

Communalism Combat and CJP Memo to EC on Status of Criminal Investigations

July 31, 2002

To,
The Chief Election Commissioner,
Nirvachan Sadan,
Sardar Patel Chowk,
New Delhi
FAX- 011-3711023

Submitted through Fact Finding delegation of Election commission to Gujarat

Dear Mr. Lyngdoh,

As a senior journalist, human rights activist and close watcher of Gujarat, it is with deep pain and concern that I address this memorandum to you. Last Friday, on July 19, 02 the chief minister of Gujarat, Shri Narendra Modi dissolved the state assembly, resigned his post in a bid to push for early elections in that state.

To state that this action is cynical in the extreme is to state the obvious. Mr Modi and his cabinet, have in past month abused sorely their constitutional responsibilities of protecting the dignity, lives and properties of his citizenry. He ruled over a violent, state-wide, premeditated pogrom against a section of the citizenry using the tragic Godhra mass arson as an excuse to justify the sheer scale and brutality of the violence. I spent no less than six weeks in total in that hapless state touring not just the metros but far flung villages to document in detail the happenings. *Genocide Gujarat 2002* is the outcome. I annexe a copy of this report for you (Annexure 1).

In the months that have followed, too, no normalcy or peace has actually returned. The July 12, 02 Jagannath yatra that took place under strict security, where only minority areas were searched and cleansed and no behavioral constraints put on those who had been found to be offenders, show that the state functioning under the current political dispensation has and continues to be partisan and therefore, unconstitutional. In my subsequent survey (Status of Refugees Survey done for the Citizens for Justice and Peace and Communalism Combat writ petition in the Ahmedabad High Court—Annexure 2), the clearcut situation for refugees who have returned home has been documented: servility or exodus into newly formed ghettos is what a large section of our population faces in Gujarat.

The condition and registration of refugee relief camps in Gujarat was ensured only after six camps went before the Ahmedabad High Court in a petition demanding adequate water, food grain and medical facilities. Subsequently, a PIL filed by CJP and CC in the Ahmedabad High Court evinced an assurance from the state in court (June 4, 02) that *their would be no closure of relief camps in the state. Despite this assurance to the Court, the Collector, as representative of the State Government and administration went around coercing camps into closure even threatening managers with criminal action if they failed to close.*

Officially, there are now only 13, 482 refugees in the state (all of them in Ahmedabad city) to whom food grains are grudgingly being provided by the district collector. An additional 6,500 more persons continue to live in other camps in Ahmedabad though they have ceased to exist in official records after camps were coerced into closing down. (CJP-CC survey for the PIL). This despite the pendency of the writ petition and the government assurance that there would be no closure of camps. Another 2,000-odd persons are in camps located elsewhere in the state but which have ceased to exist for the government. These camps – Nandasan (419 persons), Dasaj (400 persons), Lunva (100 persons), Shivali (400), Gunja (near Visnagar-50 persons), Unjha (250

persons) and Lunavada (460 persons) – were summarily closed down between mid-May and early July and the government assumes no responsibility for the relief or rehabilitation needs of these people. Three dozen other camps located at Mandali, Godhra, Halol, Kalol and Anand actually closed down after the state's coercion's compelled them to.

As a result, nearly 25,000 of the over 66,000 (official figure) people who had sought refuge within Ahmedabad city and a majority of the 21,000-odd (official figures) refugees from the rest of the state of Gujarat have been coerced into leaving the camps, their dignity compromised and with no guarantee of security. In over 70 per cent cases, basic rehabilitation costs have also been denied, with cheques of meagre amounts being disbursed.

Furthermore, a statewide status of refugee survey conducted by CC shows how the return of displaced persons to many districts has been dictated by a raw choice: servility or exodus. In Mehsana district, home to prominent cabinet colleagues of Modi, two of whom have been named as perpetrators by eye-witnesses, the villages of Unjha, Raisan are out of bounds for refugees as are Paliyar in Gandhinagar district; refugees from Por in Gandhinagar have returned only to face an economic boycott from the Patel-dominated village. Moghri, Karamsad and Odh in Anand, Prantij in Himmatnagar, Chanasma in Patan, Randhikpur in Panchmahals have been purged of Muslim residents. In many other villages displaced persons belonging to the minority face similar conditions of boycott. Under such circumstances, with no comprehensive official data on rehabilitation efforts, with 1 crore Gujarati voters yet to receive voter identification, what guarantee that the electoral rolls under a blatantly partisan government will be fairly updated reflecting the brutal reality of the situation?

The over two dozen affidavits filed by the petitioners, 24 camp managers and refuge seekers for the hearing of the writ that came up before Justices Sinha and Panchal of the Gujarat High Court on June 26, are revealing. *Asgarkhan Babukhan Pathan, aged 30 years, a labourer, formerly resident of Darbarnagar, Navapura, Vatwa, Ahmedabad, residing at the Jahangirnagar Relief Camp, camp no. 9, Vatwa has in an affidavit has sworn that: "At present about 600 people are still taking shelter in the same place where*

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the camp existed till June 1, 2002 under the open sky... No relief is being given to the camp organizers as the collectorate has already closed down the camp. All 600 of us are now depending upon private parties for food... I have not yet received any compensation amount including the amount of Rs. 1,250 for loss of utensils, which the state government is required to give as per the GR. I have received no compensation for the loss of my home, a loss that amounts to Rs 50,000."

Javed Munnabhai Sheikh, the administrator of the Patrewali Masjid relief camp, Saraspur, Ahmedabad says before the High Court : "There are 358 families, ie, 1728 inmates in the relief camp of which I was a manager. The liaison officer from the collectorate was regularly verifying our records and the number of inmates. The district collector had mounted the pressure on me to close the camp. One method used was checking the number of inmates very often during odd hours. On all previous occasions, the district collector had counted the inmates and their number had tallied with the official figure...In fact, more than Rs 60,000 is yet not given by the district collector to the camp organizer for provisions. A cheque dated May 3, 02 was handed over to me on June 18, 2002. It was due to this constant harassment that the camp organizers had sent a letter on June 14, 2002 to the deputy collector for closure of the camp which was readily accepted by the office of the district collector. The inmates have not reduced despite the closure; the state government refuses to take over the camp and the lack of provisions from the government makes it difficult to continue."

Mohammed Raza Ahmed Saiyed, aged 39 years, a labourer and presently an organiser of Jahangir Relief Camp, Registered Camp No. 9 at Saiyedwadi, Vatva, Ahmedabad:

"The camp had commenced on February 28, 2002 onwards, at which time the total number of inmates in the camp were 1738; these reduced to 1678 by May 31, 02. The inmates are from the Vatwa area whose homes have been completely destroyed and they are too scared and afraid of returning to their respective homes. No compensation amount for repairs of the house has been given. Further, Rs. 7/- per person per day is yet to be given to the victims. The total outstanding amount is approx Rs. 7,07,128.50 towards the camp organizers. Since June 4, 02, due to immense pressure and arm-twisting method of the district collectorate, the camp organisers were compelled to write a letter to the district collector to close down the camp and all victims have been asked to leave the camps. The office of the district collector had threatened the camp organizer, i.e., myself of implicating him in some criminal offence if the relief camp was not closed down merely because while checking the camp some inmates were not present....I, the camp organiser was also told by the collectorate that the outstanding quota of food grains for the previous three weeks would be given if I handed the closure letter. Due to all this pressure, I was compelled to write a letter to the state government asking for closure of the camp. On writing such letter, the food stock was supplied and the camp has been declared closed... Lastly, since the camp has been declared to be closed down, even the municipal corporation does not care for maintaining cleanliness and even water supply has been stopped. All the victims are residing under the open sky and facing prospects of monsoon with trepidation."

Meanwhile the status of criminal investigations by the state into the brutal massacres also leaves much to be desired.

Naroda Pattiya Massacre

In late May (Asian Age, May 27), Operation Crackdown launched by the crime branch of the Ahmedabad police, in which the police have tried to arrest some of those directly named in FIRs related to the multiple crimes committed at Naroda gaon and Naroda Pattiya. Operation Crackdown also involved arrests of those involved in the Gulberg Society massacres.

In Naroda village case the total number of arrests has gone up to seven. The total number of accused, however are 27. ¹Police had arrested two persons on Sunday and two others were arrested earlier. Although names of Naroda legislator Maya Kodnani, VHP general secretary Jaideep Patel and other top leaders figure in the FIR of Naroda Pattiya carnage, they have not been arrested till date. On the contrary, crime branch officials say that "their names are not mentioned at all."

Among the names of those arrested, The Times of India, May 28 reported that "Babubhai Rajabhai Patel alias Babu Bajrangi, Parminder Singh Rajput and Kishan Khubhchand Kooranai were arrested early this morning from Naroda and Saijapur localities and were produced before a court which remanded them to 10 days police custody, according to Joint Commissioner of Police (Crime Branch) P P Pandey quoted in the publication. He said it was a matter of investigation whether they were activists of Bajrang Dal, VHP or BJP or not. "So far we have no evidence to suggests this," he added. "We have arrested them because their names were in the FIR in the case relating to the killing of 86 people by a mob on February 28 at Naroda Patia locality of Ahmedabad," Pandey said.

On May 16, The Indian Express quoting a PTI report reported how a single woman witnesses' courage—Jannatbi Kallubhai Sheikh--, had led to the arrest of Ratilal Rathod alias Bhavani Singh, accused of raping five women at Naroda Pattiya on February 28. Rathod is a driver with the Ahmedabad Municipal Transport Service (AMTS)² Jannatbi had filed a detailed complaint listing the name of the accused in the offences.

One of the most troublesome and worrying trends to have emerged from the Gujarat Carnage is the largescale *direct involvement of elected representatives in the incidents of violence*.³ This was first recorded through testimonies of victims and survivors.⁴ Thereafter, in scores of FIRs lodged by victims and survivors, the names of MLAs figure. The Hindustan Times (May 26) and The Hindu of May 27) report how “ 1 BJP MLA; 1 Cong MLA 1; 4 BJP corporators; VHP Gujarat chief figure in the FIRs: BJP MLA Mayaben Kodnani in Naroda Patia massacre; toll 60; Cong MLA Faruqhai Sheikh in Kalupur riots; BJP MLA B. Khatri, Corporator Kokabhai in Kalupur riots; BJP Corporators Ashok Saheb and Vallabh Patel in Naroda Patia riots; BJP Corporator Nitin Patel in Naranpura violence; BJP Kheda district general secretary Rajesh in Kheda rioting; VHP state chief Jaideep Patel, Bajrang Dal leader Praduman Patel in Naroda Patia riots.” As disturbing were extensive media reports that expose how the state government, the BJP party and the VHP were pressurising innocent Hindu young men from Ahmedabad to ‘volunteer their names and get arrested’ so that the political bigwigs and masterminds go scot free. The Hindustan Times reported on May 3 that. “ It appears the Vishwa Hindu Parishad (VHP) has been paying

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poor Hindu boys to own up to being the rioters in the recent violence and surrender to the police. The VHP has also been accused of doing this to help the state government appear to be taking action in the riots cases.

Significantly, last week the state submitted to the Supreme Court that it had arrested almost 40,000 people so far in connection with the riots.

But this has failed to provide consolation or relief to riot victims. People in areas like Kalupur and Gomtipur, which have witnessed more communal violence than most, say the VHP is conducting an enormous volunteering exercise, where poor Hindu boys are being lured with cash to surrender themselves in place of the real culprits. This, they add, will help the state government have satisfactory statistics in their reports.

Gulberg Society, Chamanpura (Ahsan Jaffri case)

On the day of the incident itself PI Erda of the local, Meghaninagar police station filed an FIR; a second FIR was filed the next day and 19 persons were first arrested after which another 3 were arrested (see page 27 of *Genocide—Gujarat 2002*). Thereafter in late May a chargesheet has been filed which is not yet public. Then, the Operation Crackdown led by the crime branch of the Ahmedabad police in late May arrested nine more persons, in addition to the earlier arrests made in the weeks following the incident. (The Asian Age, May 27). Three main accused are still free.

Sardarpura massacre, Mehsana

Thirty-four persons, mostly women and children, were burnt alive in a small room in Sardarpur village. In all, there are 46 accused and they have been released on bail through four different applications filed before the additional sessions judge, Mehsana, D. R. Shah. Four applications have been filed for cancellation of bail of the accused by advocate Hashim Qureshi appearing for the victims’ families. The public prosecutor in the district court, Dilip Trivedi, is also a general secretary of the Vishwa Hindu Parishad, Mehsana district. (He gave an extremely provocative statement on February 28 to the *Sandesh* daily)—see *CC, June-July 02*.

The four applications for rejection of bail are on the grounds that even after being released on bail, the accused attacked a mosque in the same Sardarpur area. (FIR no. 110/2002 dated May 13 is launched with the Vijapur police station.) The PP did not take any objection to cancellation of bail. The High Court has issued notices in all these four matters filed under section 439(2) of CrPC. Chargesheets have been filed.

Deepla Darwaja, Visnagar, Mehsana district

Twenty-four persons were attacked and subsequently burnt to death. Thereafter, with a view to destroy the evidence, the culprits collected their remains and dumped it in a lake situated in a Patel community area.

Two cancellation of bail applications have been filed by advocate Hashim Qureshi against the 43 accused released on bail. Shockingly, the same PP (Mr. Trivedi) who never objects to bail applications by the VHP and the BJP had in this case, registered his 'no objection' to bail being given to the accused.

These applications have made several pleas, the main ones being that the police conduct in non-registration of names of accused, deliberate non-recording of *panchnama* and subsequent failure to help locate the victims' bodies all ensured that easy bail was obtained. Prima facie there

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appears to be biased police conduct, a patent example of culpable negligence. Therefore, a special criminal application has also been made challenging the same.

Gomtipur police atrocities case, Ahmedabad

This case pertains to the death of six persons in reprisal killings by the police on April 21, after a police constable was killed at Dani Limda. Significantly, there were no disturbances in the area on that day, no members of the majority community reside anywhere around where the victims were targeted or shot dead.

Hanifabibi Bashir Ahmed Sheikh (42) a woman residing at Modi Chawl: She was killed because police constable Prakash hit her on the head. The VS Hospital post-mortem report shows cause of death as shock as a result of firearm injury. There is no FIR registered. Nor compensation has been given till this date.

Kalubhai Sheikh (20), male, residing at Jhoolta Minara, Ahmedi Society: Just in front of the society, the police fired from the police chowki. He suffered a head injury and died on the spot. The post-mortem report from VS Hospital identified the cause of death as due to shock as a result of firearm injury.

Naziabibi and Mehmood Husein Sheikh (daughter and father) aged 18 and 42 respectively residing at Patel Chawl, Kamdar Medan: While cooking in her kitchen, Naziabi was hit by a police bullet, and she died on the spot due to head injury. Her post-mortem was done at the VS Hospital. Her father, Mehboob Hussein Sheikh was shot at in the same incident, outside the house.

Abrar Ahmed Hanif Qureshi (22), male, residing at Patel Chawl, Kamdar Medan: Though the main gate of the chawl was closed, police aimed from a hole in the gate. Neck injury, died on the spot. Post-mortem at VS Hospital.

Mehboob bhai Sultan bhai Sheikh, (22), male, residing at Maniarwada, Gomtipur: The police entered the chawl from a private house. Deceased was on the roof of his house when one police constable along with several police personnel beat him mercilessly. Then the constable, using a private firearm concealed in his socks, shot him from point blank range. Four different applications have been filed before the Gujarat High Court on behalf of the victims and supported

by the Islamic Relief Committee, praying for the special investigation by the crime branch and inquiry against the culprits/police constables and for compensation. The grounds: The police authority totally failed in discharging their duty as per the provisions of the Police Manual, particularly Clause 45, 53, 55, 60 and 61 of part 3 of Volume 2. Therefore, this is a fit case for inquiry through proper channels, by proper office, as per the hierarchy of the police department. In a case of Darmishta behn, the Gujarat High Court has led down the law on payment of compensation. The court ruled that when great loss and injustice is caused to a person who has lost his beloved, and his life has become miserable by way of an atrocity by the police officer, then he is not in position to meet with any orthodox litigation and proceeding. Therefore, interim compensation can be awarded under Article 226.

Dr Bhavnagari Case, Ahmedabad

On February 28, when many areas of Ahmedabad and the state of Gujarat were being attacked, a large mob of 5-7,000 had targeted the Paldi area of Ahmedabad where Dr Bhavnagari, a respected doctor and his son lived in the Delite Apartments in Paldi that was also severely attacked and damaged by the mobs. Dr Bhavnagari owns a licensed gun and is also an ace shooter, being a member of the National Rifle Shooters' Association. When the mob advanced close and threatened the doctor and his family, he used his gun and fired. Two persons were injured and later one fell victim to the bullets.

The police arrested Dr Bhavnagari despite there being a strong case under section 66 onwards of the Indian Penal Code that permits a person firing in self-defence when his life is endangered. The police also filed an FIR against both the Dr Bhavnagari and his son on the ground that both had fired. The son surrendered to the police in late March.

Though the police had met one of the survivors of the bullets on March 3, they recorded his statement only on March 14. In his statement, the young man had stated that both father and son had fired in which two persons died. Applications for anticipatory bail filed for both father and son by advocate Haroon Momin were rejected in the City Civil and Sessions Court, Ahmedabad. The bail applications were then pending before the Gujarat High Court. In its report the police stated: "If he had not fired, he could have died. A mob of 1,500-2,000 had attacked the building; shops were burning, they had deadly weapons and it was only when sections of this mob climbed the staircase of Delite Apartments that Dr Bhavnagari and his son fired."

When this report was filed in the Sessions Court, Chetan Shah, advocate for the VHP (he is appearing in all their cases) asked to be joined as party. Magistrate Purani turned down the application saying that he had no *locus standi*. The matter for deliberation on the police report under section 159 was pending. Meanwhile, 90 days had passed since Dr Bhavnagari's arrest. Under section 167(2) of the CrPC if no chargesheet has been filed within three months, a person has to be released. Both appeals for bail came up before the HC. Granting bail, the judge, Justice Behram J Sethna passed unwarranted strictures against two police officers — additional commissioner of police Satish Sharma and PI NH Joshi — for filing its report under section 159.

He says, "Therefore *prima facie* I am of the considered opinion that by submitting the aforesaid report, both of them have committed contempt of court for which even contempt proceedings could have been initiated against them; however on the request made by learned additional public prosecutor, Abhichandani and on the assurance given by PI Joshi that that in future this will not be repeated I have not thought it fit to initiate such proceedings. However I am fully convinced that the attempt made by both the police officers Shri Satish Sharma, additional CP Sector I and PI NH Joshi in 'trying to interfere with the administration of justice by submitting the report dated June 24, 02 and June 26, 02 is a serious misconduct for which both the police officers should be dealt with strictly

by way of departmental proceedings by the state govt. When the last day for filing chargesheet was June 30, 02 they submitted such report at the last minute and allowed the main accused to get the bail.”

All these factors reveal more than ever before that normalcy and peace have far from returned to the hapless state of Gujarat. Gujarat and it's people have been held victim to the brutal manipulation of religion for political ends and there is little to show that the guilty will be punished and the perpetrators who occupy high government office will be brought to book. Apart from the entire constitutional framework, sections 153a and 153b of the Indian penal Code (123a and 123b of the Representation of People's Act) have been breached more than once by those that hold government office in Gujarat.

Gujarat moreover poses a challenge to the whole Indian Constitutional Framework as at every juncture, since 1998, state machinery has been used to subvert the basic Constitutional parameters of parity in citizenship and non-discrimination in state functioning. The same day that the assembly was dissolved and the chief minister resigned, a spate of transfers of police officers all over the state showed that upright officers were being taken away from active functioning and sidelined into administrative posts (please refer to Police—Criminals in Uniform, Genocide Gujarat 2002). Under the circumstances, polls at this juncture would be far from free or fair.

More than once, statutory bodies like the National Human Rights Commission (NHRC), the Courts and Parliament have been derided by those who hold power in Gujarat. After watching over the violence, decent rehabilitation with dignity has not occurred; hundreds of thousands of persons are facing economic and social boycott. The indecent haste in violating court orders and closing down relief camps amounts to a denial of the right of citizens to a dignified rehabilitation. In short, a section of the Gujarat citizenry has already been reduced to less than second class status.

I urge, as an individual citizen committed to justice and opposed strongly to the virus of partisan governance that has seeped into the functioning of organs of the state that the EC defers polls in the state until justice and reconciliation have been genuinely affected. I urge also that the EC makes its own visit to the State of Gujarat visits, the victims of those affected and groups working with them. I urge that this visit is guided independently and time freely given to all groups to present their cases before the Election Commission.

In anticipation
Yours sincerely,
For, Raiskhan

Teesta Setalvad
Secretary, Citizens for Justice and Peace & Co-Editor Communalism Combat