society fall.

During the last half hour of the massacre at Naroda, Pande even received a call from VHP state general secretary and riot accused, Jaideep Patel. Nevertheless, in his deposition before the Nanavati-Shah Commission, Pande said that he had not been "receiving any information regarding the serious incidents which followed after 2.30 p.m."

Another point on which Pande claimed memory loss was the meeting called by the chief minister, Narendra Modi, on the night of the Godhra arson, hours after the VHP and the BJP had declared a *bandh* for the next day.

27. Other Contradictions Before the commission

Joint CP (sector II), Ahmedabad, MK Tandon, who was in charge of areas that saw the worst two massacres, told the Nanavati-Shah Commission that he only heard about the attack on Gulberg Society at 2 p.m. on February 28. This was a massacre in which 70 people were killed, many of them burnt alive, including former Congress MP, Ahsan Jaffri. "I was not present when the mob was being dispersed as I had gone near the Gulberg Society at about 10.45 a.m. and then had gone to Naroda. I was in Naroda at about 12 p.m.," he deposed.

However, records of Tandon's official cellphone reveal that between 11.34 a.m. and 12.09 p.m., he was in the Meghaninagar area (where Gulberg Society is). From Meghaninagar, records show, he called up the DCP in charge of the area and the CP, PC Pande. (According to police records, violence at Gulberg Society started at 10.30 a.m. and went on till 7 p.m.)

He also told the commission that he only heard about the Naroda Patiya massacre at 9.30 p.m. "I do not know when the mob entered this Muslim locality and I also do not know if the police officials present on the spot tried to contact me during this time. I think that during this time, the telephone lines were jammed. I first came to know about this incident (Naroda Patiya) at 9.30 p.m. when I was in the Gulberg Society and immediately rushed there," he said.

But his cellphone details reveal that he was constantly in touch with the police officers who were in direct charge of the riot hit areas, and the police control room called him at least four times between 1.24 p.m. and 3.01p.m.

28. The level of subversion of the criminal justice system by the stat extended to a crude policy of Reward and Punishment, Reward to those officers of the administration and police who followed illegal and unconstitutional orders and

punishment for those fewer in number who refused to bend. We crave leave to expand on these details as and when required.

Subservience of the Indian Police Service (IPS) association

- The terror instilled in the minds of the Gujarat bureaucracy is evident in the fact that the IPS association's Gujarat unit did not dare to convene a meeting until about three years after the genocide.
- The Gujarat police force has about 8,000 vacancies at the constabulary level and about 950 vacancies at the level of police sub-inspector (PSI). These vacancies are in crucial functional posts. The inadequacy of trained and skilled human resources has had damaging effects on the efficiency, dedication and professionalism of the Gujarat police even as it undermines the quality of service delivered to the people. Overworked and under tremendous stress, the policemen at the constabulary and PSI level take the line of least resistance in matters of policing vis-à-vis the interests of the ruling BJP. Submitting to illegal directives from leaders of the ruling party is the only way they can survive.
- As part of a so-called economy measure, the state government has introduced a new cadre of "Lok Rakshaks" under which persons are hired for policing (eventually to replace the constabulary) at a meagre Rs 2,500 per month. A group of senior citizens headed by former DGP, PB Malia, has filed a petition in the Gujarat High Court asking that the scheme be declared illegal.

Role of Indian Administrative Service (IAS) officers

- Almost none of Gujarat's collectors or district magistrates, who are bound by police acts and regulations to maintain law and order, initiated any action to contain rioting especially where mass killings had

taken place during the violence of 2002. District magistrates are authorised by law to implement such measures without delay.

- District magistrates in affected districts recommended the appointment of well known sympathisers and even office bearers of the sangh parivar to the post of public prosecutor in many riot related cases i.e. in cases against Hindu rioters. These public prosecutors functioned instead as defence lawyers, a fact that has also been highlighted by the Supreme Court in the Best Bakery case.
- Many district magistrates forcibly closed down relief camps meant for riot victims, mainly Muslims, in August 2002, in order to project an image of normalcy to the chief election commissioner and thereby facilitate early assembly elections in the state.

29. Despite all this evidence, the Nanavaty Shah Commission, we find that some crucial questions have not come on record through the critical depositions.

Under section 5(5)(b) of the Rules of the Commission of Inquiry Act, the Commission is empowered to recall witnesses.

5 (5) (b) if after all the evidence is recorded under clause (a), the Commission is satisfied that it is necessary for the proper determination of any relevant fact to do so, it may recall any witness already examined or examine any new witness.]

We therefore pray that the following officers are summoned again before the Commission in view of the Findings in the Evidence placed by us in our Application and the Averments made by us in the Written Arguments herein. We urge that the following officers aee summoned again:

1. **Former Director General of Police K Chakravarthi**
2. **Former Commissioner of Police, Ahmedabad, PC Pande**
3. **Former Joint Commissioner of Police MK Tandon**
4. **Former Additional Commissioner of Police Shivanand Jha**
5. **Former Deputy Commissioner of Police, PB Gondia**
6. **Former Deputy Commissioner of Police, RJ Savani**
7. **Former ACP GL Singhal**
8. **Former Director General of Police, RB Sreekumar**

We also humbly urge that the following questions are specifically put to them

- Why were no minutes prepared of the meetings held by the chief minister and other senior officers to review the situation from February 27, 2002 onwards? Why were such minutes not circulated to concerned officials?
 - If such minutes were prepared, why were no copies of such minutes submitted to the commission?
 - Why were the dead bodies of the Godhra arson victims paraded through the streets of Ahmedabad city, especially when many of the deceased belonged to places outside Ahmedabad city and a few had not even been identified at that juncture?
 - Did the CP, Ahmedabad, or the DGP, Gujarat, report in writing to the chief minister or their superiors in government and administration on the possible adverse repercussions on law and order by this parade of dead bodies?
 - If any such letters were sent to higher authorities, why were they not placed before the commission?
 - Why was no preventive action taken against communal elements on February 27/28, 2000 even though the call for a *bandh* (on

February 28) by the sangh parivar and the BJP was issued on February 27, 2002 itself?

- Why was the Communal Riot Scheme not put into operation in relevant areas from the evening of February 27, 2002 onwards?
- Why was no prompt and effective action taken against the rioters by officers of the rank of DSP (deputy superintendent of police) and above (who had additional forces of armed policemen moving with them), particularly in Ahmedabad city which has about 40 such DSPs and Vadodara city, which has about 30?
- Why was no action taken by the policemen in approximately 100 police mobile vans stationed in Ahmedabad city, as also in Vadodara city, against crowds that first began to congregate in small numbers on the morning of February 28, 2002 onwards?
- Why was no action taken when enforcers of the *bandh* created traffic disturbances and indulged in petty crimes on the morning of February 28, 2002 so as to test the mood and strategy of the police?
- Why was there a delay in the imposition of a curfew, particularly in Ahmedabad city? (In Ahmedabad, curfew was imposed as late as 1.00 p.m. on February 28, 2002.)
- Why were no arrangements made for videography of the violent mobs despite regulations to this effect?
- How or why did the police fail to videograph mobs even as the electronic media succeeded in doing so? Were there any orders to prevent this?
- Why was no effective action taken against rioters by policemen at specific locations and in mobile patrolling groups, both in vehicles and on foot, from the evening of February 27, 2002 onwards?
- Why was there such a delayed response to distress calls from prominent Muslim citizens such as former member of parliament, Ahsan Jaffri, despite their having made frantic calls to the chief

secretary, the DGP, the CP, Ahmedabad city, etc, and possibly even the chief minister?

- Why were there higher casualties of police firing and riots among Muslims?
- Why were the instructions contained in the compilation of circulars entitled “Communal Peace”, issued to all district magistrates and police officers of the rank of SP and above, not implemented?
- Why were the “Instructions to deal with Communal Riots (Strategy and Approach)”, prepared by ZS Saiyed, former officer on special duty, and forwarded to all executive police officers for strict implementation, not enforced?
- Why was there no monitoring of the implementation of instructions issued by the chief secretary, the home department, the DGP and other higher officers from February 28, 2002 onwards?
- Why was no action taken against the vernacular press publishing communally inflammatory news reports and articles despite clear reports from the SP, Bhavnagar (Rahul Sharma), the CP, Ahmedabad (PC Pande) and the ADGP (Int.), RB Sreekumar, that such action should be initiated?
- Why was no action taken or any enquiry instituted against police officers for their alleged failure to record FIRs and conduct proper investigations into complaints of riot victims, largely minorities, although this matter was emphasised by ADGP RB Sreekumar in his reports to the government dated (1) April 24, 2002 (2) June 15, 2002 (3) August 20, 2002 and (4) August 28, 2002?
- Why was no action taken or any enquiry instituted against officers of the executive magistracy, particularly district magistrates, who failed to initiate prompt action against rioters, especially between February 27 and March 4, 2002? Similarly, why was no action taken or any enquiry instituted against district magistrates and their staff who recommended the appointment of pro-BJP/VHP

advocates as public prosecutors in a bid to subvert the trials that would follow?

- Why was no action taken against supervisory officers (i.e. DSPs, Range IGs/DIGs, CPs and the DGP) who violated Rules 24, 134, 135 and 240 of the Gujarat Police Manual-Vol. III by not properly supervising the investigation of serious riot related crimes and who were thereby guilty of culpable omission and grave misconduct?
- Why was no action taken against supervisory officers (i.e. the Range IG, Vadodara range, and the CP, Vadodara city) who were guilty of gross misconduct and negligent supervision in the Bilkees Bano and Best Bakery cases, trials of which had been transferred from Gujarat to Maharashtra by the Supreme Court?
- Why was no investigation conducted into the deposition by Rahul Sharma, the then SP, Bhavnagar, before the commission on October 30, 2004, about the location of BJP leaders and senior officers in Bhavnagar while a madrassa was being attacked? (In November 2004, the English daily, *The Indian Express*, published a three-part investigative report that exposed revealing conversations between influential politicians and policemen.)
- Why was no clarification provided on the government's inadequate implementation of recommendations made by the National Human Rights Commission, the National Commission for Minorities and even the Supreme Court?

30. Complicity and Complacency Bordering on Criminal Negligence by Chief Minister, Minister and Officers of the State of Gujarat

Applying the same section, section 5(5)(b) of the Rules of the Commission of Inquiry Act, the Commission is empowered to recall witnesses we urge that in pursuance of the powers vested in the Commission by the Commission of Inquiry Act, 1952 and the Rules therein, and specifically in view of the

Findings in the Evidence placed by us in our Application and the Averments made by us in the Written Arguments herein.

Further this Commission also needs to ensure that the following Nine Persons from the Chief Minister'

CMO's Name, Designation & Nos.

Tanmay Mehta	OSD To Chief Minister	9825000837
O. P. Singh	OSD To Chief Minister	9825000836
Sanjay Bhavsar	OSD To Chief Minister	9825037432 / 0795460888 (R)
Anil Mukim	Addl. Principal Sec To CM	9825049391 / 0796407739 (R)
A. P. Patel	PA To Chief Minister	9825037439
J.M. Thakkar	PRO To Chief Minister	9825037429
Harsh Brahmbhatt	General Administration Departments Dy. Secretary (Ser)	9825000620 / 0795464988 (R)
P. K. Mishra	PS To The Chief Minister	9825095142
A. K. Sharma	Secretary to CM	9825037435
Dinesh Thakore	PA to CM	9825000838

Three persons Shri Sanjay Bhavsar, Tanmay Mehta and OP Singh have at a belated stage (January 2010) filed brief affidavit before this Commission simply on questions about their phone calls made to one Dr Jaideep Patel an accused in the Naroda Patiya and Gaam Investigations. No relevant questions raised in our **Detailed Phone Call Records Analysis have been put to them.** Hence we urge that the Commission asks them to file more detailed affidavits about those phone call details and also summons them again before the Commission.

31. The grounds for this application lies in the extent of denials of the state of Gujarat and its failure to take necessary preventive & precautionary steps as also

regarding the total failure and breakdown of its machinery are false and belied by the record. The State has failed to discharge its obligations in public law and/or that the Petitioners have not established any infringement of Fundamental Rights under Arts 14,19 & 21.

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

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

34. Moreover on February 27th 2002 itself, the Chief Minister / Government which is responsible for maintaining law and order and protecting the lives and property of its citizens, announced that it would be supporting the State wide Bandh called by the Bajrang Dal & the VHP for the February 28th, 2002. This was widely reported in the Press and TV and has also been recorded / noted by the NHRC in para 15 of its order dated 31st May 2002.

35. On February 27, 2002 evening the Chief Minister in the presence of some of his cabinet colleagues (including Mr. Haren Pandya Minister of State, Revenue) held a meeting with ACS Home Mr. Ashok Narayan, DG of Police Chakravarthi & Commissioner of Police Ahmedabad Mr P.C.Pande. The Chief Minister stated that in communal riots the police took action against Hindus & Muslims on one to one basis and that this would not do now. He instructed the DG & the CP to “allow Hindus to give vent to their anger”. This was communicated by Chakravarthi to Additional DG SIB Sreekumar on February 28, 2002. DG Chakravarti also told Sreekumar that this posture of the CM was a major obstacle to police officers initiating action against Hindu Communal elements, who by the February 28th 2002, were on a rampage against the minority community. This has been recorded by Mr. Sreekumar in his 4th Affidavit filed before the Nanavaty - Shah Commission.

36. The Concerned Citizens Tribunal (comprising retired Supreme Court Justices V Krishna Iyer & P.B Sawant , retired High Court Justice H Suresh & others have in their Report recorded that they had “received direct information through a testimony from a highly placed source of a meeting where the chief minister, two or three of his cabinet colleagues, the CP of Ahmedabad an IG of Police of the state were present. This meeting took place on the late evening of Feb 27th 2002. This meeting had a singular purpose: the senior most police officials were told that they should expect a “ Hindu reaction” after Godhra. They were also told that they should not do anything to contain this reaction.” This two-volume report that was in the original signed by the panel is annexed hereto as Annexure A Colly.

37. We humbly urge that if all this evidence was not enough, the expose by *Operation Kalank* by Tehelka magazine and telecast on the *AAJ TAK* channel on October 25, 2007 further adds gravity and urgency to the situation. As the transcripts of the conversations show, the persons taped in a sting operation include :

1. Babu Bajrangi
2. Haresh Bhatt
3. Dhaval Patel
4. Anil Patel
5. Ramesh Dave
6. Mangilal Jain
7. Madan Chawal
8. Suresh Richard
9. Prahlad Raju
10. Prakash Rathod
11. Dhimant Bhatt
12. Deepak Shah
Advocates
13. Arvind Pandya
14. Dilip Trivedi
15. Bharat Bhatt
16. Rajendra Vyas

The contents of the conversations are stark and revealing. Apart from brazen admissions of mass murder, rape, transportation of arms from states, preparation for Godhra and post Godhra violence for weeks and months before February 27, 2002 and a direct role of chief minister Narendra Modi in fulling mass rape and murder, these revelations call for stringent notice by this Commission.

In this context, and citing again Section 5(5)(b) of the Rules of the Commission of Inquiry Act we urge the journalist Ashish Khaitan responsible for Operation Kalank is summoned by the Commission to verify and authenticate the CD submitted before the Commission.

38. The *Tehelka* tapes contain a confession, or rather a gloating admission of a rapist from Naroda who speaks of Modi arriving at Naroda the evening after 200 persons have been humiliated butchered and burnt, euphorically congratulating the army of marauders, surrounded by black cat commandoes (who are therefore witnesses as well). They also contain recordings of a man working in the accounts office of MS University Vadodara also speaking of direct orders from Modi as also Modi's street operator, Babu Bajrangi who was thereafter protected by Modi in mount Abu. The judiciary was also carefully manipulated to ensure that mass murderers and rapists get bail, sometimes anticipatory bail and roam scot free.

39. Shri Modi, accused for over five years of the planning and execution of a state sponsored genocide, was able to carry out the act because of an armed militia trained and created for mass rape and murder. Hate camps held every Tuesday and Saturday at Naroda, Kheda and a host of other locations in the state since mid-1985, has created young mindsets and a population that may and can possibly rise again if the *battlecry* is given. Since 1998, carefully circulated anonymous pamphlets (that were submitted by me to the Gujarat state police too) guide the rank and file of this militia to manipulate evidence, file false FIRs, destroy bodies and forensic evidence to leave no trail of the crime. All this was executed masterfully in February March 2002.

40. Besides serious questions are also raised:

- A. Conversation with Haresh Bhatt (MLA of the ruling party) from Godhra suggests that the conspiracy to import arms into Gujarat from Punjab was a long standing one. If so,
 - a) Who were the conspirators?
 - b) Who was present in the meeting?
 - c) When did the meeting take place?
 - d) Did this meeting take place well before 27th Feb. 2002 when the Godhra arson took place?

- e) It is true that Godhra is a hub of Truck owners. Hundreds of truck could be available at short notice to supply consignment all over Gujarat. However it is worth investigating what the Distance between Godhra/Ahmedabad and point in Punjab as well as UP/MP?
- f) When did Haresh Bhatt order two truck load consignment (swords) from Punjab?
- g) When did Haresh ordered consignment of KATTA (desi guns) from UP & MP?
- h) How long does it take for a loaded truck to communicate distance between Punjab & Gujarat?
- i) How long does it take for a loaded truck to communicate distance between UP & Gujarat? (cause' road conditions en rout partially single lane road & partially express way – Trucks do not exceed 50/60 KM / Hour speed and therefore the time factor is critical)
- j) When did the consignment arrive in Gujarat (Ahmedabad / Godhra)?
- k) If the consignment was ordered well before 27th Feb. 02, ca it or does it corroborate the much-touted Godhra conspiracy theory?
- l) The truck passed through how many states? Punjab, Haryana, UP, MP, & Rajasthan states. Did the Police arranged easy passage for the consignment to pass through their respective states like Punjab, Haryana, UP, MP and Rajasthan?
- m) Is it possible for he consignment to be ordered on 27th, receive delivery instantly and use it on 28th, 1st, 2nd?

- n) Who are the manufacturers and suppliers of swords (Punjab) & Katta in UP, MP?
- o) When did they receive the order for consignment? When delivered? Who paid for them?

B. Haresh Bhatt claims to be an owner of Crackers factory in Ahmedabad. From 27th February onwards, despite the Gujarat Bandh, his factory was functioning. Relevant Questions that need to be put to him::

- a) Who were/are the workers in the factory?
- b) Who supplied the Diesel to make Diesel bombs?
- c) Pipe bomb does require considerable time on lathe machine!
- d) Rocket launcher manufacturing does require considerable time on lathe machine?
- e) How many lathe machines and expert workers were occupied? Time factor.
- f) Identity of vehicles used for the supply & it's owners?
- g) Where was it supplied?
- h) To whom it was delivered in village, town or city?
- i) Which Police Officers allowed the consignment to pass through giving it safe passage.
- j) Patterns of burns / destructions on structures like buildings etc by BURN MARK by Diesel, by explosive like Dynamite, by Explosive used in Rocket launchers etc?
- k) What about the FSL report? Does it help anywhere? Like samples of ashes, color, melted organs, floor of building and penetration marks by weapon like Rocket launcher?

C. Sting Operation on Dhaval Patel VHP General Secretary, Sabarkantha.

Questions Raised after Sting Operation:

- a) He is a Registered holder and supplier of Dynamites for stone query.
- b) What was the quantity of stock of dynamite noted on Stock Register kept in his premises ON and BEFORE 27th Feb. 02.
- c) From which Government Depot did he get the supply on requisition?
- d) Did he acquire the stock from some other State?
- e) How much stock was supplied and where?
- f) Identity of vehicles used for the supply & it's owners?
- g) Where was it supplied?
- h) To whom it was delivered in village, town or city?
- i) Which Police Officers allowed the consignment to pass through? Giving safe passage.

D. Babu Bajrangi, from Naroda formally of the VHP now supposedly with the Shiv Sena. The sting has his interview shows that

- i) Present in Godhra at the time of accident and threatened to kill four times the number of karsevaks.
- ii) First to start the Naroda Patiya massacre.
- iii) Organized as well as threatened people to participate in the riots.
- iv) Rammed a diesel tanker inside a mosque and set it ablaze.
- v) Witnesses were bribed, threatened and forced to flee.
- vi) Slit open a pregnant ladies womb.

vii) Did not allow the release of the movie Parzania threatening to cause harm to theatres.

Questions raised:

- a) He has admitted to calling Home Minister Zedekiya. corroborate mobile print-out of his mobile.
- b) He claims that CM Modi informed Commissioner to provide safe passage to Bajrangi and to enjoy hospitality at Gujarat Bhavan, Mount Abu (Raj).
- c) Who else were with him in Mt. Abu? What are the details of the rooms Nos. occupied by Bajrangi and others?
- d) Any entry in the Guest book register from 1st Jan to 31st Aug 2003.
- e) Who provided the expenses of living at Mount Abu?
- f) Bajrangi's interview has indicted Justice Dholakia's court and this needs investigation due to the seriousness of the allegations.
- g) Which court was Justice Dholakia presiding over? The records and orders of this court need to be examined.
- h) Which Judge/s subsequently occupied his place?
- i) Which Judge may have arranged for 'setting' the matter?
- j) Which Judge granted Bail?
- k) Did the court ask for the opinion / statement of the concerned Investigating Officer before granting bail? Who were the concerned IOs?
- l) Details of Bail application presented by Defenses lawyer/s.
- m) Objections by Prosecution – if any?
- n) Entire court record – for security.

E. Dilip Trivedi, A Public Prosecutor from the VHP Cadre, Mehsana District

Questions Raised from the sting Interview:

- a) He was responsible for settling 1800 riot related cases all over Gujarat state. Settled 1700 riot related cases with **conviction** in only 12 cases!
- b) In Mehsana riot related FIR registered 182. Out of which charge sheet presented in 78 + 2 on later date. 76 cases were decided in acquittal of Hindu rioters / offenders and 2 for conviction : out of it one gets acquittal from Sessions Court where as the other one have an Appeal pending before the Hon'ble High Court. Rest 4 are still pending.
- c) Who did he manage in judiciary to obtain acquittal of Hindu offenders?
- d) Through which part of state machinery did he manage judiciary in Gujarat State?
- e) Court record of Mehsana and rest of the state – for scrutiny & re-trial.

F. Bharat Bhatt VHP (Public Prosecutor) Sabarkantha District. He admits in the Sting that an IPC 436 matter settled by buying witnesses for Rs. 6,50,000/-

- a) There is a need to scrutinize identity of complainant and witnesses who may have turned hostile as part of the game.
- b) Bhiloda: Day light murder by five persons who cut off the victim into pieces.
- c) Did the Police recover murder weapon – swords in muddamal?
- d) Does the swords match & **identical** to the swords used elsewhere in the state or the swords as part of consignment from **Punjab**?
- e) Entire Court record-for scrutiny and re-trial.

f) Whom did he pay the money?

G. Arvind Pandya – Head of Lawyers panel to defend the Government (& Hindu youth). Questions Raised by the Sting Operation

- a) Who did call upon him in the early hours of the morning to handle matters relating to 182, 130 ?
- b) His questioning pattern of witnesses including police officers before the Nanavaty Shah commission.
- c) Which witnesses were dropped from examining?
- d) Did the commission help him in recording the words as per his will?
- e) For the release if how many Hindu offers he is responsible?
- f) Which and how many Judges expressed their sympathy with him and provided guidance **when** to put up the case and **how** to put up the case?
- g) Which cases were put up accordingly?
- h) How could he manage the judiciary? Who are they?
- i) How could he manage facility to offenders in the jail?
- j) Which jails?
- k) Who were the jailors etc.
- l) Who used to provide food and other luxury in the jail?
- m) Could **other detainees** of the jails testify to the special treatments given to the riot related offenders?

H. Ramesh Dave VHP Ahmedabad

In the sting operation, he admits to taking DCP Gadhavi to the terrace of a house opposite a Mandir, to pin point any house/s or Gali/street where (Muslims were/stay) on the back side of the house in question.

Thereafter:

- a) DCP Gadhavi fired shots and kill 5 persons.
- b) Did he shot by service revolver – distance should be close range of upto 20ft.
- c) Did he shoot by 303 rifle – bullet would get through the wound making a hole and would be recovered later from scene of crime!
- d) If it was shot from the revolver – bullet should have struck in the body, either in the head or chest!
- e) Five dead bodies must have **identical injury/wound**.
- f) Did the doctor performing PM recover any bullets?
PM report?
- g) Bullets fired from One weapon/gun would have **identical pattern/scratch** mark/s. FSL report.

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

- i. Gulberg Society Chamanpura (where 70 persons including Ex MP Jaffri were killed & 10 – 12 women were raped in a mob attack which lasted for 7 hours - till 4.30 p.m. Jafri had made numerous calls for help to the Commissioner P C Pandey, to the Home Minister & the

Chief Minister. At about 2.30 Jafri was stripped, paraded naked & cut into pieces. Police stood by and did not even try to stop the rioters. The Chief Minister was also dismissive of Jafri's calls for help – and in fact later attributed the violence to firing by Jafri. Minimal Police intervention took place only after 4.30 p.m.

- ii. Naroda Gaon , Naroda Patiya (where 83 men women & children were massacred and a number of women were raped, killed and burnt. P.I.Mysorewalla & the SRPF Men present provided no assistance to the victims and instead taunted them & forced them towards the rioting mob & death.
- iii. Panchmahal Dailol where a number of Muslims attempting to flee were killed & women raped,
- iv. Anand (where 27 persons were burnt alive on 1st March and 2nd March 2002) ,
- v. Mehsana where Muslims were killed in Visnagar & electrocuted in Sardarpur,
- vi. Dahod where men were killed & women raped,
- vii. Sabarkantha (where 60-65 persons attempting to flee in two tempos were burnt alive) ,
- viii. Patan, where two boys were shot dead and the FIR names the BJP MLA of Radhanpur and the chief of the BJP's Radhanpur Unit & other VHP & BD members.
- ix. Vadodara (where 14 people were burnt alive at the Best Bakery),
- x. Vadodara Rural, Bharuch, Kheda, Bhavnagar, Rajkot and many other places.

The Police were either absent and/or inactive, or actually supported the rioters by shooting any Muslim offering any resistance. Significantly on

Feb 28th in Ahmedabad of the 40 persons shot dead 36 were Muslims – although it was the Muslim community which was being targeted by huge well armed mobs. Repeated calls to the Commissioner of Police Ahmedabad & even the Chief Minister resulted in no assistance or response. The murders, mayhem, rape & molestations took place openly and over a number of hours. Details of these heinous crimes have been recorded in the Report of the Citizens Tribunal. The Concerned Citizens Tribunal report has been signed by all members of the panel included Justices (retd) VR Krishna Iyer, PB Sawant and Hosbet Suresh.

42. Additional DG Sreekumar has recorded in his Fourth Affidavit that on the 28th DG Chakravarthi told him that “ activists of the VHP, Bajrang Dal, BJP and its sister bodies were leading the riots and police officers were not intervening effectively as they were keen to avoid crossing swords with the supporters of the ruling party.”

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

44. By August 2002 the Government itself had recorded that 185 cases of attacks on women of which 100 were in Ahmedabad city; that there had been 57 attacks on children of which 33 were in Ahmedabad and that 225 women and 65 children killed. The Government had also recorded 11 cases of rape of women: 3 cases from Dahod, 1 from Anand, 4 in the Panchmahals & 3 in Ahmedabad. In fact the rape / molestation of women was far more pervasive. Many of the victims were killed & burnt beyond recognition. Others were too terrified to record complaints.

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

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

47. Then Additional DG SIB Mr. Sreekumar in his Secret Report dated 24th April 2002 (which was submitted to the Nanavati - Shah Commision) has recorded that: “ (X) The inability of the Ahmedabad city Police to contain and control violence unleashed by the communally oriented mobs created an atmosphere of permissiveness and this eroded the image of the police as an effective law enforcing machinery in the society, particularly among the lumpen and underworld segments. . . . ” (XI) . . . Many senior police officers spoke about officers at the decisive rung of the hierarchical ladder viz. Inspectors in charge of City Police Stations, ignoring specific instructions from the official hierarchy on account of their getting verbal instructions from the senior political leaders of the ruling party. ”

48. Then Additional Director General Sreekumar has also noted in his affidavit of 11.04.2005 that “ It is widely known that the DMs and Collectors , who are bound

by Police Acts and Regulations to maintain law and order through their personal intervention and effective supervision of the District Police, had not initiated any action to contain/ control riots or to stabilize the situation, especially in those areas where mass murders, rapes and other heinous crimes had taken place. This malady was quite pronounced in the Districts of Mehsana, Sabarkantha, Banaskantha, Gandhinagar, Ahmedabad rural, Kheda, Anand, Vadodara Rural, Godhra, Dahod etc..”

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

50. Police officials failed to properly register FIRs. The names of VHP, Bajrang Dal, BJP members & their associates who had been involved in the heinous attacks were not recorded in the Firs. No steps were taken to arrest most of them. Even the few arrested were bailed out very soon without any opposition from the Prosecutors (quite a few of whom were supporters of the VHP/ BD/ BJP) and the police. The NHRC in its order dated 31st May 2002 records that it’s Special Representative had reported on 24th April 2002 that “ in respect of most of the sensational cases, the FIRs registered on behalf of the State by the Police Officers concerned, the accused persons were shown as “unknown”. His report adds that “ this is the general pattern seen all over the State. Even when complaints of aggrieved parties have been recorded, it has been alleged that the names of the offenders are not included. In almost all cases, copies of the FIR which the complainant is entitled to has not been given”. There has been widespread public outrage, in particular, in respect of atrocities against women, including acts of rape, in respect of which FIRs were neither promptly nor accurately recorded and the victims harassed and intimidated.”

51. The NHRC in its order dated 31st May 2002 has also noted that its special representative had “ observed in a Report to the Commission dated 24th April

2002 that “ almost 90% of those arrested even in heinous offences like murder, arson, etc have managed to get bailed out as soon as they were arrested.”

Reports have also appeared in the media that those who have been released on bail were given warm public welcomes by some political leaders. This is in sharp contrast to the assertion made by the State Government in its Report of 12th April 2002 that “ bail applications of all accused persons are being strongly defended and rejected”

52. In some of the criminal cases which reached trial the prosecutor/ prosecution and the police effectively ensured the acquittal of the accused. In the Best Bakery case where a large mob killed 14 persons in Vadodara on 1st March 2002, all the accused were acquitted. The NHRC, the 1st Petitioner herein filed Petitions to the Supreme Court . By a judgement & order the Supreme Court [dated 12-04-2004 annexed hereto as Annexure J] allowed the Petitions, set aside the acquittal, directed a retrial by a Court under the jurisdiction of the Bombay High Court and also directed the appointment of another public prosecutor after taking into account the suggestions of the victims/ affected persons. The Court observed that it was apparent from what had transpired that the investigation had been done in a manner with the object of helping the accused persons. The Court held “ The investigation appears to be perfunctory and anything but impartial without any definite object of finding the truth and bringing to book those responsible for the crime. The public prosecutor appears to have acted more as a defence counsel than one whose duty was to present the truth before the Court. The Court in turn appeared to be a silent spectator, mute to the manipulations and preferred to be indifferent to sacrilege being committed to justice. The role of the State Government also leaves much to be desired. ” The Court observed:“69. Those who are responsible for protecting life and properties and ensuring that investigation is fair and proper seem to have shown no real anxiety. Large number of people had lost their lives. Whether the accused persons were really assailants or not could have been established by a fair and impartial investigation. The modern day "Neros" were

looking elsewhere when Best Bakery and innocent children and helpless women were burning, and were probably deliberating how the perpetrators of the crime can be saved or protected. Law and Justice become flimsy in the hands of these "wanton boys". When fences start to swallow the crops, no scope will be left for survival of law and order or truth and justice. Public order as well as public interest become martyrs and monuments. ”

Following the re-trial conviction resulted in Maharashtra (February 24, 2006).

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

54. Eight other major criminal trials are being currently monitored by the Hon Apex Court and investigations and further investigations have been ordered. The Hon'ble Supreme Court has also ordered that a special cell of 7 Range Inspector Generals should be set up to look into the FIRs and other materials of 2000 cases in which A summary Reports had been filed resulting in closure of the cases, to decide whether further investigation was required and to submit quarterly reports regarding the same to the Court.

In view of this overwhelming evidence -- in view of Tehelka--Aaj Tak tapes, RB Sreekumar's affidavits and Rahul Sharma's affidavits and CD's of phone records to grant the prayers mentioned above.

Ends