

# **When Justice Becomes the Victim**

## **The Quest for Justice After the 2002 Violence in Gujarat**

**May 2014**

**International Human Rights and Conflict Resolution Clinic**

**Stanford Law School**

<http://humanrightsclinic.law.stanford.edu/project/the-quest-for-justice>

**Cover photo:** Tree of Life *jali* in the Sidi Saiyad Mosque in Ahmedabad, India (1573)

**Title quote:** Indian Supreme Court Judgment (p.7) in the “Best Bakery” Case: (“When the investigating agency helps the accused, the witnesses are threatened to depose falsely and prosecutor acts in a manner as if he was defending the accused, and the Court was acting merely as an onlooker and there is no fair trial at all, justice becomes the victim.”)

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The IHCRC provides direct representation to victims, and partners with communities that have suffered or face potential abuse, or human rights advocacy organizations. The IHCRC seeks to train Stanford Law students to be effective human rights advocates while simultaneously advancing the cause of human rights and global justice worldwide.

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## Executive Summary

In late February 2002, riots spread across Gujarat (pop. 60 million), one of India's most prosperous states. The violence began on February 27, 2002, when one carriage of a train carrying *sevaks* (*lit.* "volunteers;" here, the term suggests Hindu nationalist activists) was attacked by a Muslim mob and subsequently engulfed in flames. The fire killed more than 50 passengers. Hours after the attack, the *Vishva Hindu Parishad* (VHP), the organization that had organized the journey, called a statewide *bandh* (or privately enforced general strike), claiming that Muslim groups had conspired to attack and kill the Hindus on the train. The Gujarat state government, meanwhile, hastily ratified the call for a *bandh*, and made preparations for the bodies of the dead to be transported by road a few hours north to the State's largest city, Ahmedabad (*see below*, Sections II and III).



Before the bodies even arrived in Ahmedabad, anti-Muslim violence had already broken out across the state. A number of riots broke out along the path of the convoy carrying the bodies, including in Ahmedabad where riots branched out from the hospital where they were received shortly after midnight. The following morning, on February 28, Ahmedabad was in chaos. Police were unable or unwilling to intervene against mobs of attackers, many wielding knives, tridents, swords, guns and gas canisters (used to blow up concrete walls). These mobs often numbered in the thousands, and roamed unencumbered through the city (*see below*, Sections III). At around 9:30 AM on February 28, two simultaneous attacks took place. The first took place at Naroda Patia, a poor and mixed Hindu-Muslim neighborhood on the outskirts of Ahmedabad. The second took place at Gulberg Society, a small, middle class complex housing mostly Muslim inhabitants, including one prominent politician, Mr. Ehsan Jafri. Both attacks continued into the afternoon hours, despite repeated desperate calls for help by the inhabitants to the police. When the dust settled, the cumulative death toll from these two locations alone included at least 165 men, women and children, with many more injured. Included in the death toll was Mr. Jafri himself, who had been killed and brutally dismembered by the rioters. Survivors told ghastly stories of abuse, including mass sexual violence (*see below*, Section III).

The most large-scale violence lasted for three days, although sporadic attacks against Muslims continued for several months.<sup>1</sup> Civil society activists and newspaper reporters often refer to the violence as the "Carnage." Some scholars have urged for the events to be described collectively as a "pogrom."<sup>2</sup> All told, between 1000 and 2000 people lost their lives,<sup>3</sup> thousands more were injured,<sup>4</sup> and hundreds of thousands were displaced as a result of the violence and destruction (*see below*, Sections III and IV).

This report focuses on the response of India's judiciary to the criminal cases emerging from Gujarat's communal violence in 2002. Early on, it became clear that the courts would face intense scrutiny as they evaluated the cases brought before them. Under India's judicial system, the cases were first handled by the lower courts of original

jurisdiction. The police failed to bring charges against most of the alleged perpetrators of the violence, and even when they did, they failed to provide crucial evidence needed for their conviction (*see below*, Sections III and IV). An analysis of the lower courts' handling of the cases reveals a number of significant shortcomings, as well as some noteworthy successes (*see below*, Section IV). Many victims of the violence feel that courts overlooked police bias, leading to an improper dismissal of cases (*see below*, Section III and IV). Many of the accused received bail and were able to carry on with their lives. In some instances, these accused threatened victims and witnesses in the cases against them (*see below*, Sections III and IV).

Nonetheless, human rights activists, lawyers and victim families were able to overcome barriers and use the court system to produce a small but growing number of convictions against those who committed atrocities in 2002. According to one advocate familiar with the cases emerging from the 2002 violence, convictions were secured in only a small sub-set of cases: those in which the Supreme Court of India had (1) removed the investigation from the Gujarat Police; (2) provided witness protection to the prosecution witnesses; and (3) replaced the public prosecutors bringing the case, and additionally (4) where the Gujarat High Court Chief Justice, under the supervision of the Supreme Court, had appointed the presiding judges; and (5) civil society had taken an active interest in the case.<sup>5</sup> The Gujarat High Court heard a number of appeals in the cases initially brought to the lower district and sessions courts, and the Supreme Court of India intervened as early as 2003 to ensure that some of Gujarat's highest-profile cases were handled appropriately.

The trickle of cases that led to convictions (estimated in 2012 to be no higher than 1.2% of the complaints originally filed with the police, compared to a 9.6% conviction rate for riot-related cases nationwide)<sup>6</sup> nonetheless rekindled the hope for many riot survivors that they too might someday see justice done in their cases.

Twelve years after the violence began, therefore, it is possible to take stock of the judiciary's performance, focusing both on its successes and its failures. To conduct this analysis, the author of this report examined available court documents and media coverage of three of the most prominent cases to emerge from the 2002 riots. These three cases were arguably the highest-profile and politically most controversial cases to emerge from the 2002 riots, and thus worthy of detailed analysis because of their capacity to highlight the strengths and weaknesses of the Gujarat judiciary when faced with high profile cases alleging high-level complicity in cases of communal violence.

The first case reviewed in this report arises from the tragic events at the Gulberg Society, in which victims alleged the existence of a criminal conspiracy by high-level police and political figures, along with a host of other criminal charges against individuals acting in a non-official capacity. The second case, focusing on the events at Naroda Patia, contained similar allegations. That second case has resulted in numerous criminal convictions. The August 2012 judgment established in damning language that a criminal conspiracy involving one very high profile politician led to the violence at Naroda Patia. It established legal criteria and evidentiary standards that many of the other ongoing trials could also apply to evaluate the evidence presented in those cases.

The third case reviewed in this report was initiated in 2006, four years after the violence subsided. Ms. Zakia Jafri, widow of the politician killed at the Gulberg Society, drew on a variety of publicly available sources to allege a high-level conspiracy involving 60 persons to plan, carry out and subsequently cover up the Gujarat-wide violence. One of those she accused was Mr. Narendra Modi, Chief Minister of Gujarat since 2001, who is currently



campaigning to be Prime Minister of India. Understandably, Ms. Jafri's case has assumed enormous political significance.

Ms. Jafri has been seeking to get a court to accept her petition and file criminal charges, so far unsuccessfully. Her entreaties have, however, resulted in a prolonged investigation by the Special Investigative Team (SIT), an ad hoc investigatory body created by the Supreme Court of India in 2008 to inquire into a limited number of high profile, riot-related cases. In 2011, the SIT communicated to the Supreme Court its recommendation that the Jafri case be closed for lack of sufficient evidence of criminal wrongdoing (the SIT's closure report was communicated to the Gujarat trial court in early 2012).

The author chose the three cases given that they represent some of the most well documented instances of the legal system addressing communal violence in Gujarat. They serve as a rich entry-point for anyone wanting to understand the challenges the Indian legal system faces when it handles sensitive and serious allegations of official complicity in what some consider to be crimes against humanity.

The three cases also address deep and traumatic human suffering. Our hope is that this report will highlight some of the successes and challenges that survivors have faced in their pursuit of justice, and generate some meaningful recommendations regarding judicial responses to allegations of communal violence.

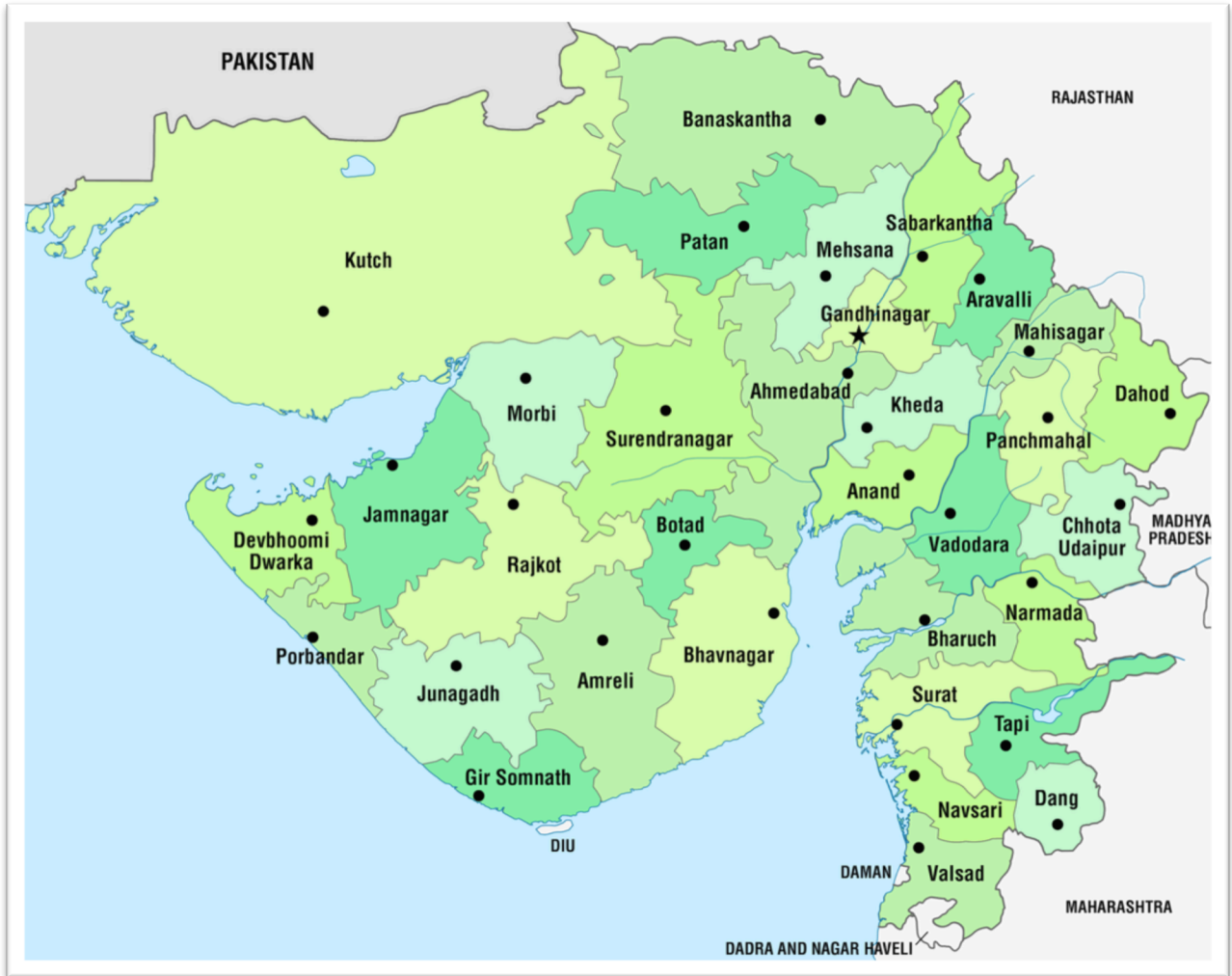
According to the analysis detailed in this report, the state of Gujarat has failed to pursue accountability vigorously for what transpired in 2002, nor has it effectively acted to alleviate the suffering of riot-affected victims in the past twelve years. The fragility of the situation in Gujarat today suggests that necessary reforms may not be implemented absent serious attention and oversight from outside of Gujarat. Such oversight would necessarily involve the Central Government of India.

The analysis contained in this report suggests six key areas where Gujarat state authorities and Indian federal authorities, acting individually or in concert, should focus their efforts to achieve compliance with international human rights norms. These recommendations are described in greater detail in the report (*see below* Section IV).

1. Relevant federal and state authorities, acting individually or in concert, should redouble their efforts to settle ongoing disputes over the events of 2002. Troubling and unanswered allegations persist that the warnings issued by the Gujarat intelligence community about the potential for unrest failed to trigger an adequate law enforcement response in anticipation of the 2002 riots. The truth commission tasked with conducting an official investigation into the 2002 riots has yet to issue its report on the violence, and it is not clear when that report will be issued (Recommendations 1 & 13).
2. Gujarat judicial authorities must improve the process by which criminal cases are initiated. In many cases, victims faced insurmountable challenges while trying to trigger an investigation into crimes allegedly committed against them. In others, police inaction or malfeasance rendered the information victims provided legally irrelevant. The Supreme Court of India ordered the reopening of over 2000 cases arising from the Gujarat violence that, in its assessment, had been improperly closed. Many of those cases were allegedly closed again shortly after the Supreme Court ordered them to be reinvestigated. The perception persists, particularly among Gujarat's minority community, that the failure of the police investigatory process led to a great number of cases never being properly investigated and heard in court. Gujarat

judicial and police authorities need urgently to address this problem by implementing transparent and incorruptible procedures for members of the public to inform the relevant judicial and police authorities about alleged criminal wrongdoing (Recommendations 2-7).

3. Gujarat judicial authorities should ensure that public prosecutors in the State of Gujarat are not selected and evaluated based upon their political affiliations. (Recommendation 8).
4. Relevant federal and state authorities, acting individually or in concert, need to ensure that criminal trials continue to become more victim-friendly. The Naroda Patia case (reviewed in this report) made great strides in that direction, and should be seen as a precedent-setting starting point informing judges overseeing other sensitive trials. Riot victims who testified in trials following the 2002 riots in Gujarat were among the first in India to receive witness police protection. More needs to be done, however, to safeguard victims' physical, social, economic, and psychological needs as they participate in the judicial process (Recommendations 9-10, 12-13).
5. Relevant federal and state authorities, acting individually or in concert, must ensure that civil society actors, human rights defenders, and independent journalists continue to enjoy the freedom to carry out their work without interference or harassment by government or government-endorsed actors (Recommendations 11, 15).
6. Relevant federal and state authorities, acting individually or in concert, should promulgate legislative and institutional safeguards designed to prevent communalist violence, such as the 2002 Gujarat riots. Federal lawmakers should consider passage of the proposed Prevention of Communalist Violence Bill as an important step in that direction (Recommendation 14).



Gujarat, India

## Section I: Introduction

In the aftermath of any violent conflagration, the justice system plays a crucial role. Unlike academics or journalists rendering their opinions on events in the past, properly functioning courts can issue immediate and binding relief to victims, and ideally deter other would-be criminals from committing similar crimes in the future. Like truth commissions, courts can also establish objective and fact-

based historical records of what happened. And unlike politicians, courts have the liberty of focusing on one very narrow issue only: whether the accused perpetrators did—or did not—violate the law. When courts operate independently, victims and other observers can rest assured that their cases will be handled fairly, without consideration for other, legally irrelevant factors. Finally, countries are

obligated under International Law to provide adequate remedies for human rights violations that take place within their borders. The primary focus of this study is to assess, against this ideal, the Gujarat courts' responses to the 2002 riots, and to formulate recommendations based on an analysis on the strengths and weaknesses of this response.

The Indian legal system's response to the 2002 violence was the most problematic in cases that alleged the complicity of Gujarat's political establishment in the violence. According to many eyewitnesses and analysts, the 2002 violence was not an instance of spontaneous inter-communal violence. Rather, many have asserted it to be the result of a carefully orchestrated plan by a group of ethno-nationalists who sought to instigate such violence and subsequently consolidate their political hold on the state of Gujarat (*see below* section III). Some of these allegations have implicated Mr. Narendra D. Modi, Chief Minister of the State of Gujarat since October 2001, and the Bharatiya Janata Party (BJP) candidate for the position of India's Prime Minister in the 2014 general elections.<sup>7</sup> Activists and victims have also accused several other high-ranking government and civic leaders of playing a role in the violence (*see below*, section III). Indeed, following the riots, victim-survivors, human rights advocates, and a small but growing group of whistle-blowers alleged a widespread refusal by state and judicial authorities to hold those responsible for the violence accountable before the law (*see below*, sections III and IV).

The chorus of allegations has persisted. Within days of the riots breaking out across Gujarat, the Indian National Human Rights Commission (NHRC) initiated inquiries into reports that

Gujarat State authorities had been complicit in the violence and subsequent efforts to subvert justice. The NHRC subsequently filed a Special Leave Petition with the Supreme Court of India seeking to have an initial set of five high-profile cases (including the Naroda Patia and Gulberg Society cases discussed in this report) investigated by the Central Bureau of Intelligence (a federal organ), rather than the Gujarat police. These efforts proved unsuccessful. One year later, in 2004, the NHRC again approached the Supreme Court, this time asking the Court to overturn the acquittals in two cases that had emerged from the Gujarat violence: the "Best Bakery" and "Bilkis Bano" cases (*see below*, section IV). Both cases received national and international media coverage and attracted considerable attention from prominent human rights groups. The Supreme Court agreed with the NHRC's assessment that there had been a serious miscarriage of justice in the Gujarat lower courts, and in fact that there *could be no* justice done in these cases as long as they remained in the hands of the Gujarat police, prosecutorial, and judicial authorities. The Supreme Court ordered the cases to be re-investigated and retried in neighboring Maharashtra State, where both ultimately led to the convictions of some of the accused (*see below*, section IV).

In 2004, the Supreme Court ordered the Gujarat police to reopen approximately 2000 other cases they had earlier dismissed (claiming lack of sufficient evidence). Four years later, in 2008, the Supreme Court appointed a Special Investigative Team (SIT) to reinvestigate ten high-profile cases, including the five that the NHRC had initially flagged for the Court. The SIT's mandate was only to investigate. In effect, its role was to conduct the investigation that *should* have been conducted by the police after

the initial allegations of criminal behavior. The results of the SIT's investigation were then handed to a specially-appointed public prosecutor, who conducted the prosecution on behalf of the State of Gujarat in one of six "fast-track" courts mandated by the Supreme Court to handle all riot related cases (*see below*, sections III and IV).

While the SIT investigations did lead to some convictions, both of Muslims accused of orchestrating a February 27, 2002 attack on a train (*see below* Section II), and of Hindus involved in the subsequent rioting that swept across the state of Gujarat (*see below* Section III), some observers suggested that the SIT shied away from seriously investigating charges against high-ranking political and civic authorities in Gujarat for their alleged complicity in the violence (*see below*, p. 39).

In light of the growing concerns over the SIT's independence, the Supreme Court in May 2011 invited Mr. Raju Ramachandran, one of India's most well-respected and prominent lawyers, to serve as *amicus curiae* (*lit. friend of the court*), and review the evidence gathered by the SIT during its into allegations made by Ms. Zakia Jafri. Ms. Jafri's case (*see below*, Section III), is arguably the most controversial to have been brought following the 2002 riots, since it alleges the direct complicity in the violence of much of the State's political leadership. In its preliminary investigation the SIT concluded that there was not enough prosecutable evidence to establish possible criminal charges against Mr. Modi and other high-ranking officials in the violence. After conducting his review of the SIT's investigation, however, Mr. Ramachandran came to precisely the opposite conclusion, arguing that the *prima facie* allegations against Mr. Modi and others could constitute gross criminal misconduct.

More fundamentally, Mr. Ramachandran concluded that the proper forum for evaluating the evidentiary significance of Ms. Jafri's case was a regular criminal trial, and not by the investigatory body charged with gathering relevant evidence of criminal wrongdoing (*see below*, sections III and IV).

The circumstances of the Gujarat communal violence of 2002 are particularly charged given Mr. Modi's continuing role in politics.<sup>8</sup> Several official and civil-society sponsored commissions (or citizens' tribunals) have investigated the events of 2002.<sup>9</sup> Journalists have also contributed significantly to the formation of public opinion about the Gujarat riots, its origins, and subsequent efforts to hold those responsible accountable for their actions.<sup>\*,10</sup> Numerous Indian and international human rights organizations have written about the events of 2002, providing vital documentation of the destruction and impacts on affected communities.<sup>11</sup> Finally, the Internet is replete with exposés, fact-sheets, and attempts to frame what happened in Gujarat.<sup>12</sup> This latter category of writing is especially problematic, in that much of it lacks objectivity, and often recasts facts and data specifically to suit narrow political or cultural agendas.

The battle over the consequences of the Gujarat violence has grown in ferocity in the run-up to the 2014 national elections. Allowing the political and media arenas to become the

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\* This report relies heavily on both contemporaneous as well as retrospective media coverage of the Gujarat violence.

dominant fora for the battle over how to interpret the 2002 violence risks transforming the victims' quest for justice into a winner-take-all political competition, disconnected from the ongoing physical and emotional needs of the victims and survivors of the violence, not to mention justice and the rule of law.

Meanwhile, in the midst of the swirling and increasingly shrill commentary, the Indian and Gujarat courts have been asked to render their own objective, evidence-based, and impartial opinions as to whom or what should be blamed for the Gujarat communal violence. Given the current atmosphere, every verdict issued will inevitably be seized by some as vindication, while others likely will reject the opinion and impugn the competence or impartiality of the judiciary. Nevertheless, the obligations of the

courts to render a proper verdict remain unchanged. Delay, or a blanket refusal to entertain charges, merely undermines the courts' credibility and legitimacy among *all* concerned stakeholders.

This report focuses on the question of whether the Indian judiciary has lived up to the basic principle articulated by Mr. Ramachandran: that the courts should remain open to allegations of criminal wrongdoing, no matter how controversial the subject matter or how high-ranking the alleged perpetrator may be. This report's analysis of three high-profile cases arising from the Gujarat communal violence suggests that the judiciary unfortunately still has a long way to go to live up to Mr. Ramachandran's principle.

## Methodology

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This report highlights the successes and shortcomings of the Gujarat authorities' police and judicial response to the 2002 riot cases. The report also details a number of recommendations arising out of its analysis of the three highest-profile cases to emerge from the riots. The majority of these recommendations focus on structural reforms that authorities can make to ensure that the substantial problems associated with the judicial response to the 2002 riots in Gujarat do not occur again in future such scenarios.

The report does not seek to re-examine the basic facts of what happened in Gujarat during the 2002 violence. The report presents no facts about the events in 2002 that have not been documented elsewhere. Instead, this report seeks to add to the well-established facts about

the 2002 violence the perspectives and experiences of the victims, survivors, prosecution witnesses and petitioners in the three reviewed cases, as well as their lawyers, as they seek justice through the Indian judiciary. The author of this report and clinic students were witness to dozens of conversations between primary victims and survivors of the violence, as well as their family members. These interactions, which took place during meetings held by a civil society group, deepened and contextualized the analysis that informed this report. The traumatic events described by these individuals represent just a small fraction of the totality of the violence that engulfed Gujarat in early 2002. Nonetheless, these conversations illuminated the substantial difficulties that at

least some victims and survivors continue to face as they seek justice.

Given the focus of this report, the author's methodology was to examine in detail the court records and media coverage of three significant criminal cases: the Gulberg Society, Naroda Patia, and Zakia Jafri cases. These cases were not selected at random. All three have garnered national attention from the Indian media. Each case has relied primarily on victims, survivors and their lawyers, against great odds, to drive the cases through the judiciary. The three cases are also closely intertwined, both legally and factually. Finally, the three cases illustrate how harrowing it has been for the survivors of mass violence in Gujarat to seek justice.

Where attacks were reportedly perpetrated by Muslims against members of the Hindu majority community—including the well-known February 27, 2002 Godhra incident (described below)—the cases were promptly prosecuted by State officials, in the face of little public opposition. The report focuses instead on those cases in which the Gujarat and Indian legal system has been called to act in the most politically charged contexts, namely those relating to instances in which predominantly 'minority' (i.e., Muslim) communities suffered at the hands of primarily 'majority' (i.e., Hindu) perpetrators.

To date, The Indian judiciary has had limited successes. It has held some perpetrators of the violence responsible for their acts and compensated some of the survivors. However, that process has been inconsistent, exacting, tenuous and ultimately inadequate. Twelve years after the Gujarat riots, the need for further action and structural reforms remains apparent.

While reviewing the case materials, the author was invited to observe a series of conversations between lawyers, social scientists, activists, and victims and survivors of the attacks at Gulberg Society and Naroda Patia. The author was able to listen to the survivors recount their experiences pursuing justice and their daily lives since 2002. What follows is a summary of those observations, supplemented by significant citations to research and reporting conducted by others. The author observed a number of key interviews with witnesses who testified in the two cases and conducted a substantial review of available secondary literature on the topic.

Most of the observed interviews were conducted in private, while others were conducted in small focus-group settings. In cases in which the victim and survivors did not speak English, the report's author had access to translators acceptable to the victims and survivors. Separately, the author also sought out many of the lawyers involved in litigating these cases. The author travelled to Delhi, Mumbai, and Ahmedabad. Interviews took place in each of these locations as well as the United States.

Given the significant risk that victims and survivors still face when speaking about the events of 2002, all interviewees remain anonymous in this report.

The author and clinic students also conducted an extensive literature review of available secondary sources. Sources include judicial, SIT and amicus opinions, other court documents, reports by human rights organizations and specialized governmental institutions, print media, blogs, other forms of web-based media (such as YouTube content and specialized websites dedicated to the 2002 riots), as well as

academic publications. Many of those sources are not available electronically and can be made

available by the author upon request.



The report begins by detailing the broader context and history of the Gujarat riots, and then turns to a discussion of the events that unfolded between February 27 and March 2, 2002, as well as the serious after-effects of the initial rioting on the state's Muslim community. These events have been described in much greater detail elsewhere, but are summarized in this report to provide the context for the subsequent analysis.

The report describes in detail three high-profile cases arising out of the post-Godhra communal violence reviewed in this report. Only one of those cases has resulted in a final verdict and subsequent criminal convictions. Of the remaining two, one has been stayed, and the other (the only one to allege a state-wide criminal conspiracy) has yet to result in charges being filed by state authorities.

The final section of the report offers an analysis of the Indian judiciary's performance so far with regard to the three cases under review, as well as recommendations based on this analysis.

There is some cause to welcome the role of the judiciary in holding riot perpetrators to account. These successes, however modest and delayed they may be in the eyes of some commentators, have restored faith in the judiciary for some victims. No doubt, the tireless efforts of countless riot survivors and their advocates played an important role in catalyzing these decisions. Few commentators believe that the Gujarat judiciary would have achieved these modest judicial victories had it not been for the ongoing interventions and oversight by the Indian Supreme Court. Thus, much needs to be done to safeguard and reinforce the independence and effectiveness of the Gujarat judiciary, and the efficiency of the system as a whole. The author looks to Indian judicial precedent, as well as India's obligations under international law to investigate and prosecute criminal wrongdoing, and proposes a list of recommendations on how to increase the capacity of the Indian judiciary to handle such cases in the future.



## Section II: The Events of February 27, 2002

There is virtual consensus that the sustained violence known as the Gujarat Carnage started with a fire in a train car on February 27, 2002 near the train station in Godhra, Gujarat. That event, and the communal violence that followed, have been the subject not only of intense media and academic literature, but also criminal court cases. A striking feature is the very different treatment of cases brought against alleged perpetrators of the train fire versus cases brought against alleged participants in the violence that followed.

On February 27, 2002, a devastating fire broke out in coach S-6 of the Sabarmati Express at the Godhra train station. The fire left 59 passengers dead, including 27 women and 10 children, and another 48 injured.<sup>13</sup> This incident is commonly referred to as the event that subsequently provoked violent riots across the state of Gujarat in the coming days and weeks.<sup>14</sup> How the Godhra tragedy provoked these subsequent riots, and more specifically, whether the subsequent riots erupted spontaneously in a fit of retaliatory popular outrage, or due to careful pre-meditation by Hindu nationalists, is the subject of intense ongoing debate.

Accounts differ as to what caused the fire on the Sabarmati Express. Some believe that the fire was the result of a premeditated plan by

Muslims living in Godhra to kill Hindu pilgrims.<sup>†</sup> VHP activists had been returning home from northern India, where they had controversially assembled to begin the construction of a Hindu temple on a site in Ayodhya, where the VHP and others in 1992 had destroyed the historically significant Babri Mosque.<sup>15</sup> This narrative of events is described as the ‘conspiracy theory,’ since it alleges advanced planning of the Godhra attack—perhaps even with the covert assistance of Pakistan’s ISI intelligence agency.<sup>16</sup> This theory was widely promoted by numerous Gujarat politicians at the time, and quickly confirmed by the initial police investigation as the operative theory of what caused the attack on the Sabarmati Express.<sup>17</sup> Others deny that there was any evidence of advance planning, and insist that what happened at Godhra was instead either a spontaneous act of communal violence, unlawful and illegal (perhaps in response to a quarrel at the Godhra train station between Muslim vendors and VHP activists),<sup>18</sup> or even a tragic accident unrelated to any communalist rioting.<sup>19</sup>

The criminal case against the alleged perpetrators of the Godhra train fire, which was

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<sup>†</sup> Most notably, this is the conclusion reached by the Nanavati-Mehta Commission Report, which was the state-sponsored commission of inquiry tasked with investigating the events at Godhra. See Nanavati-Mehta Commission Report, EN 13, at 159 (“All [] circumstances indicate that what was to be done was planned in advance.”)

brought to trial by the prosecution under the guidance of the SIT, endorsed the ‘conspiracy theory.’ The prosecution alleged that the plot to firebomb the train had been “hatched by the political and religious leaders of the Muslim community in Godhra.”<sup>20</sup> Included in the group of co-defendants were eight prominent Muslim religious and political leaders, including a prominent cleric, a local politician who was well known for his opposition to the BJP, four members of the Godhra municipal council, and two lawyers.<sup>21</sup> Defendants were initially charged under the Prevention of Terrorism Act (POTA), but these terrorism charges were later dropped after a central review committee ruled POTA to be inapplicable in this case.<sup>22</sup>

During the trial, numerous indications surfaced suggesting that there had been no advance planning behind the attack. Several credible inquiries into the events at Godhra strongly refuted the ‘conspiracy theory.’<sup>†</sup> Some of the prosecution’s key witnesses from the trial recanted their stories, or confessed to an independent journalist during a sting operation that they had knowingly fabricated testimony to

sustain the prosecution’s ‘conspiracy theory.’<sup>23</sup> Some, allegedly, did so to “serve the cause of *Hindutva*” [Hindu nationalism].<sup>24</sup> Others claimed to have been bribed,<sup>25</sup> or forcibly coerced or tortured<sup>26</sup> into providing false testimony to the court. In one case, the prosecution reportedly entered into evidence testimony made by a man who—upon investigation by the defense—had apparently died in 1995.<sup>27</sup>

The judge dismissed nine of the prosecution’s key witnesses as lacking in credibility,<sup>28</sup> but nonetheless found there to have been a conspiracy to carry out an attack against the Sabarmati Express at Godhra.<sup>29</sup> In February 2011, the court convicted 30 of the 94 originally indicted suspects.<sup>30</sup> Eleven of those convicted received death sentences, and another eleven received sentences of life in prison.<sup>31</sup>

The aggressive, decisive, and zealous response by the Gujarat police and judicial authorities stands in contrast to their handling of the post-Godhra riot cases alleging violence against predominantly Muslim communities.<sup>32</sup>

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<sup>†</sup> See CONCERNED CITIZENS TRIBUNAL – II, *supra* note 9, at 12-17 (“The evidence as analysed above clearly indicates that the incident was not preplanned by the Muslims, as alleged by the government.”); Cheney Report, *supra* note 16, Section 1, (“The attack does not appear to be pre-planned in the sense in which it was claimed publicly by high authorities in the immediate aftermath of the incident of 27th Feb. Neither available information nor the circumstances then prevailing provide support to the theory of any deep-rooted conspiracy, with or without involvement of foreign agencies.”)

## Section III: The Events Following the Godhra Tragedy

“I was offered 6 lakh to not testify . . . I responded: ‘I’ll give you double that to get my family back’”

- Gujarat violence survivor

Gujarat’s most famous son—Mahatma Gandhi—condemned the logic of retributive violence most poignantly, years prior to the Gujarat riots, when he remarked that “an eye for an eye leaves us all blind.”<sup>33</sup>

The response to the Godhra fire involved countless acts of horrific and illegal violence. Large mobs sought to kill or injure entire communities of innocent civilians merely because of their ethnic or religious backgrounds.<sup>34</sup>

Some people and groups have sought to justify the retributive communal violence against Muslims following the Godhra tragedy as an understandable response to the train fire, invoking an “action-reaction” frame to justify the violence.<sup>35</sup>

“ Evidence shows that Hindus and Muslims, including the accused and the victims lived together without noticeable disharmony over generations at village Randhikpur till Vishwa Hindu Parishad gave call for Gujarat Bandh following the Godhra Train Burning Incident, and ferment of communal hatred sparked off the riots. ”

Sessions Case No. 634 of 2004  
(Bilkees Bano Verdict; January 28, 2008)  
Paragraph 450, p. 168

Human Rights Watch dismissed this action-reaction frame in an April 2002 report, finding instead that the violent attacks against Muslims were the embodiment of a plan by several loosely associated Hindu nationalist organizations called the *Sangh Parivar*, whose ultimate aim is to establish India as a Hindu state:

“The attacks on Muslims are part of a concerted campaign of Hindu nationalist organizations to promote and exploit communal tensions to further the BJP’s political rule—a movement that is supported at the local level by militant groups that operate with impunity and under the patronage of the state. The groups most directly responsible for violence against Muslims in Gujarat include the Vishwa Hindu Parishad, the Bajrang Dal, the ruling BJP, and the umbrella organization Rashtriya Swayamsevak Sangh (National Volunteer Corps, RSS), all of whom collectively form the *sangh parivar* (or “family” of Hindu nationalist groups). These organizations, although different in many respects, have all promoted the argument that because Hindus constitute the majority of Indians, India should be a Hindu state.”<sup>36</sup>

Following the Godhra tragedy, the VHP announced a statewide *bandh* for the following day, February 28. A *bandh* is essentially a general strike that is called and enforced by a political party or private entity.<sup>37</sup> Although *bandhs* are fairly common in India,<sup>38</sup> the Supreme Court of India and numerous lower courts have repeatedly held them to be “illegal and unconstitutional.”<sup>39</sup> The courts’ clear decisions notwithstanding, numerous politicians have continued to call for *bandhs*.<sup>40</sup>

In 2002, the Gujarat state government endorsed the VHP’s call for a *bandh*.<sup>41</sup> Critics allege that by doing so the state government effectively facilitated the lawlessness and inter-communal violence that ensued.<sup>42</sup> Sanjiv Bhatt, then-Deputy Commissioner of Police, has testified that on the very evening of the Godhra tragedy, Mr. Modi allegedly instructed those present at a meeting of senior bureaucrats and police officials at his home to grant the extremist mobs free reign.<sup>43</sup> Bhatt’s testimony was corroborated by investigative journalists,<sup>44</sup> testimony from other insiders before a civil-society driven commission of inquiry,<sup>45</sup> as well as news reports covering statements made by other insiders—some appearing in print as early as March 2, 2002.<sup>46</sup>

On February 28, 2002, two state government ministers were reportedly posted at the State Police Control Room and the Ahmedabad City Police Control Room.<sup>47</sup> According to Bhatt and others, the role of these ministers was to ensure that the police would ‘go slow’ in their efforts to put an end to the unfolding carnage.<sup>48</sup> Mr. Modi and his supporters have categorically denied these charges in official investigations as well as in numerous media statements.<sup>49</sup>

Attacks on minorities began within hours of the Godhra train fire.<sup>50</sup> On February 27, State authorities allowed then-VHP General Secretary for the State of Gujarat, Jaideep Patel, to organize the transfer to Ahmedabad of the bodies of those who burnt to death in Godhra.<sup>51</sup> Critics allege that this move, which ceded control of the bodies to a non-state organization with an open activist agenda, was both imprudent from a violence-prevention perspective, and not in keeping with standard operating procedures.<sup>52</sup> The resulting procession drew huge crowds of anti-Muslim rioters along the way and especially in Ahmedabad, where the bodies were paraded through the streets. One analysis of leaked messages sent to the State Intelligence Bureau headquarters from field officers, for example, detailed how a mob of 3,000 RSS members gathered at Sola hospital in Ahmedabad to greet the bodies, and that—in line with the warnings that had been flooding in to that same number since the night before—“soon violence sparked off.”<sup>53</sup> Victims and eyewitnesses of the massacre that took place on the morning of February 28, 2002 at Naroda Gam, another Ahmedabad neighborhood, accuse Patel and Maya Kodnani (former senior Gujarat BJP politician convicted in the Naroda Patia decision, *see below*, p. 14), of having played a significant role instigating that riot as well.<sup>54</sup>

On February 28, 2002, coordinated mob attacks against Muslims continued to spread across the state of Gujarat. Over the course of the next three days, 20 of Gujarat’s 25 districts were rocked by communal violence<sup>55</sup> – 12 of them seriously (according to the State of Gujarat’s 2002 presentation to the National Election Commission and its factfinding team).<sup>56</sup> Despite widespread reports to the contrary, these communal attacks, at a reduced but still

significant scale, continued well beyond the initial 72 hours.<sup>57</sup>

The communal violence followed a strikingly similar pattern across the state.<sup>58</sup> Mobs of several thousand people arrived in trucks, often dressed in saffron scarves and khaki shorts (the uniform of the RSS, a paramilitary *hindutva* volunteer corps), and attacked the Gujarati Muslim population.<sup>59</sup> Muslim homes and shops were selectively identified, looted and burned.<sup>60</sup> Mosques and *dargahs* (Muslim pilgrimage sites)

were destroyed.<sup>61</sup> Muslim women and girls were brutally raped—often publicly.<sup>62</sup> Muslim children and adults alike were butchered and burnt alive.<sup>63</sup>

Both of the attacks that led to the cases analyzed in this report—the Gulberg Society and Naroda Patia attacks—took place on February 28, 2002. Both incidents received widespread national news coverage and were among the deadliest attacks to occur during the 2002 Gujarat riots.

## The Attack at the Gulberg Society

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The attack on the Gulberg Society claimed the lives of 69 Muslim and Parsee inhabitants.<sup>64</sup> The victims included Ehsan Jafri—a former Member of Parliament and outspoken Modi critic. The Gulberg Society was a multi-unit housing complex, inhabited primarily by Muslim tenants.<sup>65, §</sup> During the attack, many of the Gulberg Society’s inhabitants took shelter in Mr. Jafri’s

home seeking shelter from the violent mobs, hopeful that Mr. Jafri’s prominence would shield them from harm. Eyewitnesses estimated that several thousand rioters attacked the Gulberg Society throughout the day, roaming freely through the streets, unencumbered by the police.<sup>66</sup>

Years later, important details about the nature and scope of the violence at the Gulberg Society emerged during testimony in 2009 in the criminal trial against the accused in that case. Numerous witnesses described hearing Mr. Jafri make calls to prominent Congress Party and BJP politicians and police officials, including Mr. Modi himself.<sup>67</sup> These allegations could not be confirmed by the author of this report, and Mr. Modi has denied ever having received such calls.<sup>68</sup> None of these individuals provided the assistance allegedly requested by Mr. Jafri to him or to the others trapped at the Gulberg Society.<sup>69</sup> Instead, a witness alleged that Mr. Modi had asked “why are you not dead yet?”<sup>70</sup>

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<sup>§</sup> According to Burraiya Jafri (45), Ehsan Jafri’s daughter-in-law, “[Ehsan Jafri] had procured the plot [for the Gulberg Society] in 1968 and subsequently constructed the structure. The idea was not to make a profit but provide shelter to those in need, Burraiya explains. “My father in law also constructed a police *chowkie* (post) nearby, but when the rioters attacked our society [] none of the policemen came to our rescue,” she says bitterly.” (See Vinod Kumar Menon and Pix Nirav Trivedi, *I Can Give up our Bungalow Plot for Free*, EN. 250).

“

I called the then police commissioner and asked for help, but no one came. . . . They were carrying knives and swords. Many of them were pelting stones and throwing burning rags at vehicles and into houses. . . . The mob had surrounded the house and Jafri decided to go out even though we urged him not to. The moment they saw him, the mob dragged Jafri away. A burning rag fell on me and I fell unconscious. Azhar was standing beside me. When I regained consciousness, Azhar was nowhere to be seen.

”

*Rupa Mody's Testimony at the Gulberg Society Trial  
Her 14-year old son Azhar was never seen again  
Statement reproduced from Nov. 11, 2009 article in Ahmedabad Mirror*

Numerous witnesses described the presence of the Gujarat Police Chief P.C. Pande on the scene shortly before the mobs descended at around 10:30 in the morning, promising that he would “send help soon.”<sup>71</sup> Other police officers allegedly did show up intermittently throughout the day, but none stayed to protect the Muslims under attack. Allegations also emerged that high-level BJP and VHP officials had instigated and directed the mobs.<sup>72</sup> Witnesses also described sexual violence that allegedly took place during the attack.<sup>73</sup>



Three months after the attack at the Gulberg Society, on June 3, 2002, a criminal case was initiated in the lower court in the State of Gujarat. The Supreme Court stayed the case in November 2003 (along with 9 other high profile cases) amidst concerns over the integrity of the State of Gujarat's efforts to identify and prosecute perpetrators of the violence.<sup>74</sup> At the time this report went to press, the case is still pending, and is expected to result in a verdict soon.

Witnesses spoke of the efforts by senior police officers to extort witnesses to induce them to lie to the Nanavati Commission (an official probe to investigate the 2002 Gujarat violence), to cover up for police malfeasance.<sup>75</sup> Furthermore, there have been allegations of a

systematic effort to destroy or tamper with forensic evidence after the attack had ended.<sup>76</sup>

In March 2008, after the Supreme Court decided not to remove the Gulberg Society case (and several other cases) to other jurisdictions for trial, the investigation resumed in Gujarat, under the supervision of the newly-formed SIT. Once it had finished its investigation, the SIT was to transfer the case to a special prosecutor who would bring the case to trial in a special “fast track” court created to handle Gujarat riot-related cases. The charges brought in the case included “criminal conspiracy, murder, attempt to murder, promoting enmity between different groups on grounds of religion, causing disappearance of evidence, [and] rioting.”<sup>77</sup> The trial began on May 14, 2009, with 36 accused.<sup>78</sup>

One notable challenge in the case has been the troubled relationship between the presiding judge and the witnesses in the case. As a criminal case, the public prosecutor was tasked with making the case against the alleged perpetrators.

The witnesses also played an active role in the proceedings, however. Witnesses in the Gulberg Society case had their own legal counsel, and their advocate, S.M. Vora, initially was able to address the court directly.<sup>79</sup> A Gujarat High Court judgment later scaled back the witness advocate's ability to directly address the court, instructing him to do so only via the Public Prosecutor.<sup>80</sup>

Numerous times, witnesses and their advocates accused the presiding judge in the Gulberg

Society case of bias, both in his treatment of them and in his behavior throughout the proceedings.<sup>81</sup> Witnesses spoke of his abusive conduct during trial, alleging that he often shamed victims and treated them as if they themselves were the accused.<sup>82</sup>

In February 2010 Special Public Prosecutor R.K. Shah and his assistant Nayana Bhatt resigned, they claimed, in the interest of "ensur[ing] the rule of law and that the guilty get punished."<sup>83</sup> In a letter written to the SIT justifying his resignation, Shah confirmed the allegations that the prosecution witnesses had made in their petition (see below) to get Judge Joshi removed, stating:

"The attitude of the learned judge towards the witnesses, particularly victim eye-witnesses, has by and large remained hostile and unsympathetic. He browbeats them, or threatens them, or taunts them. He does not allow witnesses to go to the dock for the purpose of identification and insists on identification from [the] witness box as if he is holding [a] test identification parade and the most material evidence regarding identification of the accused gets affected."<sup>84</sup>

In response to the allegations levied by Shah, the Supreme Court on March 15, 2010 again stayed the Gulberg Society trial, pending "a detailed response from the SIT."<sup>85</sup> In mid-June 2010, the State Government appointed R.C. Kodekar and N.K. Dahiya as the new Public Prosecutors, allowing the case to resume.<sup>86</sup>

Throughout 2010, witnesses in the Gulberg Society case had unsuccessfully petitioned the Gujarat High Court to have Judge Joshi removed.<sup>87</sup> It took another year for the witnesses' plea to be answered, when the Gujarat High Court ordered the transfer of

Judge Joshi to another jurisdiction, replacing him with Judge B.J. Dhandha.<sup>88</sup> About two years later Judge Dhandha retired.<sup>89</sup> This announcement came after final arguments in the case had already been made.<sup>90</sup> In February 2013, the Supreme Court had again stayed the trial court from issuing a judgment pending the Magistrate Court's decision in the Jafri case (see below).

Another major procedural issue had to do with witnesses' efforts to join higher-level political and police authorities as co-defendants in the case, based on evidence that they had either

conducted, instigated, or abetted the massacre.<sup>91</sup> Victims and their advocates sought to expand the list of accused in 2009, following testimony by a few witnesses alleging that high-level *Sangh Parivar* individuals had coordinated the violence.<sup>92</sup> The SIT opposed the witnesses' efforts.<sup>93</sup> The High Court in 2010 concurred with the SIT<sup>94</sup> for six of the alleged eight high-level *Sangh Parivar* accused, while in the two remaining instances it added the individuals to the list of the accused in the case.<sup>95</sup>

The issue of adding new defendants came up again under Judge Dhanda's tenure as presiding judge.<sup>96</sup> Like his predecessor, Judge Dhanda also concurred with the SIT's assessment that there was insufficient evidence to bring charges against additional defendants.<sup>97</sup> A few months later, the witnesses for the third time filed a motion to bring charges against higher-level alleged conspirators, this time relying on the

evidence gathered by the SIT in the Jafri case (see below, p. 20).<sup>98</sup> The SIT, however, refused to hand over its investigation documents to the trial court hearing the Gulberg Society case, claiming it had not been authorized to do so by the Supreme Court.<sup>99</sup> In the meantime, the trial against the *existing* defendants continued. Witnesses sought to stay the trial, claiming that "unless all evidences related to the case [are] submitted in the court, prejudice could be caused to the trial."<sup>100</sup> Neither the trial court,<sup>101</sup> nor the Gujarat High Court,<sup>102</sup> which heard an interlocutory appeal, agreed to stay the trial to wait for the SIT to submit its documents. That only happened in February 2013, after the Supreme Court of India intervened to stay the trial from reaching a verdict pending the outcome of the Jafri case, which alleged higher-level conspiracy (see below). At the time this report went to press, the issue was still unresolved.

## The Naroda Patia Attack

The Gulberg Society neighborhood was not the only one attacked on February 28, 2002. Simultaneous with that attack, mobs also terrorized the residents of Naroda Patia, a mixed-ethnicity neighborhood on the outskirts of Ahmedabad, inhabited mostly by less affluent day-laborers.<sup>103</sup> The attack on Naroda Patia claimed the lives of at least 96 individuals, and seriously injured 125 more.<sup>104</sup>

The criminal case against the accused perpetrators of the Naroda Patia massacre differs from the Gulberg Society case in that it has resulted in

convictions of several of the accused, including some high-ranking political figures. Some credit the trial judge, Jyotsna Yagnik, as having played a crucially constructive role in that outcome.

“

The mob stormed our house and dragged me and my parents out. They doused us with petrol and threw lighted match sticks on us . . . my parents are dead and see what they have done to me,” cried 15-year-old Shah Jahan, a resident of [Naroda Patia], pointing to her face that looked like a blood-curdling horror-mask.

”

Statement reproduced from Mar. 02, 2002 article in *The Times of India* (article on file with author)

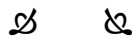


The case concluded on August 29, 2012, resulting in an almost 2000-page public record of what transpired that day. Numerous witnesses at the trial testified to the role that Maya Kodnani, at the time a high-ranking BJP politician (later appointed as Minister of State for Women and Child Welfare and Higher Education), had played. According to the trial findings, Kodnani had incited others to kill Muslim inhabitants of Naroda Patia,<sup>105</sup> urged the destruction of a mosque,<sup>106</sup> promised the rioters that she would protect them from repercussions,<sup>107</sup> and fired her own revolver to animate the crowd.<sup>108</sup> Kodnani became the highest-profile figure to be held accountable for her actions during the riots. Babu Bajrangi (a former *Bajrang Dal* convener), Kishan Korani (BJP member of the Ahmedabad Municipal Corporation), and BJP and VHP leaders Bipin Panchal and Ashok Sindhi were also convicted.<sup>109</sup>

Witnesses at the trial spoke of numerous incidents suggesting official complicity with the rioters, including accounts of desperately seeking shelter with the State Reserve Police

(paramilitary police forces trained to deal with public emergencies), whose compound was located 500 meters from Naroda Patia, only to be turned away by the officers guarding the gate.<sup>110</sup>

The court found that there was a criminal conspiracy to carry out the attack at Naroda Patia.<sup>111</sup> The court was confronted with two alternative explanations for the attack. The first was the action-reaction explanation (the violence was merely the spontaneous and uncoordinated outpouring of vigilante outrage against the events in Godhra). The second was the allegation that the violence had been pre-planned even prior to the Godhra tragedy.<sup>112</sup> The court's judgment stopped short of endorsing either of these frames, instead finding the formation of a criminal conspiracy "after the Godhra occurrence on 27/02/2002 and before 9:30 a.m. of 28/02/2002 when the conspirators met at the site."<sup>113</sup> The court thus left open the question whether a wider or more long-standing criminal conspiracy could be proved: a question raised directly in the Jafri case (discussed below, p. 20).



As with the Gulberg Society case, the initial investigation conducted by the local police authorities into the crimes at Naroda Patia was deeply flawed. Judge Yagnik found the initial investigation to be so poorly done that she afforded it little to no evidentiary weight in her final decision.<sup>114</sup> That decision openly questioned the professional integrity of the

police officials on duty as the violence unfolded and during subsequent efforts to investigate the incident.<sup>115</sup>

The early investigation was characterized by a long and drawn-out process of slowly arresting accused,<sup>116</sup> including some known *Sangh Parivar* activists,<sup>117</sup> followed by bail hearings.<sup>118</sup> In November 2003, the Supreme Court stayed

the trial (along with the Gulberg Society trial and others).<sup>119</sup> Nearly six years later, in September 2009, the many individual First Information Reports (FIRs)<sup>120</sup> comprising the various alleged incidents that took place at Naroda Patia were consolidated into one “omnibus” FIR,<sup>121</sup> and one month later the SIT issued chargesheets against 60 defendants.<sup>122</sup> The trial restarted, and witness testimony—including testimony pertaining to sexual violence,<sup>123</sup> began in late 2009, attracting considerable media attention.<sup>124</sup>

On August 29, 2012, Judge Yagnik acquitted 29 accused and convicted the remaining 32 defendants, sentencing them to prison terms of varying lengths while reserving sentencing for one convict who had absconded. Though the court acknowledged that serious sexual violence had occurred during the attack, no perpetrators could be identified for these crimes. Instead, Judge Yagnik ordered the lone witness who had testified that she had been raped\*\* to receive Rs. 500,000 in compensation (see below, p. 50 for further discussion).

Victims and survivors in the case spoke about how grateful they were for having had an empathetic judge.<sup>125</sup> Witnesses felt that Judge Yagnik was receptive to the needs of victims and survivors, and more interested in finding out about the truth of what happened at Naroda Patia than in shielding the accused from

being held liable for their crimes.<sup>126</sup> Her “humanity,” and the fact that she was a woman, were particularly important for survivors of sexual violence, who felt that she had been more able to relate to their experiences and needs.<sup>127</sup>

Despite the great success of the Naroda Patia verdict, Judge Yagnik nonetheless did not wish to entertain arguments by victims and their advocates to consider evidence of a wider, statewide conspiracy linking the events at Naroda Patia to the rest of the Gujarat violence. Two years prior to the verdict, in February 2010, two survivors of the Naroda Patia massacre had filed separate petitions urging the court to take heed of new information that had surfaced linking key perpetrators in the attacks to actors not physically present during the violence.<sup>128</sup> Judge Yagnik denied those requests, saying she felt these claims were already being investigated by the SIT in the Jafri case (which had not yet shared its findings with the court), and simultaneously rejected a plea to stay the trial pending the SIT’s final report.<sup>129</sup>

The 2012 Naroda Patia judgment—while not the first post-Godhra judgment resulting in convictions—represented a tremendous vindication of the riot victims’ suffering, and resulted in at least two important high-level convictions—that of Maya Kodnani and that of Babu Bajrangi. But the verdict brought to justice only a handful of several influential politicians or *Sangh Parivar* activists alleged to have played an active role in the massacre.

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\*\* Various other alleged rape victims at Naroda Patia had been killed by their attackers, or died as a result of their wounds. Only one rape survivor told her story to the Court.

## Evidence of Conspiracies in the Attacks on Muslims

Whether the attacks on Muslims were pre-planned or spontaneous has been widely debated. Gujarat has a long history of communal violence.<sup>130</sup> Precisely due to this history, authorities should have anticipated that an incident like the mass deaths in the Godhra fire might provoke broader, ethnic violence. Many critics argue that the government's failure to heed the warning signs that inter-communal violence was likely to erupt constitutes, at a minimum, negligence. This is particularly true given the return of the *kar sevaks* from the Ram Temple / Babri Mosque site,<sup>131</sup> followed by the Godhra tragedy.<sup>132</sup>

Other analysts argue that the 2002 violence in Gujarat was in fact preplanned, and that a core group of *Sangh Parivar* activists had been meticulously planning for the kind of anti-Muslim violence that erupted following the Godhra incident.<sup>133</sup> Witnesses alleged that "local tensions built up after the formation of an RSS/VHP/BD unit in the area."<sup>134</sup> In particular, young *Bajrang Dal* recruits were allegedly asked to survey their neighborhoods to "collect information about Muslim places of residence, property, businesses, family, etc.,"<sup>135</sup> and given assurances that "[i]f you killed Muslims, the organisation was there to protect you from penal consequences."<sup>136</sup> Political scientists hinted at a possible motive for such mobilization and training,<sup>137</sup> documenting statistically that violence was *not* most likely to occur in those regions where BJP support was

the strongest, but rather in those where the BJP faced the most competitive political contests.<sup>138</sup>

According to the above, the VHP and BJP (along with other *Sangh Parivar* organizations) were allied in an endeavor to spread *Hindutva* ideology and cement the BJP's political dominance in the State.

“ Today we have a holiday and you are to die. ”

*Alleged statements of Senior Inspector of the Naroda Police Station in response to request for protection from Naroda Patia residents*

*Testimony at Naroda Patia trial*

*Reproduced in Roshan Kumar, 'Kodnani had fired from her revolver', DNA (Ahmedabad) 4, Jan. 21, 2010 (article on file with authors)*

Substantial evidence has been amassed by commissions of inquiry, journalists and victims' advocates, that suggests an organized plan for violence may have been outlined in the hours immediately *following* Godhra.<sup>139</sup> For example, the Chairman of the Gujarat Unit of the VHP, Keshavram Kashiram Shastri, acknowledged that lists of "shops owned by Muslims in Ahmedabad" had been prepared on the morning of February 28.<sup>140</sup> Mr. Shastri made this revealing statement—ironically—as part of his defense against allegations that the plot to target and kill Muslims had been hatched *prior* to the 28th. Police officials also corroborated the fact that the mobs "hardly failed to lay hands on their targets, thanks to documents like the voters' list."<sup>141</sup> Because Gujarat has a history of communal violence, many Muslim establishments have Hindu names.<sup>142</sup> Yet, the attackers were still able to systematically target,

burn and loot Muslim-owned property, whereas neighboring Hindu-owned establishments remained unscathed.<sup>143</sup>

Much debate has also focused on whether State authorities could have done more to call on the support of federal army troops to help quell the violence. Those troops only began to deploy in Ahmedabad on the morning of the March 1, 2002, after many hundreds of persons had already been killed.<sup>144</sup> Many observers credit

“ While people were flocking the streets, leaving their households inside, Shri K.K. Mysorewala has reported to the Control Room that “everything is Okay (*Khairiyat Hai* – There is peace and happiness in Patiya area) it was like “*When Rome was burning, Nero was playing fiddle.*” ”

*Naroda Patia Judgment, August 29, 2012, p.487*

the army troops, once deployed, with having put a stop to the communal violence.<sup>145</sup> Critics argue, however, that the two-day delay in their deployment was inexcusable, and caused by a calculated strategy by state government officials.<sup>146</sup> The government maintains it was the federal army troops who were unable to respond more expediently.<sup>147</sup> Regardless, by the time the army had deployed, the worst of the violence had already been committed.<sup>148</sup>

Those who believe there to have been an organized plan behind the violence in Gujarat also point to the proliferation of hate speech and hate publications in the days and weeks following the Godhra incident.<sup>149</sup> Senior politicians and *Sangh Parivar* activists issued public statements tacitly condoning the violence in terms of the action-reaction frame, and did little to signal to rioting mobs that their actions were illegal or unwelcome.<sup>150</sup>

Perhaps the strongest evidence of Gujarat government officials' complicity in the violence comes from the lackluster police response to quell the riots, especially during the first three days of the rioting. Critics accuse the Gujarat Police of turning a blind eye to the violence. Both Human Rights Watch and the NHRC noted that police stations and police posts were near many of the affected sites.<sup>151</sup> The Naroda Patia neighborhood was located just across the street from the State Reserve Police quarters, and the

Gulberg Society was located less than three kilometers from Shahibaug Police Headquarters.<sup>152</sup> In defense of their inability to keep the peace, police officers describe being overwhelmed by the sheer number and ferocity of the rioters. That justification, however, rings hollow in the face of numerous anecdotes from the 2002 riots of successful dispersement of thousands of rioters by small units of determined police officers.<sup>153</sup>

Police at the Gulberg Society and Naroda Patia failed entirely to intervene effectively. Indeed, some police officers allegedly did more than merely act with negligence. There are multiple instances in which the police are alleged to have actively participated in the anti-Muslim violence. One survivor of the Naroda Patia massacre recalled how “[w]herever we hid, the police showed [the rioters] where we were.”<sup>154</sup> Survivors of the violence spoke of their desperate attempts to gain entry into police barracks to save themselves from murderous mobs, only to be turned away by the officers guarding the gate.<sup>155</sup>

Other witnesses described seeing police officers gathered, listening to a speech by Kodnani exhorting them to action. In addition to leading

and directing mobs, the police also fired their weapons, injuring or killing innocent civilians.<sup>156</sup> Mr. Modi reportedly defended this police use of force, stating that the police had “‘mowed down people’ to quell the violence.”<sup>157</sup> But a look at the casualty figures shows that the vast majority of police gunshot victims were Muslims,<sup>158</sup> not Hindu rioters.

Following the riots, police did little to gather evidence of criminal wrongdoing from the victims.<sup>159</sup> There was virtually no police presence at all in the relief camps and relief colonies, where most survivors had fled following the riots (see below, p. 53).<sup>160</sup> This made it extremely difficult for individuals to present their evidence without returning to the same locations they had fled.

Even when present to take note of an alleged riot-related attack, officers often compromised the value of victims’ allegations by filing incomplete or inaccurate FIRs.<sup>161</sup> In some cases, police simply refused to file an FIR. In others, FIRs were filed, but the recording officer would willfully distort or dilute the witness’ statements, making the information practically meaningless for prosecutorial purposes (see below, p. 36).

Finally, police officers apparently faced significant pressure from within their units to suppress and compromise evidence of any criminal wrongdoing in the Gujarat violence. When individual police officers did do their job properly (as happened in the case of officer Kirit Erda, Senior Inspector-in-Charge of the Meghaninagar police station, who implicated a local BJP leader Deepak Patel in the crimes that took place at the Gulberg Society)<sup>162</sup> they often faced pressure from within their organization to recant their statements. Others were passed

over for promotions or actively demoted or transferred to other, less desirable posts.<sup>163</sup> And, in at least three cases, important whistleblowers who revealed to the SIT or the Nanavati Commission important information about official complicity in the riots, were dismissed or criminally prosecuted for their actions. Sanjiv Bhatt, who testified about the February 27, 2002 meeting at Mr. Modi’s residence to the SIT, was dismissed from his post and subsequently faced criminal charges (since vacated).<sup>164</sup> Rahul Sharma, who provided to the Nanavati Commission crucial phone records allegedly showing that rioters in the street were actively communicating with politicians and police officers during the post-Godhra riots, was also criminally charged in 2011 under the Official Secrets Act for professional misconduct (charges still pending in 2014).<sup>165</sup> Finally, R.B. Sreekumar, who made several affidavits to the Nanavati Commission regarding alleged police complicity in the 2002 attacks, faced professional repercussions that have since been deemed illegal by several review boards.<sup>166</sup>

On the whole, Gujarat’s police failed to uphold the law. Those officers who fulfilled their duties did so in the face of what one unnamed “top police official” allegedly described as “the state government’s instructions” to avoid implicating anyone belonging to the *sangh parivar*.<sup>167</sup>

For example, a police report written by Assistant Police Sub-Inspector N.T. Bala stated that “the carnage at Naroda Patia was the handiwork of a mob of 6,000, which was led by Babu Bajrangji, Kishan Kosani, T.J. Rajput, Harish Rohit and Raju Goyal.”<sup>168</sup> According to the Associated Press, these five individuals were all confirmed VHP local leaders.<sup>169</sup> When pressed on why these individuals were never charged

with any criminal offenses, a senior VHP official alleged in March 2002 that the accusations against these individuals were levied by “anti-Hindu forces” within the police force.<sup>170</sup> Bala himself changed his story in May 2002, alleging that he had been coerced into filing a fraudulent report.<sup>171</sup> The Gujarat government, for its part, sought to play down the scandal by appointing a special investigator with a strong and open connection to the VHP to investigate the matter.<sup>172</sup>

State government officials in March 2002 claimed to have arrested 2,500 individuals in

connection with the post-Godhra violence.<sup>173</sup> Most of those originally arrested were soon released; some were released on bail, but most without ever being charged, allowing them to roam free for years following the riots and, in some cases, even take up political office.<sup>174</sup> Frequently, at the outset of the trials, the only ones left on the chargesheets were lower-caste *dalits* (untouchables), many of whom had allegedly been brought into Gujarat prior to the riots specifically for the purpose of carrying out some of the violence.<sup>175</sup>

## The Jafri Case Emerges

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On June 8, 2006, Zakia Jafri (widow of the murdered former Member of Parliament Ehsan Jafri, who died in the Gulberg Society massacre) filed a 118-page complaint against initially 63—now 60—individuals (three of the original accused have since passed away), for conspiring to effectuate the Gujarat violence.<sup>176</sup> The list of alleged perpetrators includes Mr. Modi.<sup>177</sup> Jafri’s complaint has yet to result in charges being filed against any of the individuals she named. Unlike the Naroda Patia and the Gulberg Society cases, however, which focus on lower-level perpetrators, Ms. Jafri, alleges high-level conspiracy. Her focus is not on any one instance of violence or looting, but rather the entire pattern of “seemingly disparate though contemporaneous incidents and locales of the riots throughout the State of Gujarat.”<sup>178</sup> Her petition alleges “the State Government’s complicity in the riots as much as its duplicity in launching ostensible criminal prosecutions in respect of them.”<sup>179</sup> More specifically, the Jafri petition alleges criminal wrongdoing by Mr.

Modi and 59 other defendants, including Cabinet Ministers, sitting Members of the (Gujarat) Legislative Assembly (MLAs), BJP and VHP functionaries, and high-ranking police officers and bureaucrats.<sup>180</sup>

Lacking the powers that a proper investigatory body would enjoy, Ms. Jafri has faced great difficulty gathering the necessary evidence to support her allegations. When the case was first initiated in 2006, petitioners relied on documents compiled from public or quasi-public sources.<sup>181</sup> Since 2006, more information has been made public, including testimony by whistleblowers and independent investigations conducted by NGOs and journalists.<sup>182</sup> Since the case is unfolding in the midst of a political

election campaign, it is being carefully followed by a range of political actors.

The case seeks to prove criminal conspiracy<sup>††</sup> and abetment<sup>‡‡</sup> on the part of Mr. Modi and others by relying on circumstantial evidence that has emerged indicating that the riots in Gujarat had been systematically planned, including:<sup>§§</sup>

1. That immediately upon hearing news of the Godhra tragedy, Mr. Modi allegedly conspired with Gujarat General Secretary of the VHP, Mr. Jaydeep Patel;
2. That Mr. Patel, in accordance with the agreement he allegedly hatched with Mr. Modi, reportedly set in motion a series of events designed to inflame popular sentiment against Muslims;

3. That Mr. Modi, in keeping with the agreement he is alleged to have made with Mr. Patel, reportedly provided quasi-official sanction to the message and actions of the VHP activists, and that furthermore he allegedly encouraged the otherwise-capable law enforcement authorities in Gujarat to 'go slow' on the rioters, and to subsequently deny survivors of the riots the proper relief and rehabilitation;
4. That Mr. Modi and Mr. Patel jointly allegedly invited and incentivized the other accused to knowingly join the ongoing criminal conspiracy;
5. That Mr. Modi and others have since allegedly conspired to keep evidence of this original criminal conspiracy out of the judiciary and press; and finally
6. That as a result of this being an alleged criminal conspiracy, all defendants are jointly liable for all crimes committed as a result of this conspiracy.

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<sup>††</sup> Conspiracy under Indian Law is defined in §§120A & 120B of the Indian Penal Code (1860). To be charged with criminal conspiracy, two or more individuals must be guilty of agreeing to conduct an illegal act (or a legal act by illegal means), *and* one of those parties must have taken an initial step in furtherance of that agreement.

<sup>‡‡</sup> Section 107 of the Indian Penal Code states that "A person abets the doing of a thing, who [1] Instigates any person to do that thing; or [2] Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in or der to the doing of that thing; or [3] Intentionally aids, by any act or illegal omission, the doing of that thing."

<sup>§§</sup> The list below is the author's summary of arguments presented in the Jafri Protest Petition, (see EN 51).

Whether these accusations are eventually found to be true or not, the Jafri case weaves together a series of accusations that many of Gujarat's minority population believe to be true.<sup>183</sup>

Still, other observers are unconvinced by the accuracy of Ms. Jafri's allegations. Indeed, the case has come to embody the psychological gulf that continues to separate Gujarat's majority and minority communities—certainly when it comes to their perceptions of the events in 2002. The key question, therefore, is how to ensure that the evidence is evaluated by a process that all sides perceive as fair.



Since 2006, when Ms. Jafri first attempted to prompt an official investigation into her charges, the legal question has always been whether the claims she makes about a wider conspiracy to plan and execute the post-Godhra riots were sufficiently well documented by evidence to merit a trial. When Ms. Jafri first brought the case, the police refused to register an FIR based on her written complaint, insisting instead that she first speak to an investigator. Ms. Jafri demanded that her written report should be treated as a witness statement, and that she did not trust the police to take down a proper FIR based on her oral testimony.

To secure a court order compelling the police to register an FIR, Jafri and her co-petitioners (Center for Justice and Peace, or “CJP”) filed a petition with the Gujarat High Court in February 2007.<sup>184</sup> Two successive High Court judges refused to hear the case, and a third finally dismissed the petition in November 2007.<sup>185</sup> In March 2008, the Supreme Court of India accepted petitioners’ appeal of the High Court decision.<sup>186</sup> A little over one year later, in April 2009, the Supreme Court invited the SIT to “look into [the] matter and take steps as required in law and give its report to this Court within three months.”<sup>187</sup> The Supreme Court also appointed noted human rights lawyer Prashant Bhushan as *amicus curiae* to provide his expert analysis on the case.<sup>188</sup> The SIT interviewed 163 witnesses,<sup>189</sup> including, in March 2010, Mr. Modi himself.<sup>190</sup> Over a year later, in May 2010, the SIT submitted its “enquiry report” to the Supreme Court.<sup>191</sup>

In October 2010, just prior to the submission by the *amicus curiae* of his report into the legal issues arising from the SIT’s investigation, the Government of Gujarat accused Mr. Bhushan of being biased, whereupon he recused himself from the case.<sup>192</sup> Mr. Raju Ramachandran, a prominent legal expert and advocate, was appointed as his replacement.<sup>193</sup> In January 2011, Mr. Ramachandran submitted his then confidential analysis to the Supreme Court, where he urged a more serious investigation into the matter.<sup>194</sup> The Court agreed, and asked the SIT to reinvestigate some of the issues flagged as particularly problematic by Mr. Ramachandran’s early analysis.<sup>195</sup> In light of growing criticism of the SIT (see below, p. 43), the Supreme Court also broadened Mr. Ramachandran’s authority, allowing him not only to review the SIT’s documentation, but also to conduct his own independent investigation and interview witnesses.<sup>196</sup>

By early 2012, it was increasingly clear to many observers that the SIT intended to conclude its investigation with a recommendation for the closure of the case.<sup>197</sup> Indeed, the SIT Closure Report, which was subsequently released to the petitioners, summarily dismissed each of Ms. Jafri’s claims, labeling them as either baseless, or not sufficiently egregious to constitute criminal misconduct.<sup>198</sup> The SIT also impugned the reputations of many of the petitioners’ witnesses,<sup>199</sup> as well as Ms. Jafri herself.<sup>200</sup> To arrive at its conclusion, the SIT dismissed allegations that Mr. Modi had allegedly suggested that Gujarat state security services should “let the Hindus vent their anger” from



the Godhra tragedy at a meeting of high-level politicians on the evening of February 27, 2002. Evidence of Mr. Modi having allegedly uttered these words came from several sources,<sup>201</sup> but most directly from Mr. Sanjiv Bhatt, former Deputy Commissioner of Police, who claimed to have been present at the meeting on February 27, and to have heard Mr. Modi speak those words.<sup>202</sup>

The SIT in 2011 concluded that none of these sources was sufficiently robust to withstand judicial scrutiny,<sup>203</sup> and consequently discredited any evidence of an alleged conspiracy between Mr. Modi or any of the other defendants.

After reviewing the SIT's still-confidential conclusions, Mr. Ramachandran submitted his final report on the SIT's investigation in July 2011.<sup>204</sup> Mr. Ramachandran disagreed with the SIT's opinion that the petitioners' evidence was insufficient to make out a *prima facie* criminal charge against Mr. Modi and his alleged co-conspirators.<sup>205</sup> He agreed with the SIT that much of the evidence presented by the petitioners was flawed or circumstantial, but he also insisted that evidentiary questions should be decided in open court, rather than by the SIT—a three-person panel that self-describedly preferred to operate “in a highly confidential manner.”<sup>206</sup> Mr. Ramachandran recommended that the SIT complete its report, but that the petitioners also be given the opportunity to challenge the SIT's conclusion.<sup>207</sup> The Supreme Court agreed with Mr. Ramachandran, and on September 12, 2011 remanded the Jafri case to a Magistrate Court (trial court) in Ahmedabad to decide whether to initiate a formal trial based on Ms. Jafri's original petition.<sup>208</sup> In February 2012, the SIT submitted its Closure Report to the Magistrate Court.<sup>209</sup> The SIT's

report included a section responding to—and dismissing—Mr. Ramachandran's assessment of its conclusions.<sup>210</sup>

Meanwhile, a vigorous debate began in the press on whether the SIT's Closure Report represented a ‘clean chit’ for Mr. Modi.<sup>211</sup> The Supreme Court's September 12, 2011 order makes it clear that the only impact of the SIT's Closure Report is to provide the trial court with a non-binding recommendation.<sup>212</sup> The court is still empowered to decide freely whether to proceed with the case or to dismiss it.<sup>213</sup> Thus, the SIT's closure report was not the ‘clean chit’ that some have suggested, at least not in the sense of a judicial determination based on evidence presented in court.

While the Magistrate Court had access to the SIT Closure Report as early as February 2012,<sup>214</sup> petitioners struggled for over a year to obtain the SIT's report and complete investigation files, so they could review it and file an appeal.<sup>215</sup> On April 13, 2013, Ms. Jafri and her co-petitioners filed their Protest Petition challenging the SIT's Closure Report.<sup>216</sup> \*\*\*

At issue in the ensuing case was still only the question of “whether *prima facie*, there is reasonable material to take cognizance of the offence.”<sup>217</sup> If so, petitioners argued, “the court

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\*\*\* Ms. Jafri almost wasn't able to file her Protest Petition. After giving her two months to process the voluminous documents in the SIT's investigation, the court initially rejected Ms. Jafri's plea to extend that window. See Rathin Das, *Setback for Zakia Jafri, Boost to Modi Re-Election*, THE PIONEER (New Delhi) 1, Nov. 28, 2012.

has a duty to issue process against the accused.” Under Indian law, the Magistrate has discretion either to accept or reject the results of a police investigation<sup>218</sup> (which is what the Supreme Court in its original order tasked the SIT with conducting).<sup>219</sup> In other words, the question before the Magistrate Court in 2013 was whether the Magistrate, informed but not bound by the SIT report and Mr. Ramachandran’s report, believed a formal prosecution should be opened.

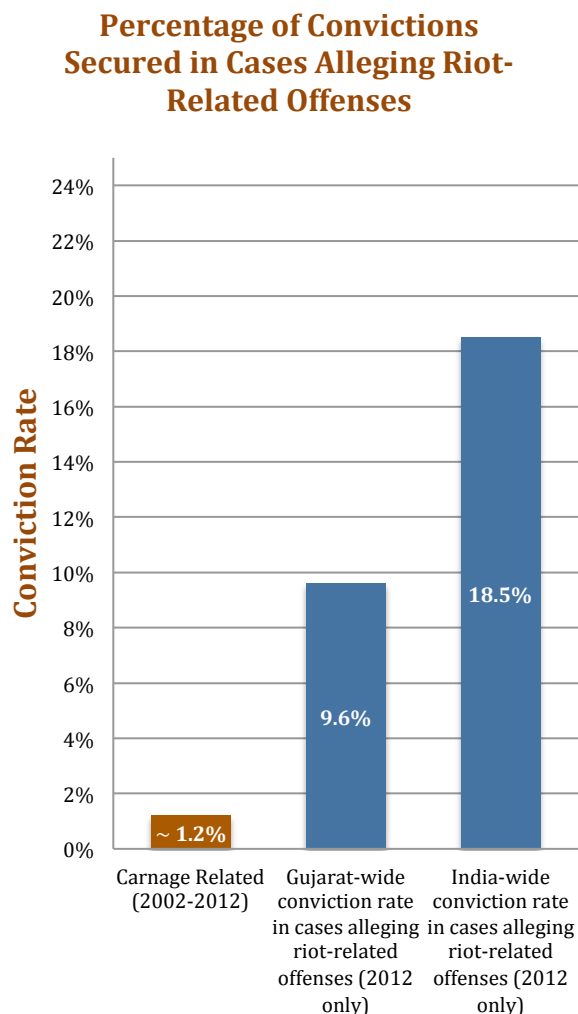
On December 26, 2013, almost eight months after petitioners filed their Protest Petition, Judge B.J. Ganatra at the Metropolitan (Magistrate) Court in Ahmedabad dismissed Ms. Jafri & co-petitioners’ Protest Petition and accepted the closure report filed by the SIT.<sup>220</sup> As a result, charges have not been filed against any of the 60 individuals named in Ms. Jafri’s Protest Petition, nor is there currently a criminal investigation into Ms. Jafri’s allegations.

On March 18, 2014, Ms. Jafri and her co-petitioners appealed the Municipal Court’s decision before the Gujarat High Court.<sup>221</sup>

## Section IV: Analysis & Recommendations for Systemic Reforms

The remainder of this report presents recommendations for structural reform initiatives that should be addressed by the Gujarat and Indian central authorities to comply with their obligations under international human rights law to provide the victims of the Gujarat violence with an effective remedy for their losses, trauma, and displacement.

This report’s findings suggest that the success of the criminal justice system twelve years after the riots is mixed. Estimates of the percentage of criminal cases registered in response to the 2002 communal violence that resulted in a criminal conviction of any sort range between 0.21% and 1.18%.<sup>222</sup> Even at the high end of this range (1.18%), the percentages are well below levels for similar criminal prosecutions in Gujarat. Thus, for example, the conviction rate is 9.6% in cases involving riot-related charges<sup>†††</sup>



<sup>†††</sup> The statistics pertain to cases reported across India having to do with the following offenses of the Indian Penal Code: (1) IPC §143—Punishment for unlawful assembly; (2) IPC §144—Joining unlawful assembly armed with deadly weapon; (3) IPC §145—Joining or continuing in unlawful assembly, knowing it has been commanded to disperse, (4) IPC §147—Punishment for rioting, (5) IPC §148—Rioting, armed with deadly weapon, (6) IPC §149—Every member of unlawful assembly guilty of offence committed in prosecution of common object, (7) IPC §150—Hiring, or conniving at hiring, of persons to join unlawful assembly, (8) IPC §151—Knowingly joining or continuing in assembly of five or more persons after it has been commanded to disperse, (9) IPC §153—Wantonly giving provocation with intent to cause

riot-if rioting be committed-if not committed, (10) IPC §153A—Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony, (11) IPC §153B—Imputations, assertions prejudicial to national-integration, (12) IPC §157—Harbouring persons hired for an unlawful assembly, (13) IPC §158—Being hired to take part in an unlawful assembly or riot, and (14) IPC §160 IPC—Punishment for committing affray.

*in general* in Gujarat. This figure (9.6%) is based on both 2002 communal violence-related and other riots in the aggregate that ended in 2012 (83 convictions out of a total 863 such cases completed in 2012). The figure for riot-related cases ending in conviction across India as a whole is higher still—18.5% (7,281 convictions out of a total 39,415 such cases completed in 2012).<sup>223</sup> The over 15-fold difference in conviction rates arising from 2002 communal violence-related cases versus all other riot-related cases in India needs to be examined closely.

In 2004, the Indian Supreme Court looked at this problem in the context of two individual cases: the “Best Bakery” case<sup>224, †††</sup> and the Bilkis Bano case.<sup>225, §§§</sup> These two cases are

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††† The “Best Bakery” case generated widespread media coverage and attracted substantial international attention. It dealt with an incident in which a mob of approximately 500 people converged on a Muslim-owned bakery, firebombed the building and killed the predominantly Muslim citizens who had taken shelter in that store. In the subsequent trial, most of the witnesses who had previously testified about the attack turned “hostile” and refused to cooperate further with the prosecution. As a result, the case ended in the acquittal of all the accused. Later, one of the key witnesses fled Gujarat to seek security with an outspoken advocate for Gujarat’s riot victims, Ms. Teesta Setalvad (Secretary of Citizens for Justice and Peace) in Mumbai, where she spoke about efforts to threaten and intimidate her into falsifying her testimony. In response, the Supreme Court ordered the case removed to a Maharashtra Court, where the trial ended with the conviction of several of the accused.

§§§ The Bilkis Bano case sought to hold accountable those who had gang raped and left for dead a

noteworthy given the Court’s remedy: removal from the Gujarat judicial system.

After investigating the various procedural and prosecutorial abuses that took place in those cases, the Supreme Court recognized that it would be impossible to guarantee a fair trial as long as the cases remained in Gujarat:

“When the investigating agency helps the accused, the witnesses are threatened to depose falsely and prosecutor acts in a manner as if he was defending the accused, and the Court was acting merely as an onlooker and there is no fair trial at all, justice becomes the victim.”<sup>226</sup>

The remedy of transfer, while perhaps justifiable as an emergency measure in truly remarkable circumstances, *cannot* be the solution for the thousands of cases arising out of the communal violence in Gujarat. While removal of controversial matters may resolve tensions and increase the likelihood of impartiality in a particular case or cases, this device is not a remedy for structural shortcomings. Removal cannot, by its very nature, be employed on a widespread basis, in part because it violates the default principle

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woman, in addition to killing many of her family members. Bano filed an FIR to initiate suit against her neighbors who had perpetrated the attack. In Bano’s case, the police abuse, harassment, and intimidation of the key witnesses was so intense that the Supreme Court decided that the Gujarat judiciary was not capable of guaranteeing Ms. Bilkis a fair trial. The case was moved to Maharashtra, where it ended in criminal convictions of some of the accused.

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The modern day “Neros” were looking elsewhere when Best Bakery and innocent children and women were burning, and were probably deliberating how the perpetrators of the crime can be saved or protected. Law and justice become flies 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.

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*Supreme Court of India “Best Bakery” Judgment, April 12, 2004*

articulated in the Indian Code of Criminal Procedure that “[e]very offense shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed.”<sup>227</sup>

Indeed, a year after deciding the Best Bakery and Bilkis Bano cases, the Indian Supreme Court ordered the police in Gujarat to reopen some 2,000 violence-related cases that had earlier been closed.<sup>228</sup> The police in Gujarat subsequently reopened 1,594 cases and reportedly announced 41 internal investigations against officers who had been found to have improperly disposed of cases.<sup>229</sup> According to one study, many of those reopened cases were summarily shut down again, and the status of the remaining cases continues to be unclear.<sup>230</sup>

The unfortunate reality, as documented in this report and many others,<sup>231</sup> is that many of the serious shortcomings the court noted in the Best Bakery and Bilkis Bano cases persist to this day. Echoes of the behavior criticized by the Supreme Court in the Best Bakery and Bilkis Bano cases were also present in the Gulberg Society and the Naroda Patia cases. Witnesses in the Gulberg Society case complained about judicial bias, even after the Supreme Court began to monitor that case actively. The fact that such complaints persisted,

even in such a high-profile case, raises serious concerns about the integrity of the many riot-related trials that were not monitored by the Supreme Court or subject to the same level of media coverage. The

impression persists that the Gujarat justice system remains compromised in any case that implicates the political leadership of the state.

More sustainable solutions can and must be found to strengthen the capacity of the Gujarat judicial system to handle complicated and politically charged cases alleging communal violence.

Finally, the concept of “justice” cannot adequately be captured with reference only to conviction rates in criminal trials against alleged perpetrators. Justice also requires various forms of reparation to the victims of injustice: efforts to establish and document the truth about what happened; official apologies and efforts to memorialize and acknowledge the trauma suffered by victims and survivors; and various structural reforms designed to prevent the same patterns of violence from arising again. In Gujarat today, twelve years after the 2002 riots, there needs to be more substantial progress in all of these areas.

“

We lost such a lot. [Two members of my family died]. I am a daily wage earner, I work to keep things going. There was a lot of satisfaction that we got most of the perpetrators.

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*Anonymous survivor statement, 2013*

## Some Noteworthy Successes

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Before focusing on the need to reform the Indian judiciary, it is important to note the successes of India's judicial response to the 2002 violence. Any proposed reform efforts must build on the institutional bases for these notable successes.

First, there have been some very high profile convictions of perpetrators, most notably the Best Bakery, Bilkis Bano and Naroda Patia cases. For the individual victims and survivors who suffered harm during the communal violence, a conviction in court represents a vindication of the idea that all in India are held equal before the law, and that justice can prevail over power. Survivors have emphasized repeatedly how important the ongoing judicial processes were to them. Survivors spoke of not being able to psychologically overcome what had happened to them and their family members in 2002 until after their court cases had concluded.<sup>232</sup>

For those riot survivors who testified in a criminal trial against their alleged perpetrators, the impact of convictions was palpable. One survivor of the Naroda Patia massacre indicated in testimony having felt "more empowered" and "vindicated" by the court's favorable judgment.<sup>233</sup> Strikingly, the Naroda Patia conviction had ripple effects across the *entire* community of victim-survivors, not just those who were personally connected to that case. As one survivor from the Gulberg Society put it when discussing the convictions in the Naroda Patia case: "At least some people got justice. Now it's my turn."<sup>234</sup> Just as a miscarriage of

justice tends to erode trust in the legal system, the opposite is also true: success in an important case also may *increase* confidence in the judiciary among the population as a whole.

Not insignificantly, especially for those victims whose livelihoods were so severely disrupted by the events of 2002, the courts were also in some instances able to provide badly needed monetary compensation for the losses they suffered. Some victims have been able to buy homes with this compensation to replace the ones they lost during the riots,<sup>235</sup> or otherwise use compensation to regain economic stability in their daily lives.

Finally, as discussed above, the list of convicted criminals includes more than just low-level perpetrators. While this is not the first time that high-level officials and political leaders have been accused or convicted of criminal misconduct in instances of communal violence in India,<sup>236</sup> the convictions of Ms. Kodnani and Mr. Bajrangi in the Naroda Patia case still stand out as an exception rather than the norm. The conviction of these high-level politicians continues to be a national news story.<sup>237</sup> These convictions document that at least in some instances, politics and violent communal behavior were dangerously intertwined in Gujarat during the 2002 violence.

These successes would likely not have been possible without the critical involvement of civil society, the media, the National Human Rights Commission, the National Commission on Minorities, and the Indian Supreme Court.

## *The Role of Civil Society*

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Commenting on the Bilkis Bano case, one reporter came to the following conclusion:

“Given the intimidation and abuse of a witness like Zaheera Sheikh in the Best Bakery case, the manner in which the team around Bilkis ensured witness protection played a crucial role. One of those involved with the case, who prefers to remain anonymous, says, “There was a broad-based team, involving a cross-section of people and activists, who gave Bilkis emotional, material and legal support for six years.” As [Supreme Court lawyer Vrinda] Grover sees it, “It is clearly not enough to have a strong case. That’s the reason why convictions in such cases are few and far between. An entire cast of characters has to generate a support system to make the criminal justice system work. It becomes a movement. And Bilkis’ became a test case.” Witness protection is the duty of the State. But for Bilkis, the women’s movement and a network of activists have provided the protection.”<sup>238</sup>

Each of the three cases under review in this report had a similar civil society mobilization effort supporting the petitioners. Organizations such as CJP, Jan Sangharsh Manch (JSM) and others supported the petitioners since 2002, as they sought to move their cases through the Indian judicial system.

Survivors spoke of the crucial psychological, legal and financial importance of such support. Haala, a survivor of the Gulberg Society massacre, spoke of the powerful psychological effect that telling her story and listening to those of others who faced similar ordeals had on her.<sup>239</sup> Aasma, another survivor, spoke of the importance of support going beyond legal advice.<sup>240</sup> In describing why she chose to trust CJP, she mentioned the fact that CJP had returned to the

internally displaced person camps subsequent to an initial documentation field visit offering legal support.<sup>241</sup> Several survivors mentioned the important role that civil society organizations, especially CJP, played in explaining in lay terms the labyrinthine procedural twists and turns of the cases.<sup>242</sup> But most of all, survivors spoke of the importance of CJP’s long-term commitment to the community of survivors.<sup>243</sup>

“ My grief is limitless. The way I am still anguished...I don’t want others to suffer. Even though I have lived through a lot of pain, I feel better when I listen to others. My pain is not the only pain.”

*Survivor statement (Haala – pseudonym), 2013*

### *The Role of The Media*

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Some of the early reporting on the riots took on a highly politicized tone, and some victims' advocates and scholars have accused certain Gujarati newspapers and television broadcasters of having propagated hate speech during and after the riots.<sup>244</sup>

But for the most part, the media have covered the main events of the post-riot aftermath with rigor, and are credited by analysts as having exposed the truth about what happened in 2002 Gujarat.<sup>245</sup> This is especially true of the country's investigative reporters.<sup>246</sup> Indeed, the petitioners in the Jafri case have benefitted tremendously from the efforts of journalists to uncover details of how and why the Gujarat riots unfolded.<sup>247</sup> Many of these exposés have generated evidence that was used by Ms. Jafri in her case alleging a higher-level conspiracy behind the violence that swept the state in 2002. For example, Ms. Jafri introduced evidence of advance planning by *sangh parivar* activists to kill Muslims that had been captured by a Tehelka undercover news journalist, and numerous other whistleblower revelations documented by independent journalists.<sup>248</sup>

The relationship between the media and the ongoing cases has been a symbiotic one. Not only did the victims and their lawyers benefit from the ongoing efforts of investigative journalists, but the cases themselves also

provided the impetus for many journalists to justify their continued coverage of the riots' aftermath. The daily reporting of most Gujarat editions of the major English-language national newspapers (i.e. *the Times of India*, *the Hindu*, *DNA*, *the Indian Express*, *Hindustan Times*) has extensively covered riot-related stories. Most of this ongoing reporting has focused on the cases as they make their way through the courts. Occasionally, usually following a major event in one of the cases, the pages of these newspapers would publish opinion pieces on the legacy of the 2002 riots. The Jafri, Gulberg Society and Naroda Patia cases in particular have been documented in great detail through news outlets. Survivors of the violence have appeared in interviews with the media and have had the opportunity, like the accused,<sup>249</sup> to speak about their ordeals.<sup>250</sup> The result is that the memory of the Gujarat riots is still alive for many newspaper readers, and the broader public is aware of efforts to hold the perpetrators accountable before the law.

More recently, some advocates have begun to complain that India's press freedom is increasingly under attack, especially in the run-up to the 2014 general election.<sup>251</sup> This would be a dangerous trend, and it would significantly undermine one of the most important barriers to impunity that has existed in post-2002 Gujarat.



### *The Role of Specialized Federal Institutions*

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In its 2002 report on the Gujarat riots, Human Rights Watch commended the role of the National Human Rights Commission (NHRC) and the National Commission for Minorities (NCM) in taking prompt action in response to news of the Gujarat riots.<sup>252</sup> Indeed, the NHRC issued its first order relating to the riots on March 1, 2002, two days after the violence first broke out.<sup>253</sup> After conducting an investigation into the violence, the NHRC recommended the removal of five cases to the Central Bureau of Investigation (CBI) for investigation.<sup>254, \*\*\*\*</sup> In a written response, the State government rejected the need for CBI involvement, stating that such a move would only “indefinitely delay the investigation” and likely lead to the release of the accused on bail.<sup>255</sup> The national Ministry of Home Affairs agreed, stating that such a transfer would be impossible without a formal request by the Gujarat government.<sup>256</sup>

The NHRC intervened again in July 2003, when news emerged that the controversial Best Bakery case had ended with the acquittal of all accused. After an urgent fact-finding mission to Vadodara (where the case had gone to trial), the Commission referred the case to the Indian Supreme Court, demanding that the trial court’s judgment be voided, the case be re-investigated by an independent agency, and the subsequent trial be held outside the state of Gujarat.<sup>257</sup> The

NHRC played a similar role in the Bilkis Bano case.<sup>258</sup>

The NCM also conducted independent investigations into the Gujarat violence. In March 2002, subsequent to a fact-finding mission to Gujarat, the NCM expressed its concern for the safety and well being of Gujarat’s IDPs, and recommended the immediate reconstruction of places of worship that were destroyed during the violence.<sup>259</sup> The NCM continued to focus on the plight of Gujarat’s IDPs, and in 2006 issued another report taking issue with the official statements of the Gujarat government regarding the conditions in the state’s IDP camps.<sup>260</sup>

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\*\*\*\* The CBI is the elite, federal-level investigative police agency in India.

### *The Role of The Supreme Court*

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Much of this early activism focused on efforts to move the Indian Supreme Court. As described above, the NHRC, with the support of several other civil society actors, petitioned the Supreme Court in 2003 to void the trial courts' decisions in the Best Bakery and Bilkis Bano cases, and to transfer those cases outside of the Gujarat courts to be reinvestigated and retried. The Supreme Court in April 2004 ordered the removal of the Best Bakery case to Maharashtra State,<sup>261</sup> and did the same for the Bilkis Bano case in August of the same year.<sup>262</sup> That same month, the Court ordered the State of Gujarat to create a high-level police committee to reopen, re-investigate, and take measures to bring to trial over 2,000 cases that had been closed or dismissed by Gujarat authorities, ostensibly for lack of actionable evidence.<sup>263</sup> Three months later, the Supreme Court entered a stay in ten ongoing cases in the Gujarat court system, including the Naroda Patia and the Gulberg Society cases.<sup>264</sup> In March 2008, the Supreme Court finally decided against transferring the cases outside of Gujarat and instead created the SIT to reinvestigate the cases.<sup>265</sup> A year later, after reviewing the initial efforts of the SIT, the court lifted the stay on the cases and ordered the Gujarat High Court to designate six "fast track" courts to handle the cases.<sup>266</sup> The court also ordered the SIT, in collaboration with relevant state and federal authorities, to provide witnesses and their families with physical protection.<sup>267</sup>

The Supreme Court subsequently intervened multiple times to reinforce the integrity of the ad-hoc institutional infrastructure it had

created. In May 2009, and again in April 2010, the Supreme Court intervened to reconstitute the SIT in response to a series of resignations or allegations by minority witnesses (or defendants in the Godhra case) that members of the SIT were biased against them.<sup>268</sup> In February 2011, the Supreme Court intervened in the ongoing Gulberg Society trial, ordering that the presiding judge be replaced in response to complaints about his lack of impartiality (see above, p.13). The Supreme Court also ordered that witnesses in the SIT-run cases be granted protection by the Central Industrial Security Force, in response to reports of threats to witnesses.<sup>269</sup> According to one of the co-petitioners in the Jafri case, none of these crucial roadblocks to justice would have been lifted absent the Supreme Court's involvement.<sup>270</sup>

The Supreme Court continues to be the ultimate guarantor of justice in the nine riot-related cases still under the court's oversight. But the Supreme Court is also a bottleneck. Only few lawyers are experienced enough to have ready access the Supreme Court. Furthermore, in at least two cases, the Supreme Court has made clear its apparent "exasperation" that advocates continue to look to the Supreme Court to ensure the integrity of the judicial proceedings at the local level.<sup>271</sup>

A judicial system that relies exclusively on the Indian Supreme Court as the guarantor of judicial integrity is, by definition, a fragile one. To be truly sustainable, the reform process must promote institutional reform at the local level, in Gujarat itself.

## The need for Further Reforms

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Under international law, states have an obligation to ensure adequate remedies for victims of human rights violations. This basic principle of human rights doctrine is articulated in Article 2(3) of the International Covenant on Civil and Political Rights (ICCPR), which mandates each State Party:<sup>272</sup>

- (a) To ensure that any person whose [civil and political rights] are violated shall have an effective remedy [],
- (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy,
- (c) To ensure that the competent authorities shall enforce such remedies when granted.

In 2005, the United Nations General Assembly issued a resolution outlining basic principles and guidelines<sup>\*\*\*\*</sup> derived from these core human rights obligations.<sup>273</sup> The document concerns states' obligations in response to gross violations of human rights law and serious violations of international humanitarian law<sup>274</sup> and does not enumerate any additional international or domestic legal obligations. Rather, it "identif[ies] mechanisms, modalities

procedures and methods for the implementation of *existing* legal obligations under international human rights law and international humanitarian law"<sup>275</sup> (emphasis added). In other words, the document merely restates the obligations states already have by virtue of other, binding sources of law.<sup>\*\*\*\*</sup>

The 2005 resolution lists four duties that flow from states' fundamental responsibility to respect, protect, and fulfill international human rights law and international humanitarian law:<sup>276</sup>

1. Take appropriate legislative and administrative and other appropriate measures to prevent violations;
2. Investigate violations effectively, promptly, thoroughly and impartially and, where appropriate, take action against those allegedly responsible in accordance with domestic and international law;
3. Provide those who claim to be victims of a human rights or humanitarian law violation with equal and effective access to justice, [] irrespective of who may be the bearer of the responsibility for the violation; and

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<sup>\*\*\*\*</sup> This document is reproduced in full in Appendix A to this report, below, p. 69.

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<sup>\*\*\*\*</sup> A chart summarizing binding and non-binding sources of international law relevant to the situation discussed in this report can be found in Appendix B to this report, below, p. 79.

4. Provide effective remedies to victims, including reparation, [].

These four duties form the basis for the recommendations that follow, which adopt the structure of the 2005 basic principles and highlight a number of potential areas for structural reform. The analysis then returns briefly to the Gulberg Society and Jafri cases (the two cases under review in this report that

are still pending in in Gujarat’s judicial system when the report went to press), drawing some final conclusions on how the authorities involved in those cases might proceed in light of their obligations under international human rights law. Finally, the report concludes with recommendations aimed at the international community as it assists and supports the Indian and Gujarat authorities in these various challenges.

### **Promote Legislative, Administrative and Other Initiatives to Prevent Communal Violence**

Although beyond the scope of this report, it seems clear that authorities in Gujarat failed to prepare for and counteract communal violence, both in Godhra as well as in the days and weeks following the Godhra incident. In discussing the issue, the NHRC stated that the principle of *res ipsa loquitur* (lit. “the affair speaking for itself”) applies, suggesting that there was a clear state failure to “protect the rights to life, liberty, equality and dignity of all of those who constitute it.”<sup>277</sup> Thus, even accepting the SIT’s conclusion that there were no *individuals* among Ms. Jafri’s list of alleged conspirators who could be criminally charged with any wrongdoing, the NHRC finding nonetheless underscores the urgent need to implement *systemic* reforms designed to identify and prevent communal violence from occurring again in the future.

Much has been written about the failure of Gujarat law enforcement authorities during the 2002 riots to heed the ample warning signs, both in the weeks and days prior to February 27, 2002, and in the chaotic immediate aftermath of the Godhra tragedy, that communal violence was likely to occur.<sup>278</sup> The

details of the intelligence breakdown in Gujarat, especially as recounted by insiders such as Mr. R.B. Sreekumar, former Director General of Police (DGP) <sup>§§§§</sup> of Gujarat,<sup>279</sup> should be scrutinized for lessons on how to enhance the ability of the State’s intelligence and law enforcement authorities to prevent situations of potential communal violence from spiraling out of control. National and international best practices with regard to such preventative measures should be taken into account.

The result of such research could be the compilation and promulgation of internal guidelines on how to prevent, contain and counteract situations of communal violence.<sup>280</sup>

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<sup>§§§§</sup> The DGP is the highest-ranking police official in an Indian State.

### Recommendation #1:

Relevant federal and state authorities, acting individually or in concert, should task an independent commission to analyze the breakdown in 2002 of Gujarat's intelligence and law enforcement safeguards against communal violence, and take actions on any recommendations for improvement.

The commission of inquiry should have limited power to grant insiders immunity for their testimony. The purpose of the commission would be to generate actionable guidelines for Gujarat authorities on how to prevent, contain and counteract situations of communal violence.

### Investigate and Prosecute Alleged Instances of Communal Violence

The second prong of states' responsibility to respect, protect, and fulfill international human rights law and international humanitarian law pertains to its obligation to "Investigate violations effectively, promptly, thoroughly and impartially and, where appropriate, take action against those allegedly responsible in accordance with domestic and international law."<sup>281</sup> In other words, states under international law have an obligation to (1) investigate grave violations of international human rights law (IHRL)<sup>\*\*\*\*</sup> and International Criminal Law (ICL),<sup>++++</sup> and (2) to prosecute

criminally those responsible for such violations. The responsibility for these investigations and subsequent prosecutions rests with the State, and should be carried out regardless of the initiative of victims and survivors of the violations.

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\*\*\*\* International human rights law addresses rights that the state is obligated to *respect, protect* and *fulfill* with regard to individuals over whom it exercises jurisdiction, as articulated in various binding treaties and customary international legal norms.

++++ International Criminal law pertains to a set of grave offenses, typically defined as war crimes, crimes against humanity, acts of genocide, and

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crimes against peace, that give rise to individual criminal liability.

### *Overhaul and Reinforce the FIR process*

As described above, the process by which criminal cases were initiated in the post-Godhra riot cases was deeply flawed and prone to widespread abuse and manipulation. As a result, hundreds—if not thousands—of cases never even made it into the criminal justice system.

Amnesty International has concluded that in some cases, police simply refused to file an FIR for many victims of communal violence in Gujarat.<sup>282</sup> In others, the police officer taking down the case information willfully distorted, diluted or falsified witness' statements, making the information practically meaningless for prosecutorial purposes.<sup>\*\*\*\*</sup> Many of the FIRs

documenting witness' statements were written to suggest only that an "unruly mob" had perpetrated the alleged crime, making it impossible even for a well-intentioned prosecutor to bring criminal charges against any individual members of that mob for lack of information. Several prosecution witnesses in both the Gulberg Society and Naroda Patia cases described police unwillingness to properly record their allegations in an FIR.<sup>283</sup>

Police also consolidated numerous individual FIRs into so-called "omnibus FIRs" (bundling together individual reports of criminal violence pertaining to the same general series of attacks). For example, the Naroda Patia case bundled together 120 separate individual FIRs into one omnibus FIR,<sup>284</sup> while the Gulberg Society Case bundled 24 such complaints.<sup>285</sup> In that process, the new omnibus FIRs often lost much of the specificity and factual details that were contained in the original FIRs.<sup>286</sup> Critics alleged that such bundling may have been done strategically to shield key high-ranking accused from liability.<sup>287</sup>

“ The police ... said that a Hindu mob attacked a Muslim mob ... I am not a 'mob,' I am a woman who was gang-raped by three men. How can I hope for justice when they don't even register my complaint properly? [she added] To my surprise, the police said I cannot file an FIR. They said an FIR had already existed for that day's events. ”

*Sultana Feroz Sheikh – survivor victim*  
Cited in Rama Lakshmi, "Rapes Go Unpublished in Indian Mob Attacks; Muslim Women Say Claims are Ignored," *Washington Post*, June 3, 2002, and reproduced in *Human Rights Watch, Compounding Injustice*. 15:3 (C), 2003 at 24

\*\*\*\* More often, however, police investigators simply refused to record properly the full details of the crimes committed or important facts about the identities of the alleged perpetrators. This pattern of official misconduct has been widely documented by investigative commissions and human rights reports. See EN 282.

In other cases, the police required victims seeking to initiate criminal proceedings to lead the police on walking tours of their former neighborhoods. Ostensibly, this was done to allow police to fill in the details missing in the FIRs.<sup>288</sup> In practice, however, perpetrators were able to easily identify the individuals who initiated criminal charges against them. This has

created the potential for harassment, threats, and intimidation of witnesses by potential defendants seeking to get those complaints withdrawn.<sup>289</sup>

From the above discussion, it seems apparent that in situations of alleged communal violence, especially in those in which the police are potentially implicated in the violence, the current process for initiating a criminal case is deeply flawed. The current system effectively gives the police officer taking down the witness statement de facto veto power over whether

that complaint will ever result in criminal charges.

The Indian Code of Criminal Procedure (1973) already contains four important safeguards against fraud and manipulation of FIRs by recording police officers: (1) police officers must read aloud to the informant the content of the FIRs as recorded; (2) the complainant must sign the FIR as recorded; (3) the FIRs must be entered into a register to be kept by the officer; and (4) the complainant must be given a copy of the FIR, free of charge.<sup>290</sup>

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### **Recommendation #2:**

Gujarat police internal oversight mechanisms should rigorously enforce compliance with safeguards designed to prevent fraud and manipulation of First Instance Reports (FIRs) by the recording police officer.

Police officers who neglect to abide by these safeguards should be warned and, when appropriate, disciplined including through termination of employment.

Unfortunately, these safeguards, even when respected, have provided victims with only limited protection from fraud. In situations in which complainants are subjected to illegal duress, intimidation, or when police officers exploit complainants' illiteracy or other inability to fully comprehend the nature of the legal

process, victims have been forced to sign FIRs they later recanted as fraudulent or improperly recorded. For this reason, additional safeguards need to be developed to minimize the opportunity for police officers to fraudulently record FIRs.

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### **Recommendation #3:**

Indian federal and state judicial authorities, acting individually or in concert, should modernize the process by which FIRs are registered.

This modernization process should explore the feasibility of technological means of capturing and digitally authenticating all orally communicated reports of alleged criminal wrongdoing, including submission of FIRs by email.

There are robust policy reasons for allocating the primary responsibility to handle criminal investigations to the police. But when the integrity of the police investigation process itself is in doubt (as it was alleged in the case of the Gujarat 2002 riots), the system must provide an alternate means of initiating a criminal complaint.

Indian law already foresees such provisions. According to Article 190 of the Indian Code of Criminal Procedure (1973), oral communication of a cognizable offense before a police officer is only one of three ways to initiate a criminal case before a magistrate.<sup>291</sup> Two alternate means also exist: (1) the independent submission of a complaint alleging facts that would rise to the level of a cognizable offense (the process Ms. Jafri and her co-petitioners used to file their case), and (2) the Magistrate's

own initiative based on his or her independent knowledge of a cognizable offense, or an interaction he or she has with someone who reports on that offense.

In practice, these two alternate means are rarely used. Courts routinely refuse to take action on complaints of criminal wrongdoing if the victims have not first filed an FIR with the police. Furthermore, especially for victims who do not enjoy legal representation, discerning how to initiate a criminal case using one of these alternate means is a daunting task. There is little popularly accessible guidance on how these alternate modalities function. Judicial authorities at both the central and state level should clarify by what process victims can initiate a case if for some reason they cannot use the regular FIR process.

#### **Recommendation #4:**

Relevant federal and state judicial authorities, acting individually or in concert, should spread awareness among lawyers, paralegals, and community activists regarding alternate means to initiate a criminal case in India.

These means, that do not rely on a police report being filed, should be in line with Article 190 of the Indian Code of Criminal Procedure (1973). Authorities should clarify the procedure by which individuals—with or without the support of lawyers—can orally communicate an alleged violation directly to a magistrate, as well as the formal submission procedure for complaints already reduced to writing by the complainant and (when applicable) his or her lawyers.



*Ensure the Adequate Investigation (or Re-Investigation) of Alleged Instances of Communal Violence*

The SIT, as highlighted by the Ramachandran report,<sup>292</sup> assumed for itself the quasi-judicial function of evaluating the credibility of the evidence crucial to Ms. Jafri's allegations of criminal

conspiracy.

As described above, the Supreme Court mandated the SIT only to

"reinvestigate" the high-profile cases identified in its order, stating that "[f]or the purposes of the cases covered by these directions, the SIT shall take over the functions of the concerned Police Stations qua investigating agencies and accordingly exercise powers and jurisdiction in consonance with the scheme and provisions of the Code of Criminal Procedure, 1973."<sup>293</sup>

Under the Indian Code of Criminal Procedure, all police investigations—regardless of whether the police believe the allegations to be well founded—are handed to a Magistrate's Court. The Magistrate has the power to commission a renewed *independent* investigation under his or her direction, and decide whether to proceed to trial or dismiss the complaint.<sup>294</sup>

At the same time that the SIT exceeded its mandate by assessing the evidentiary value of the testimony it had gathered, it also fell short of its mandate to fully re-investigate the alleged crimes in the cases assigned to it. As described above, the Supreme Court twice reconstituted the SIT in response to serious allegations of bias among the SIT's members (see above, p. 32). Many victims, survivors and their advocates

have accused the SIT of bias,<sup>295</sup> particularly in the Gulberg Society and Jafri cases.<sup>296</sup> This is perhaps not surprising given that the chief officers tasked with supervising the investigations were all drawn from the Gujarat police force,<sup>297</sup> some literally from the police investigation units that the SIT was

tasked to replace.<sup>298</sup> The SIT has been accused of failing to ask witnesses about inconsistencies in their narratives that were widely debated in the media at the time, or selectively making reference to evidence from certain pro-establishment parties over others.<sup>299</sup> In 2010, the special public prosecutor in the Gulberg Society case joined the witnesses in critiquing the SIT's impartiality, justifying his resignation from the case in part with reference to the SIT's alleged efforts to shield police from criminal liability.<sup>300</sup> The SIT even resorted to direct personal attacks on Ms. Jafri and her co-petitioners in response to their refusal to accept the SIT's closure report on legal and substantive grounds.<sup>301</sup>

The evidence suggests that the SIT failed to conduct a proper investigation. As a result, the Supreme Court ought to rethink its strategy for investigating the alleged crimes of the Gujarat riots. A new strategy might incorporate significant additional safeguards to ensure the impartiality of the SIT.

In light of the significant and credible allegations of bias and incomplete investigation

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They are all fundamentalists.

”

Noel Parmar – SIT Member

Speaking about Gujarati Muslims with undercover journalist Ashish Kheitan

by the SIT, the State of India still has arguably not successfully conducted an “effective, prompt, thorough and impartial”<sup>302</sup>

investigation into the alleged violations of the 2002 Gujarat riots.

#### **Recommendation #5:**

The Indian Supreme Court should order a review of the ten 2002 riot cases that the Supreme Court tasked the SIT to investigate, ensuring the effectiveness, promptness, thoroughness and impartiality of the investigation.

If the Supreme Court tasks the SIT with this review, it must first reconstitute the SIT’s membership to ensure its independence and impartiality. It should do this with the assistance of civil society. In the alternative, judicial authorities might devise an alternate model for conducting an effective, prompt, thorough and impartial investigation into the cases.

Finally, it is unclear whether the over 2,000 riot-related cases that the Supreme Court ordered to be reinvestigated in 2004<sup>303</sup> have been properly re-investigated. The Supreme Court should designate a specialized complaints mechanism to allow victims of any instances of

communal violence who feel that their original complaints have been either improperly dismissed or inadequately investigated to file a formal complaint, and to have that complaint promptly investigated by a special authority.

#### **Recommendation #6:**

Relevant federal and state judicial authorities, acting individually or in concert, should create a special mechanism to accept and investigate individual complaints alleging the improper dismissal or inadequate investigation into a communal violence-related incident.

### ***Reinforce the Judicial System’s Ability to Cope with Cases Alleging Communal Violence***

According to the Indian Code of Criminal Procedures, once an alleged criminal violation has been adequately investigated, it is handed to a Magistrate’s tribunal.<sup>304</sup> The investigating agency (IA) will file a report at the end of the investigation.<sup>305</sup> If the IA believes the charges

are well founded, it will issue a chargesheet, and the trial will commence.<sup>306</sup> If the IA believes that the case should be closed, it will issue a closure report.<sup>307</sup> In such cases, the Magistrate can either accept the IA’s report and close the matter, or reject the IA’s opinion and

take cognizance of the offense and proceed with the trial.<sup>308</sup> There are three important institutional components that are essential to the proper functioning of a criminal trial: (1) the existence of an *independent* and *impartial* judiciary, (2) the existence of an *impartial* and *objective* prosecutorial agency, and (3) the existence of an *independent* lawyers' bar (see below, p.47).<sup>309</sup>

### **Independent and Impartial Judiciary:**

The UN General Assembly in 1985 defined a series of technical benchmarks that should be used to evaluate the independence and impartiality of a judiciary.<sup>310</sup> Importantly, judges and the judiciary as a whole must be seen to be operating without bias.<sup>311</sup> Thus, even a court that actually does not demonstrate bias against any of the parties may still be reasonably perceived to be operating with bias or potential bias, and thus fail the test of impartiality.<sup>312</sup> According to the Bangalore Principles of Judicial Conduct, the proper response for judges who stand accused of bias is to recuse oneself from the case.<sup>313</sup>

As described above, the witnesses in the Gulberg Society case accused the presiding judge of bias.<sup>314</sup> In that case, the Gujarat High Court finally ordered the transfer of presiding Judge Joshi to other matters, after years of

effort by witnesses and their advocates. According to international human rights norms, however, Judge Joshi could also have recused himself from the case the moment he realized that important stakeholders to the trial—in this case witnesses and prosecutors—perceived him to be biased. Witnesses in that case began alleging judicial bias as early as January 2010, barely a few months into the trial.<sup>315</sup> Given the intensity and severity of the allegations made against him, Judge Joshi should have considered recusing himself from the trial in the interests of ensuring a fair trial.

Of course, recusal should be reserved only for exceptional instances.<sup>316</sup> The National and State courts of appeal retain the ultimate authority to force judicial reassignment in cases of alleged judicial bias. In handling any such allegations, the courts of appeal should weigh the severity of the alleged bias against other interests of judicial integrity.

In any case of judicial reassignment due to alleged bias, whether voluntary or forced by a higher judicial authority, an independent investigation should be set up after the judge's removal to ensure that the trial process, witness testimony, and evidence gathered has not been compromised by the judges alleged subjective or objective bias.

### **Recommendation #7:**

Relevant federal and state judicial authorities, acting individually or in concert, should implement a mandatory inquiry in all Communal violence-related cases where a former judge either voluntarily recused him- or herself from a case, or was removed from the case by order of a higher court, to see whether that judge caused irreparable harm to the trial record by virtue of bias, and, if so, correct for that harm before proceeding with the case.

## Impartial and Objective Prosecutorial

### Agency:

In 1990, the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders promulgated the United Nations Guidelines on the Role of Prosecutors.<sup>317</sup> According to these standards, prosecutors should be “individuals of integrity and ability, with appropriate training and qualifications,”<sup>318</sup> and the hiring process must “embody safeguards against appointments based on partiality or prejudice, excluding any discrimination against a person on the grounds of race, colour, sex, language, religion, *political or other opinion*, national, social or ethnic origin, property, birth, economic or other status”<sup>319</sup> (emphasis added). Prosecutors must be allowed to carry out their duty shielded from efforts to intimidate, harass, or otherwise interfere with their work.<sup>320</sup>

Prosecutors also have the duty to “give due attention to the prosecution of crimes committed by public officials, particularly . . . grave violations of human rights and other crimes recognized by international law”<sup>321</sup>

With regard to the performance of their duties, Prosecutors shall:<sup>322</sup>

- (a) Carry out their Functions impartially and avoid all political, social, religious, racial, cultural, sexual or any other kind of discrimination;
- (b) Protect the public interest, act with objectivity, take proper account of the position of the suspect and the victim, and pay attention to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect;

- (c) Keep matters in their possession confidential, unless the performance of the duty or the needs of justice require otherwise; [and]
- (d) Consider the views and concerns of victims when their personal interests are affected and ensure that victims are informed of their rights in accordance with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

Applying these standards to the Gujarat riots, serious questions arise as to the impartiality and objectivity of the State’s prosecutors. The Jafri case alleges that the Gujarat court system should be held accountable for “recommending pro BJP, VHP advocates for appointment as Public Prosecutors, to present cases against Hindu rioters.”<sup>323</sup> In its Closure Report, the SIT *agreed* with the Petitioner. The SIT wrote that “the political affiliation of the advocates did weigh with the Govt. for the appointment of the Public Prosecutors.”<sup>324</sup> The SIT went on to dismiss the material relevance of this finding, however, noting that “no specific allegation of showing favour by [the prosecutors] to any of the accused persons involved in the riots either in grant of bail or during the trial has come to light.”<sup>325</sup>

According to the international human rights standards cited above, however, the SIT has applied the incorrect standards in assessing Ms. Jafri’s allegations. It is not, as the SIT contended, relevant whether the Public Prosecutors in Gujarat *in fact* showed any favoritism towards the defendants.<sup>326</sup> The relevant question is instead whether the hiring process “embod[ies] safeguards against appointments based on partiality or prejudice”<sup>327</sup> On this score, the SIT’s findings are sufficient to demonstrate a clear shortcoming

according to international legal norms.<sup>328</sup> The politicization of prosecutorial hiring and appointment practices should be expressly forbidden, and reforms should be put in place

to prevent such considerations from entering into the hiring, promotion, or appointment decisions pertaining to Prosecutors in the State of Gujarat.

#### **Recommendation #8:**

Gujarat state authorities should review the criteria used to decide whether to hire, terminate, promote, demote, appoint or remove prosecutors in the State of Gujarat, ensuring that an individual's political proclivities or affiliation with certain groups or organizations cannot factor into such decisions.

### *Mainstream and Build Upon the "Victim-Friendly" Trial Model*

The judgment in the Naroda Patia case spoke of the importance of "giv[ing] complete liberty to the defence, but at the same time, *strictly and sincerely taking care of [the] feeling[s] of the [Prosecution Witnesses (PW)], protect[ing] them*

*against annoying, insulting or embarrassing questions by the cross examiner*"<sup>329</sup> (emphasis added). The judgment describes the fear and retraumatization that victims suffered while testifying in open court:

"This Court has observed that during the deposition many of the witnesses were finding it very difficult to control rolling down their tears on their cheeks. They were eager to show their burnt limbs, their injured limbs and explain their losses to the Court. Many of the parent witnesses were unable to describe about the death of their children in the riot, they became so emotional that very often needed to be consoled and offered a glass of water to complete their deposition. Their pains, agonies, anxiety, effects of shock and trauma were very much visible and noticeable. Even on the date of the deposition they were noticed to have been very much afraid. They were frequently assured about their security, but when they used to go to identify the accused, it was noticed that many of the witnesses have avoided to identify the accused whom they were knowing very well. At least two to three PWs were so much disturbed that their physical health was affected and ambulance had to be called to take them to the hospital."<sup>330</sup>

Victims and survivors spoke of the trauma associated with testifying in court. The stress was compounded when the presiding judge proved unsympathetic to the

“ I was narrating what happened when I broke down. I gave testimony for [several] days, standing the whole time. ”

- Gujarat violence survivor

experiences of the witnesses, as happened in the Gulberg Society case. Witnesses of the Gujarat violence also described how the cross examination of their testimony often focused on a series of technical and substantively irrelevant questions about minor details, in an effort to impugn their credibility as witnesses, rather than the substance of their testimony.<sup>331</sup> These court-sanctioned behaviors compounded the witness' anxiety during and after their testimony.

According to the judge in the Naroda Patia case, “[v]ictims must be treated better by the Criminal Justice System.”<sup>332</sup> The criminal justice system, according to that judgment, needs “to be more victim-friendly and should treat witnesses as human beings and not as evidence for this side or that side.”<sup>333</sup>

Judge Yagnik’s vision of a more victim-friendly judicial process is consistent with international human rights norms focusing on the rights that *victims* should enjoy in a fair trial. According to a U.N. General Assembly resolution passed on this topic in 1985, it is important that victims “be treated with compassion and respect for their dignity.”<sup>334</sup>

Throughout the judicial process, victims also enjoy the following rights:

- The right to be informed “of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information.”<sup>335</sup>
- The right to have a voice in the proceedings whenever their interests are concerned, without prejudice to the accused.<sup>336</sup>

- The right to “proper assistance . . . throughout the legal process.”<sup>337</sup>
- The right of victims to have “inconveniences” for them minimized, to have their privacy protected, and, when necessary, to have their safety ensured, “as well as that of their families and witnesses on their behalf, from intimidation and retaliation.”<sup>338</sup>
- The expectation that authorities will “avoid[] unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.”<sup>339</sup>
- Victims also enjoy the right to “restitution and/or compensation, and necessary material, medical, psychological and social assistance and support.”<sup>340</sup>

“ I lost [so much]. I will never be the same. During testimony I was recalling the events, and the prosecutor was trying to support me. While I was giving testimony, the judge said “does she look damaged at all?” And during my testimony the judge kept looking at the accused and laughing. He allowed the accused to move places in an effort to confuse me when I was identifying them. ”

- Gujarat violence survivor

Witnesses who testified in the Naroda Patia case generally had a more favorable opinion of the judge and the judiciary in that case. One such witness found Judge Yagnik to be “very empathetic” and encouraging.<sup>341</sup> The judge allowed the witness to take her time in recalling details of the events that happened a decade earlier and gave her ample opportunity to identify the accused in open court.<sup>342</sup> The judge also reportedly did not publicly discredit the witnesses, nor did she treat them as if they themselves were the accused in need of defending themselves and their experiences.

Instead, she made the witnesses feel more at ease and comfortable in court. This was particularly important for female survivors of gender violence. Judge Yagnik's approach to

courtroom management should serve as a model for other judges presiding over similar cases.

#### Recommendation #9:

Relevant federal and state judicial authorities, acting individually or in concert, should take note of and disseminate best practices regarding the maintenance of a "victim-friendly" trial.

Another issue in need of further research is how best to guarantee the physical security of key prosecution witnesses in cases involving allegations of communal violence, while at the same time minimizing the potential for such security to ostracize that witness from his or her community. India introduced its first witness protection program in 1985, limiting it to terrorism cases.<sup>343</sup> In 2000, witness protection measures were introduced to protect juveniles from public scrutiny in legal proceedings,<sup>344</sup> and in 2002, the use of video conferencing and written questions in cases alleging sexual offenses was first introduced.<sup>345</sup>

In 2003, the Supreme Court of India addressed the issue of witness protection in the context of the Gujarat riots. In the *NHRC v. State of Gujarat* decision,<sup>346</sup> the Court stated that "it is [] imperative that for justice to be done, the protection of witnesses and victims becomes essential."<sup>347</sup> The Court, after conducting an extensive survey of other jurisdictions and international criminal tribunals, "regretted that 'no law has yet been enacted, not even a scheme has been framed by the Union of India or by the State Government for giving protection to the witnesses.'" <sup>348</sup> The Supreme Court

compensated for this legislative silence in the nine cases it gave to the SIT to investigate, and thus the victims and witnesses in the Gulberg Society and Naroda Patia cases were among the first in India to benefit from India's emerging witness protection doctrine. Their experience is instructive for ongoing legislative efforts to institutionalize India's approach to witness protection in sensitive cases.

“ After the testimony, the daughter of one of the accused threatened to [attack me]. She threatened me “on the 28<sup>th</sup> we attacked in broad daylight, now we will attack you in your sleep.” ”

- Gujarat violence survivor

In response to the *NHRC v. Gujarat* decision and several others, the Law Commission of India also took up the issue, seeking specifically to respond to the Supreme Court's call for legislation setting forth India's approach to witness protection.<sup>349</sup> In 2004, the Commission circulated a consultation paper on witness identify protection and witness protection programs.<sup>350</sup> At the conclusion of the consultation, it found that "the need for protection of victims and witnesses is not

necessarily confined to cases of terrorism, or sexual offences against women or children in respect of whom special statutes exist . . . [but rather to all cases] where the Court is satisfied that there is evidence about the likelihood of danger to the lives or property of the victim or to the relatives or to the lives or property of the witnesses or of their relatives.”<sup>351</sup>

Unfortunately, examples abound demonstrating the serious threat that many witnesses faced as a result of testifying in a riot-related case.<sup>352</sup> One witness, speaking with her lawyer, stated that without police protection “[she] would have been finished a long time ago.”<sup>353</sup> Another witness spoke of how she felt safe enough to speak and identify the accused in large part due to the police protection she received.<sup>354</sup> The

“ I am still getting threats. I have protection, but it is just [a] formality. This formality still makes a difference. It is psychological confidence. At first I was worried and scared. Now I feel vindicated. ”

- Gujarat violence survivor

same witness also testified, however, that even after the judgment had come down, she and her family still at times feel threatened, especially given that many of the accused’s friends and former confederates continue to live in the neighborhood.<sup>355</sup>

Other witnesses—especially those in a position to provide key evidence against higher-level accused—experienced severe repercussions for their decision to testify. Three of Gujarat’s most prominent witnesses, R.B. Sreekumar, Sanjiv Bhatt and Pradeep Shrama, faced criminal and professional sanctions in what they claimed

were illegitimate efforts to discredit, silence, and punish them for their testimony.<sup>356</sup> In other instances, witnesses described being harassed, threatened, and ostracized, sometimes by their own communities and families for coming forward.<sup>357</sup>

But even those witnesses who were afforded police protection did not describe this as a perfect solution. Several witnesses continue to receive threats despite such protection, and others were attacked for bringing charges and testifying as witnesses.<sup>358</sup> One very high profile witness who testified in the Gulberg Society case and frequently appears in the media, spoke of how the very high-visibility police protection she receives marks her for the entire community, and leads her to feel *less* secure as a result.<sup>359</sup>

Her fears are not unfounded: Nadeem Saiyed, a key witness in the Naroda Patia case, was killed on November 5, 2011, in broad daylight, only yards from a police post in the Juhapura area of Ahmedabad.<sup>360</sup> Saiyed had been under police protection since 2009.<sup>361</sup> During the Naroda Patia case, Saiyed had testified against Ashok Sindhi, who is one of the higher-profile accused to be convicted in the Naroda Patia case.<sup>362</sup> Three years prior, Saiyed had been attacked in the same location and left for dead by his attackers.<sup>363</sup> In August 2011, Saiyed filed an FIR alleging that a local gangster had threatened to kill him unless he changed his testimony in the trial.<sup>364</sup> Just a few days prior to his murder, Saiyed had apparently approached Ahmedabad police chief S.K. Saikia seeking more security<sup>365</sup> and had also sought to arrange a meeting with one of the lawyers handling the Naroda Patia case.<sup>366</sup>



Police and other unnamed sources, however, dismissed speculation that Saiyed had been targeted because of his involvement in the Naroda Patia case. Instead, they described Saiyed to reporters as a “controversial figure:”<sup>367</sup> someone who was both “ambitious politically,”<sup>368</sup> a “police informer,”<sup>369</sup> and also someone who “faced [unspecified] allegations of extortions and blackmail.”<sup>370</sup> The theory put forward by these sources within hours of Saiyed’s murder was that a local gangster must have ordered Saiyed’s killing as revenge for his cooperation with police in their investigation of an illegal slaughterhouse operating in the district (an explanation that many of the media reports adopted).<sup>371</sup>

The police’s theory on what caused Saiyed’s murder failed to allay the fears of other Naroda Patia massacre survivors “that they too [might] meet the same fate as Nadeem Saiyed.”<sup>372</sup> Even after Saiyed’s death and the fast-track court’s instructions to the SIT to provide adequate protection to the remaining witnesses in the Naroda Patia case, witnesses alleged that “the security detail is rarely around and the cops do not even respond when called for help.”<sup>373</sup>

As mentioned above, the issue of witness protection was very much on the legislative agenda in 2006. In its report on the issue, the Law Commission proposed a draft Witness (Identity) Protection Bill,<sup>374</sup> and circulated it to the 28 States and Union Territories for commentary.<sup>375</sup> When this report went to press there still had been no public progress on the finalization of such a witness protection bill.

The State obligation to provide witnesses with protection has been established in several international instruments, and established as a core principle of the various international and hybrid criminal tribunals.<sup>376</sup> The United Nations Office on Drugs and Crime (UNODC), for example, has stated that: “All criminal justice systems have a duty to put in place procedures to provide measures for the protection of persons whose cooperation with the criminal justice system in an investigation or prosecution, puts them, or persons closely associated with them, at risk of serious physical or emotional harm.”<sup>377</sup> Indian authorities should re-prioritize the passage of a comprehensive witness protection act, in line with domestic necessity and international better practices.<sup>378</sup>

#### **Recommendation #10:**

Relevant federal and state judicial and law enforcement authorities, acting individually or in concert, should review their witness protection programs and ensure that they draw on and implement best international practices.

## *Safeguard the Independence of the Legal Profession*

The final element of the right to a fair trial is the existence of an **independent** legal profession. The 1990 United Nations Basic Principles on the Role of Lawyers states that:<sup>379</sup>

[A]dequate protection of human rights and fundamental freedoms to which all persons are entitled, be they economic, social and cultural, or civil and political, requires that all persons have effective access to legal services provided by an independent legal profession.

The Basic Principles on the Role of Lawyers also articulate three important safeguards to judicial independence that were allegedly jeopardized in the post-riots trials.<sup>380</sup>

Principle 16: Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; ... and (c) shall not suffer, or be threatened with, prosecution or administrative, economic, or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Principle 18: Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.

Principle 21: It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time.

From the outset, many of the lawyers involved in the three cases under review in this report faced (and continue to face) extreme pressure, verging on intimidation and harassment. Lawyers complained of extreme professional consequences for daring to engage in a riot case.<sup>381</sup>

In one such case, Premchand Tiwari, an alleged perpetrator of the Naroda Patia case, approached the Bar Council of Gujarat (BCG) seeking the disbarment of five prominent lawyers with the non-profit organization Jan Sangharsh Manch (JSM) who were working on the case, alleging professional misconduct.<sup>382</sup> JSM claimed to have "reasons to believe that there are many persons behind the complainant-accused, including lawyers of the accused, top politicians and leaders of the ruling party who are also accused in [the] Naroda Patia case."<sup>383</sup> In April 2014, the BCG cleared the JSM lawyers of any wrongdoing.<sup>384</sup> Suresh Mehta, former Chief Minister of Gujarat (1995-1996), also spoke out against the proceedings, whereupon the BCG threatened Mehta with disciplinary action as well.<sup>385</sup>

Teesta Setalvad, Secretary of CJP (perhaps the most well-known Gujarat victims' advocacy organization), was forced several times to defend herself against allegations that she had manipulated evidence and illegally coached witnesses,<sup>386</sup> and that she had illegally exhumed bodies of 2002 riot victims.<sup>387</sup> Charges that Setalvad or her associates had coached witnesses also came up (and were subsequently dismissed) in the five separate riot related cases.<sup>388</sup> Although Setalvad was ultimately vindicated, she was obligated to respond to four separate criminal proceedings and the SIT's

inquiry into the matter.<sup>389</sup> In her January 2012 submission to the Supreme Court defending herself against such accusations, Setalvad alleged that “the Gujarat government [was driving these allegations in order to] embroil her and her organization in parallel legal procedures,” and that “the state government was trying to dilute the concentration and attention on not just the ongoing trials in critical riot cases, but [also the Jafri case] wherein the chief minister of the state and other influential persons are accused.”<sup>390</sup>

In January 2014, Setalvad, her husband, Ehsan Jafri’s son, and two Gulberg massacre survivors were accused of criminal misconduct for allegedly mishandling funds destined to create a

memorial at the site of the Gulberg Society massacre.<sup>391</sup> These allegations of criminal misconduct were issued shortly after the petitioners had announced their intention to appeal the Gujarat Magistrate Court’s decision rejecting their Protest Petition. Despite immediate outpourings of support for Setalvad,<sup>392</sup> the courts have so far refused to quash this case, or to grant Setalvad and her co-accused temporary bail, meaning that at the time this report went to press Setalvad was risking arrest.<sup>393</sup> Gujarat police have frozen all accounts run by Setalvad’s trust as well as Setalvad and her husband’s personal accounts. At the time this report went to press, the accused had filed a case alleging vindictive police retaliation.<sup>394</sup>

#### **Recommendation #11:**

Lawyers involved in cases of alleged communal violence must continue to enjoy the freedom to carry out their work without interference or harassment. Lawyers shall not be associated with the causes or alleged crimes of their clients. Relevant federal and state bar associations, acting individually or in concert, should investigate and take action on any allegations of lawyers facing such harassment.

### **Provide Victims of Communal Violence with Easy Access to Seek Justice**

The third pillar of the State responsibility to respect, protect, and fulfill its obligation to provide an effective remedy is to “provide those who claim to be victims of a human rights or humanitarian law violation with equal and effective access to justice [], irrespective of who may ultimately be the bearer of responsibility for the violation.”<sup>395</sup> The UN General Assembly Resolution on the Basic Principles and Guidelines on the Right to a Remedy and

Reparations for Victims specifies that victims should have access to both judicial remedies and “other remedies,” as relevant under domestic and international law. It obligates states, *inter alia* to:

- Disseminate information about the remedies available to victims of human rights or humanitarian law;

- Ensure that these mechanisms are “victim-friendly;” and
- Provide legal aid to victims as they seek to claim remedies...

This paper focused primarily on *criminal* cases arising from the Gujarat riots. Whether

substantial numbers of survivors accessed the Gujarat courts seeking *individual* reparations, and—if so—how those cases fared in the courts goes beyond the scope of this paper, but may well form the basis of future analysis.

### Consider Establishing Special “Survivors’ Tribunals”

Relying on a broad notion of “the role of law”, the Naroda Patia decision fashioned an extraordinary remedy for one witness who testified to having been brutally injured and gang raped by unknown perpetrators during the violence that engulfed her community on February 28, 2002. The witness’ name is withheld in this report, but is disclosed in the original judgment.<sup>396</sup> Sexual violence was widespread during the 2002 riots—even allegedly extolled by some of the *sangh parivar* rioters. Nonetheless, only *one* victim in the Naroda Patia case survived her ordeal and testified about her experience in court. In its

decision, the Court awarded money damages to the survivor, even though it found no individual defendant guilty of the crimes she had endured. Instead, the Court held the State responsible for providing the remedy.

Noting that the witness’ testimony did not enable a conviction against any individual “tormentor,”<sup>397</sup> and indeed that she “had not sought any prayer from this Court,”<sup>398</sup> the Court nevertheless found a way to compensate the survivor. The Court’s opinion includes a striking recognition of the social stigma associated with sexual violence, and how this stigma dissuades survivors from turning to the courts for redress:

“It is settled position of law that in the tradition bound and non permissive society of India, normally every woman would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity, her matrimonial life or her image in the society had even occurred. She would be conscious of the anger of being ostracized by the society or being looked down by the society including her own family members, relatives, friends and neighbours. If a woman is married, the fear of being taunted by husband and in-laws would always haunt her. The natural inclination would be to avoid giving any publicity to the incident lest the family name and family honour is brought into controversy. In case the victim of such crime died, then, the natural inclination of the parents would be to do not mention the incident at all a it would have its ugly shadows on the lives of the surviving children and even there is constant fear of social stigma on the family in case of such occurrence being quoted.”<sup>399</sup>

Against this backdrop, the judge concluded that the witness was undoubtedly the victim of terrifying sexual violence. But instead of failing to provide redress to the victim simply because

of the court's inability to identify the *individual* perpetrator, the judge instead acknowledged the State's responsibility in such a situation:

"[I]t sounds quite fitting to record the deep concern of the Court about violation of human rights and constitutional rights of the victim who was subjected to gang rape . . . . This court firmly believes that it is call of justice, equity, good conscience and even prime and paramount duty of the Court to address the issue even though the accusation against the accused has not been proved . . . .The international concern for the impacts of sexual offences against women guide this court that this victim needs to be compensated."<sup>400</sup>

The court awarded the witness Rs. 5 lacs (approx. \$9,000 USD), stating that "it is the *duty of the state* to maintain law and order situation so nicely that, such offences do not take place at all. When such offences take place, it shows that the state has responsibility to compensate the victim as, *the concept of [the] role of law* so suggests."<sup>401</sup> (Emphasis added).

As Judge Yagnik herself noted, however, for many survivors of sexual violence, the mere existence of a remedy is still insufficient to overcome the substantial social and cultural barriers preventing them from speaking out about past attacks. International law imposes obligations on states in situations of rape and other forms of sexual violence.<sup>402</sup> Under international human rights law, the state has a *systemic* obligation to suppress gender violence, as well as an *individual*-level responsibility to "provide each victim with effective measures of prevention, protection, punishment and reparation."<sup>403</sup> To do so, the state needs to guarantee an "effectively functioning criminal justice system."<sup>404</sup> Extensive better practices literature has emerged describing how to structure a courtroom environment to be more conducive

to the needs of survivors of sexual violence.<sup>405</sup> India, over the past decade, has made great strides defining (and criminalizing) sexual violence, especially in the wake of several high-profile instances of sexual violence in Delhi and elsewhere.<sup>406</sup> Strikingly, however, while the reforms contain numerous very important new measures with regard to sexual violence and violence against women, providing survivors with a "victim-friendly" environment in court has *not* figured prominently in these reform efforts.<sup>§§§§§</sup>

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<sup>§§§§§</sup> Other than some recommendations pertaining to an improved FIR registration process and more victim-friendly facilities at police station, most of the recommendations in the Verna Commission report have to do with defining previously vague categories of sexual violence (ex. Rape, Sex trafficking, voyeurism, etc.), and inserting accountability mechanisms for public officials tasked with preventing and responding to violence against women. *See generally*, Verna Commission Report, EN, 406.

Thus, Judge Yagnik's call for a more victim-friendly trial remains as pressing now as it was when the decision was issued.<sup>407</sup> Furthermore, her inclination is also consistent with international human rights law, and applicable not only for instances of sexual violence, but for other human rights violations as well.<sup>408</sup> Judge Yagnik ascribed responsibility for witness' suffering (gang rape, in the Naroda Patia case) to the State under the *due diligence* standard, holding that the state could have taken preventive measures (e.g., earlier and more effective police intervention, subsequent to specific warnings that violent attack could take

place).<sup>409</sup> The Naroda Patia judgment provides a powerful standard by which to judge a State for its failure to prevent serious human rights violations from occurring across Gujarat during the 2002 Riots. Moreover, it provides the survivors of those violent attacks with a possible remedy for their suffering, even if they cannot identify their attacker(s).

The creation of a specialized tribunal designed specifically to hear such cases would allow the judiciary to introduce additional "victim-friendly" provisions that might not be available in the traditional, adversarial context of a criminal tribunal.

#### **Recommendation #12:**

Relevant federal and state judicial authorities, acting individually or in concert, should consider creating a specialized judicial procedure to handle claims for reparations from victims of communal violence.

Survivors of human rights violations should have access to judicial remedies independent of the State's obligation to investigate and prosecute criminal wrongdoing. A specialized tribunal could be designed around the interests of the victims, survivors and witnesses of human rights abuse, and open to survivors regardless of whether they know the identity/ies of their perpetrator(s). The state's sole interest in these hearings would be to prevent fraud and provide reparations to the victims of gross human rights abuses.

#### **Provide Effective Remedies to Victims of Communal Violence, Including Reparations**

The final prong of a state's responsibility to ensure the right to an effective remedy for victims of human rights and humanitarian law violations involves reparations. The UN General Assembly Resolution on the Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims specifies that "a State

shall provide reparation to victims for acts or omissions which can be attributed to the State and constitute gross violations of international human rights law or serious violations of international humanitarian law."<sup>410</sup> The document also specifies states should "establish national programmes for reparation and other

assistance to victims in the event that the parties liable for the harm suffered are unable or unwilling to meet their obligations.”<sup>411</sup> In Gujarat, this standard would imply that both the Indian and Gujarat State governments bear

the ultimate responsibility for ensuring that victims receive reparations for the harms they suffered during the 2002 riots.

The U.N. document lists five different categories of reparation.

1. Restitution: Reparation intended to “restore the victim to the original situation before the gross violations of international human rights law or serious violations of international humanitarian law occurred.”<sup>412</sup>
2. Compensation: Reparations (usually monetary) for any “economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case.”<sup>413</sup>
3. Rehabilitation: The provision to victims of “medical and psychological care, as well as legal and social services.”<sup>414</sup>
4. Satisfaction: Official acknowledgment of the violations, including efforts to stop ongoing violence, truth commissions or other forms of official inquiry, public apologies and tributes to the victims, inclusion of victims’ narratives into educational materials, etc.<sup>415</sup>
5. Guarantees of non-Repetition: Structural and institutional measures designed to prevent similar human rights or humanitarian law violations in the future.<sup>416</sup>

This report focuses on the efforts to secure *criminal* convictions against those who engaged in violent behavior during the 2002 Gujarat riots. But as the above list makes clear, justice—especially from the victims’ perspective—is a far broader concept. Thus, although it goes beyond the scope of this report, the holistic pursuit of justice would require authorities at both the state and national level to seriously consider a more broadly defined system of reparations to riot victims. Such a system might include monetary restitution and compensation for harms suffered, in-kind services to help survivors deal with ongoing trauma, and a variety of other initiatives designed to establish

the truth of what happened during the riots. It might also include memorialization efforts designed to publicly acknowledge that what happened was both wrong and illegal. Finally, it might require authorities to enact legislative or institutional measures designed to prevent a reoccurrence of similar violence in the future.

Many riot victims have yet to be adequately compensated (or compensated at all) for what they lost in 2002. When the violence had subsided, thousands of Muslims had lost their lives, and many more had been injured, displaced, humiliated, and deprived of their livelihoods (see above, Sections II and III). NGOs estimate that the Gujarati Muslim community

suffered an economic loss of about \$760 million.<sup>417</sup> As Human Rights Watch noted, civil society groups estimated that “[a]cross Gujarat, over 1,100 Muslim-owned hotels, over 100,000 homes, around 15,000 business establishments, 3,000 handcarts, and over 5,000 vehicles were badly damaged or completely destroyed.”<sup>418</sup> Some Hindus were also displaced, and some acts of retributive counter violence also occurred, especially against Dalits and Adivasis. The legacy of these losses continues for many of the families even today, twelve years after the riots took place.

By March 1, 2002, relief camps across Gujarat were housing between 91,000<sup>419</sup> and 174,000<sup>420</sup> Internally Displaced Persons (IDPs), with another estimated 76,000 living with friends or relatives.<sup>421</sup> The internally displaced felt they had few options other than to flee their homes. As one former resident of Naroda Patia stated: “We barely survived leaving. We barely saved ourselves on the way out, why would we go back? I don’t have a death wish.”<sup>422</sup> In October 2002—barely eight months after the violence first erupted—the Gujarat government closed the official relief camps.<sup>423</sup> Thousands of IDPs were forced to choose between returning to their old communities, leaving Gujarat entirely,<sup>424</sup> restarting their lives in minority-only “ghettos,” or moving to newly-constructed relief colonies built by NGOs and Muslim charitable organizations. According to a survey conducted in 2012, about 16,000 victims were still living in 83 relief colonies spread throughout Gujarat.<sup>425</sup> With little to no access to government services, conditions in these relief colonies were, and remain, deplorable.<sup>426</sup>

Today, only one affected area of Ahmedabad (Naroda Patia) has witnessed the return of significant numbers of formerly displaced

‘minority’ inhabitants.<sup>427</sup> The rest of the city’s IDPs have moved into largely segregated parts of town, including one informal settlement close to Ahmedabad’s municipal garbage dump<sup>428</sup> and the Juhapura district on the outskirts of the city, an area home to 350,000 minorities that has been dubbed India’s largest “Muslim ghetto.”<sup>429</sup>

The economic impact of the riots on those who fled was also dramatic. Without compensation to help rebuild, large segments of Gujarat’s ‘minority’ community simply could not afford to return home or rebuild.<sup>430</sup> The government has provided some compensation to victims of the Gujarat violence.<sup>431</sup> According to the SIT’s investigation, the government compensated victims and victim households for the loss of life,<sup>432</sup> serious injury,<sup>433</sup> displacement,<sup>434</sup> and the loss of property<sup>435</sup> or income generating assets.<sup>436</sup> Additionally, the government provided a range of direct nutritional supplements, water and sanitation support, shelter and medical care to displaced persons in 2002.<sup>437</sup> Victims’ groups have criticized the government’s aid and compensation initiatives as having been too little,<sup>438</sup> and too late.<sup>439</sup> Despite these complaints, the Government of Gujarat in February 2003 returned Rs. 1,900,000 (or approximately \$71,000; inflation adjusted to 2013 USD) to the federal government, claiming that “adequate compensation had [already] been made” to the IDPs.<sup>440</sup> This led CJP in 2010 to accuse the government of Gujarat of willfully intending “to deny dignified compensation to the victims of the mass carnage of 2002.”<sup>441</sup> The federal government has also been criticized for allegedly not doing enough to help the riot victims. In late 2006—following pressure by Gujarat civil society groups on the central government—former Indian Minister of Home



Affairs V.K. Duggal went on television to announce that a rehabilitation package comparable to the one given to survivors of the 1984 anti-Sikh riots in New Delhi would be given also to the survivors of the Gujarat riots.<sup>442</sup> As of 2012, the federal authorities had yet to take action on that promise.<sup>443</sup>

The ongoing controversy over the compensation process for riot-affected families, as well as the obvious poverty that continues to plague those households, suggest that the government could do more to provide reparations to riot-affected victims.

In addition to monetary reparations, the State and national authorities should also consider a range of broader initiatives designed to bring closure to the Gujarat carnage. The Nanavati-Shah commission has been heavily criticized as no longer being relevant in the debate over what happened during the 2002 violence.<sup>444</sup> Other non-judicial measures such as memorialization efforts<sup>445</sup> or a simple, straightforward apology by a government official on behalf of the state<sup>446</sup> might also be appropriate.

### **Recommendation #13:**

Relevant federal and state authorities, acting individually or in concert, should consider a broader range of reparation measures for victims affected by communal violence in Gujarat. This could include a variety of monetary reparation schemes; services; official measures designed to foster inter-communal reconciliation; memorialization of the events of 2002; education initiatives aimed at breaking down identity barriers and negative stereotypes about both the 'majority' and 'minority' communities; and a reinvigorated truth commission to document what happened in Gujarat during the riots.

## **The Solution at Hand: the Prevention of Communal and Targeted Violence Bill**

In early February 2014, the Government of India was forced to abandon its plans to pass the Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill (*hereinafter* "Communal Violence Bill").<sup>447</sup> The bill was criticized by some opposition parties, including BJP, which alleged that it unconstitutionally sought to expand federal powers at the expense of states' rights, and that it was being proposed as a publicity stunt to garner minority votes. At the time of this

writing, the political debates that prevented passage of the bill remain unresolved.<sup>448</sup> The ongoing uncertainty over this bill is unfortunate.

The draft bill is premised on the idea that "[c]ommunal and targeted violence spreads mainly because the public officials charged with protecting and preventing, either fail to act or act in a biased manner."<sup>449</sup> The bill seeks to "provide correction of institutional bias against groups particularly vulnerable in any State, thus giving all citizens, no matter how small their

numbers of where they choose to be domiciled, an equal playing field, in enjoying their full measure of rights as citizens.”<sup>450</sup>

The draft bill originally proposed by the NAC in 2011 would have contained the following notable provisions:

**1. Explicit Criminalization of Dereliction of Duty by Public Servants**<sup>451</sup>

The articulation of a standard whereby public officials who (a) have a legal duty to act, and (b) have the material ability to act, can be held individually and criminally liable for their failure to intervene to prevent communal violence is consistent with general principles of law, and confirmed by the jurisprudence of the UN ad-hoc tribunals for Rwanda and the former Yugoslavia and the statute of the International Criminal Court, as well as in scholarly writings on the subject.<sup>452</sup>

The Indian judicial system struggled with this theory of liability in at least one of the riot-related cases reviewed for this report. The SIT, in discussing the Jafri case, acknowledged that several of the senior police officers who had interacted with Muslims trapped in the Gulberg Society case had acted with gross unprofessionalism. But according to the SIT (and the lower Magistrate’s Court affirming the SIT’s closure recommendation), these findings were insufficient to trigger criminal liability. The standards relating to acts of omission reaffirmed by the proposed Communal Violence Bill would have allowed the courts to hold police officers who failed to take any actions to prevent the riots from taking place criminally liable for their inaction.

**2. Explicit Criminalization of Breach of Command Responsibility**<sup>453</sup>

The proposed Prevention of Communal and Targeted Violence Bill contains language that would clarify the doctrine of command responsibility in the Indian legal context. The first definition would criminalize the failure by a *military* or *police* officer to stop actions or inactions by subordinates leading to communal violence in situations when: (1) the officer “knew or ought to have known” that his or her subordinate(s) would commit (or were likely to commit) such offenses, and (2) the officer either failed to take “necessary and reasonable” action that would have been within the officer’s power to prevent or repress criminal behavior by his or her subordinates, *or* failed to submit the matter to be investigated and prosecuted.<sup>454</sup> The second definition pertained to superiors *not* in a military or police hierarchy,<sup>455</sup> and would have attached in situations when that superior (1) “knew or consciously disregarded” information that his or her subordinates were about to commit such an offense, (2) that the offenses concerned activities over which the officer had responsibility and control; and (3) that the supervisor failed to take “all necessary and reasonable measures within his or her power to prevent or repress” the offense *or* submit the matter to the competent authorities to investigate and prosecute.<sup>456</sup>

These two definitions are broadly consistent with the contours of command responsibility as defined in International Criminal Law, by both experts and the growing jurisprudence of the UN ad-hoc Tribunals and the ICC.<sup>457</sup>

**3. Eliminate the Need for Obtaining Prior “Sanction” from State or Federal Government for Prosecution of Public Servants**<sup>458</sup>

This provision relates to an aspect of Indian Criminal Procedure intended to prevent frivolous criminal charges against government servants. It bars the courts from entertaining complaints against judges, magistrates or *public servants* accused of criminal wrongdoing “while acting or purporting to act in the discharge of his [or her] official duty,”<sup>459</sup> *unless given specific sanction to do so* (permission) by either the central (in cases of federal employees) or State government. In the riot-related cases, as in many other situations where state authorities are implicated in communal crimes, this kind of safeguard can prove to be an insurmountable hurdle for the victims seeking justice for what happened to them, especially if they allege to have been victimized in part by the action or inaction of public servants. In this context, impartial and independent judges seem far better placed to make the decision on whether to allow allegations of criminal wrongdoing by public servants to move forward than administrative officials, who are empowered under the current model with effective power to veto any such allegations.

**4. The Creation of National & State Authorities for Communal Harmony, Justice & Reparation**<sup>460</sup>

The call for the creation of an official bureaucracy dedicated to the investigation of alleged communal crimes by Indian officials at both the federal and state levels is perhaps the most significant part of the Communal Violence Bill. As discussed above, efforts to hold the perpetrators of the Gujarat violence

accountable under law were catalyzed initially by the early intervention of the National Human Rights Commission and the National Commission for Minorities. This example shows that specially resourced institutions with a specific mandate can be highly salient in catalyzing action. Neither the National Human Rights Commission nor the National Commission on Minorities has the specific mandate to focus only on alleged instances of communal violence, nor can they investigate the complicity of state officials and—when appropriate—help prepare the paper trail that would allow criminal charges to be brought against these officials. Given the much broader investigatory powers that the proposed network of National and State Authorities for Communal Harmony, Justice & Reparation (NACHJR/SACHJR) would enjoy, this proposal represents a substantial improvement over the current status quo.

**5. The strengthening of Victims Rights Protections in the Criminal Justice System**<sup>461</sup>

The crucial importance of safeguarding victims’ rights, both as a matter of humanity as well as emerging human rights norms, has been discussed above (at pg. 43). Indeed, it is noteworthy how much Judge Yagnik was able to influence the victim-friendliness of her own trial proceedings in the Naroda Patia case. Nonetheless, there are limits to how far even an exceptional judge can go to make his or her courtroom a more victim-friendly place. The reforms envisaged by the Communal Violence Bill seek to address the needs of victims at a structural level, and provides victims with an institutional complaints mechanisms to investigate allegations that their rights were

compromised in the course of a criminal trial on their behalf.

#### **6. Clarification of Obligations to Provide Emergency Relief to Victims of Communal Violence**<sup>462</sup>

As described above (at pg. 53), a vigorous debate continues today over the alleged inadequacy of the Government of Gujarat's response to the humanitarian crisis that followed the immediate violence of the 2002 riots. The provisions in this proposed bill would set an important benchmark for that debate, and allow activists in future instances of communal violence to work with governments to ensure that the victims of communal violence are not re-victimized a second time during the immediate aftermath of the crisis due to incompetent or bad-faith government support for their humanitarian needs.

#### **7. Compensation for all "Affected Persons."**<sup>463</sup>

The economic and livelihood impacts of communal violence are often tremendous, as was the case for many victims of the 2002 riots in Gujarat. An *immediate* and substantial compensatory scheme would help alleviate much of the long-term suffering that many families faced given their loss of serious economic assets following the communal violence. It might allow families to make different choices with regard to their own

livelihoods strategies following the violence. Not insignificantly, guaranteeing victims of communal violence such immediate compensation would also help immunize the judicial process to the threat of payoffs made to prosecution witnesses in return for their turning 'hostile' during the trials.<sup>464</sup>

Had the provisions contained in the draft Communal Violence Bill been in place prior to 2002, many of the problems detailed in this report may never have arisen. The draft bill contains robust and detailed proposals that address many, if not all, of the problems highlighted in this report.<sup>465</sup> The legal definitions and norms contained in the draft bill are consistent with the standards and definitions found in international human rights documents and International Criminal Law, and therefore would satisfy India's obligation to incorporate those standards into its domestic law. Furthermore, the draft bill would do more than merely put progressive laws on the books in India; the creation of the (NACHJR/SACHJR) network would create an important institutional infrastructure tasked to ensure that the bill's protections are implemented across India.

The draft bill has faced significant political opposition. Nonetheless, it represents an important national initiative to take action in response to communal violence in India, not just in Gujarat, but across the country.

#### **Recommendation #14:**

India's Government should pass the Prevention of Communal Violence Bill as soon as possible, and should ensure that efforts to amend the text to do not undermine its core purpose.

## Safeguard the Independence of Civil Society & Media

Finally, the analysis of the three cases reviewed in this report highlights the crucial role that India's civil society and media play in the vindication of victim rights. Unfortunately, however, civil society activists have paid a heavy price for their work on behalf of survivors of the 2002 Gujarat communal violence. The

efforts to intimidate and harass rights defenders and journalists have been particularly dangerous given the chilling effect they have not only on the intended targets, but also other potential rights defenders and civil society activists, not to mention the constituents whom they support.

### **Recommendation #15:**

Indian federal and state authorities must ensure that civil society actors, human rights defenders, and independent journalists continue to enjoy the freedom to carry out their professional work without interference or harassment by government or private actors supported or tolerated by the government.



## Section V: The Role of the International Community

This section of the report focuses on actions that the international community might undertake in support of efforts to strengthen India's capacity to handle situations of communal violence. The international community has consistently played a significant role in shaping responses to the Gujarat violence. In some instances, international interest was motivated by foreign nationals personally affected by the violence.<sup>466</sup> In other instances, riot-affected victims who left India for economic or other reasons brought with them awareness of the conflict to their new communities.<sup>467</sup>

Early on, the international diplomatic community also played a role in efforts to respond to the violence. Diplomatic missions, including those of the United Kingdom, Germany and the European Union formally or informally boycotted Mr. Modi and Gujarat following the 2002 riots.<sup>468</sup> In March 2005, the United States denied Mr. Modi a visa to the United States.<sup>469</sup> Especially given the slow pace of Gujarat's judicial accountability processes, victims and their advocates often derived solace in these international expressions of ongoing concern over the alleged high-level culpability and reports of ongoing impunity regarding the 2002 violence. Decisions to "normalize" relationships with Mr. Modi, on the other hand, or efforts to promote increased trade between Gujarat and the rest of the world, have been viewed by commentators as signs that the rest of the world has forgotten about Gujarat's riot victims.<sup>470</sup>

The international community must respond to ongoing events in Gujarat. Needless to say, Mr. Modi's political fortune and Gujarat's economic progress, will likely prompt many countries to re-evaluate their diplomatic approach towards him and his supporters.<sup>471</sup> At the same time, the Gujarat violence cannot and should not be reduced to the question of how to engage with one individual. The international community can engage in a variety of measures to support the creation of a more robust institutional and legal bulwark against future outbreaks of communal violence in Gujarat and across the country. Similarly, the international community can provide support to the victims of the 2002 violence, many of whom continue to suffer significantly from the riot aftereffects.<sup>472</sup>

The international diplomatic community, therefore, should reinforce the message that respect for human rights and respect for religious and cultural minorities remain essential cornerstones of India's relationship with the rest of the world. Furthermore, it should continue to monitor the situation faced by human rights defenders, journalists, and other professionals who work on behalf of the victims of communal violence, taking action where appropriate to counteract efforts to threaten, intimidate or harass them. If and when called upon to do so, international experts and policy makers should contribute their expertise on comparative best practices from other countries on how to deal effectively with communal violence.

Finally, private actors on the international stage also have a role to play. Gujarat's economic growth has been much praised, and many investors have flocked to the State to seek stable investment opportunities. In so doing, those investors should consider it part of their

ethical investment obligations to work with their Gujarat and Indian counterparts to ensure that their investments yield maximum benefits for *all* segments of Gujarat's population, including those negatively affected by the 2002 violence.



## Section VI: Implications for the Gulberg Society and Jafri Cases

While the above analysis suggests the need to initiate broad structural and legal reforms, the report concludes with a brief summary of what the above analysis suggests should happen in the two cases that remain unsettled in the Gujarat court system. As this report goes to

press, the Gulberg Society case is nearly completed, whereas the Jafri case seems to have a longer road ahead, as the petitioners have appealed the Magistrate Court's decision—a process that could take years to conclude.

### The Gulberg Society Case

As described above (Section III), the Supreme Court stayed the Gulberg Society case pending the fate of the Jafri case. The Gulberg Society case should be immediately restarted. The victims in that case have lived through twelve years of legal proceedings following their initial ordeal, and desperately hope to see the criminal case against the alleged perpetrators concluded. The need to appoint a new presiding judge following Judge Dhanda's retirement presents the opportunity to select a judge of high moral character, who can both re-examine

the evidence and testimony gathered under his or her two predecessors, determine whether any additional investigations and testimony are necessary, and proceed to conclude the case.

The new judge will likely have to grapple with some of the same issues that arose for his or her predecessors: whether to entertain evidence suggesting the criminal culpability of some of the senior officers responsible for maintaining the peace in Meghaninagar District on February 28, 2002, and whether to bring charges for sexual violence.

### The Jafri Case

Ms. Jafri and her co-petitioners have appealed the Magistrate Court's decision. Consequently, the High Court will have to review the legality of the lower court's decision to reject the evidence presented in Petitioners' Protest Petition and follow instead the conclusion of the SIT's Closure Report. In conducting its review, the High Court should compare the SIT's investigation with the professional standards to which a police investigation should be held. If it

finds that the numerous allegations of bias and unprofessionalism cannot be dismissed, the High Court should either order a re-investigation of the Jafri case, or instruct a lower-court to independently and thoroughly consider initiating a case based solely on Ms. Jafri's Protest Petition, pursuant to the Indian Code of Criminal Procedure.



## Conclusion

The Gujarat riots were unfortunately not the first instance of communal violence against minorities in India. Nor, sadly, were they the last.<sup>473</sup> In 1984 “[n]early 3,000 members of India’s Sikh community were massacred after the assassination of Prime Minister Indira Gandhi by her two Sikh bodyguards.”<sup>474</sup> And, in 2008—six years after the Gujarat riots—Hindu nationalists orchestrated riots against Christian communities in Odisha (also spelled Orissa) in revenge for the killing of one of their leaders, presumably by Maoist insurgents.<sup>475</sup> One author who has studied extensively communal violence in India alleges the paralysis of state institutions whose function it is to guarantee the separation of state and religion during instances of communal violence.<sup>476</sup>

It seems, therefore, that what happened in Gujarat in 2002 is neither unique to Gujarat, nor of concern only to India’s Muslim community. India *as a whole* must find more effective solutions to prevent such outbursts of senseless communal violence from tarnishing the country’s progress.

In Gujarat, the twelve years since violence erupted in early 2002 have seen only halting progress towards the goal of thorough judicial investigation and prosecution of those responsible for the violence. Efforts to compensate victims of the violence have also been controversial, with many claiming them to have been inadequate. Thousands of riot survivors remain severely traumatized and economically disadvantaged as a direct result of the violence, while those who allegedly perpetrated the attacks have either been

acquitted in suspect legal proceedings or never charged. Only a handful of criminal cases have resulted in convictions of any sort. Meanwhile, the victims continue to lack access to other relevant forms of remedies for their suffering.

The recommendations in this report are intended to appeal to political actors *across* India’s political spectrum, regardless of party affiliation, on the assumption that all reasonable public servants in India can agree that communal violence can never be tolerated in a modern democratic state such as India. Over a decade after the violence in Gujarat has subsided, India’s politicians and judicial authorities still hold the keys to demonstrate the Indian State’s commitment to this concept.



## Appendices

- A** 2005 United Nations General Assembly Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights law and Serious Violations of International Humanitarian Law (p.69)
- B** Applicable International Legal Treaties & Norms (p.79)



**2005 United Nations General Assembly Basic Principles and Guidelines  
on the Right to a Remedy and Reparation for Victims of Gross  
Violations of International Human Rights law and Serious Violations of  
International Humanitarian Law**



# General Assembly

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## Resolution adopted by the General Assembly on 16 December 2005

[on the report of the Third Committee (A/60/509/Add.1)]

### **60/147. Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law**

*The General Assembly,*

*Guided* by the Charter of the United Nations, the Universal Declaration of Human Rights,<sup>1</sup> the International Covenants on Human Rights,<sup>2</sup> other relevant human rights instruments and the Vienna Declaration and Programme of Action,<sup>3</sup>

*Affirming* the importance of addressing the question of remedies and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law in a systematic and thorough way at the national and international levels,

*Recognizing* that, in honouring the victims' right to benefit from remedies and reparation, the international community keeps faith with the plight of victims, survivors and future human generations and reaffirms international law in the field,

*Recalling* the adoption of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law by the Commission on Human Rights in its resolution 2005/35 of 19 April 2005<sup>4</sup> and by the Economic and Social Council in its resolution 2005/30 of 25 July 2005, in which the Council recommended to the General Assembly that it adopt the Basic Principles and Guidelines,

1. *Adopts* the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law annexed to the present resolution;

<sup>1</sup> Resolution 217 A (III).

<sup>2</sup> Resolution 2200 A (XXI), annex.

<sup>3</sup> A/CONF.157/24 (Part I), chap. III.

<sup>4</sup> See *Official Records of the Economic and Social Council, 2005, Supplement No. 3* and corrigendum (E/2005/23 and Corr.1), chap. II, sect. A.



2. *Recommends* that States take the Basic Principles and Guidelines into account, promote respect thereof and bring them to the attention of members of the executive bodies of government, in particular law enforcement officials and military and security forces, legislative bodies, the judiciary, victims and their representatives, human rights defenders and lawyers, the media and the public in general;

3. *Requests* the Secretary-General to take steps to ensure the widest possible dissemination of the Basic Principles and Guidelines in all the official languages of the United Nations, including by transmitting them to Governments and intergovernmental and non-governmental organizations and by including the Basic Principles and Guidelines in the United Nations publication entitled *Human Rights: A Compilation of International Instruments*.

64th plenary meeting  
16 December 2005

## **Annex**

### **Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law**

#### **Preamble**

*The General Assembly,*

*Recalling* the provisions providing a right to a remedy for victims of violations of international human rights law found in numerous international instruments, in particular article 8 of the Universal Declaration of Human Rights,<sup>1</sup> article 2 of the International Covenant on Civil and Political Rights,<sup>2</sup> article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination,<sup>5</sup> article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,<sup>6</sup> and article 39 of the Convention on the Rights of the Child,<sup>7</sup> and of international humanitarian law as found in article 3 of the Hague Convention respecting the Laws and Customs of War on Land of 18 October 1907 (Convention IV),<sup>8</sup> article 91 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977,<sup>9</sup> and articles 68 and 75 of the Rome Statute of the International Criminal Court,<sup>10</sup>

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<sup>5</sup> Resolution 2106 A (XX), annex.

<sup>6</sup> United Nations, *Treaty Series*, vol. 1465, No. 24841.

<sup>7</sup> *Ibid.*, vol. 1577, No. 27531.

<sup>8</sup> See Carnegie Endowment for International Peace, *The Hague Conventions and Declarations of 1899 and 1907* (New York, Oxford University Press, 1915).

<sup>9</sup> United Nations, *Treaty Series*, vol. 1125, No. 17512.

<sup>10</sup> *Official Records of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Rome, 15 June–17 July 1998*, vol. I: *Final documents* (United Nations publication, Sales No. E.02.I.5), sect. A.

*Recalling* the provisions providing a right to a remedy for victims of violations of international human rights found in regional conventions, in particular article 7 of the African Charter on Human and Peoples' Rights,<sup>11</sup> article 25 of the American Convention on Human Rights,<sup>12</sup> and article 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms,<sup>13</sup>

*Recalling* the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power emanating from the deliberations of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders and General Assembly resolution 40/34 of 29 November 1985 by which the Assembly adopted the text recommended by the Congress,

*Reaffirming* the principles enunciated in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, including that victims should be treated with compassion and respect for their dignity, have their right to access to justice and redress mechanisms fully respected, and that the establishment, strengthening and expansion of national funds for compensation to victims should be encouraged, together with the expeditious development of appropriate rights and remedies for victims,

*Noting* that the Rome Statute of the International Criminal Court requires the establishment of "principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation", requires the Assembly of States Parties to establish a trust fund for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims, and mandates the Court "to protect the safety, physical and psychological well-being, dignity and privacy of victims" and to permit the participation of victims at all "stages of the proceedings determined to be appropriate by the Court",

*Affirming* that the Basic Principles and Guidelines contained herein are directed at gross violations of international human rights law and serious violations of international humanitarian law which, by their very grave nature, constitute an affront to human dignity,

*Emphasizing* that the Basic Principles and Guidelines contained herein do not entail new international or domestic legal obligations but identify mechanisms, modalities, procedures and methods for the implementation of existing legal obligations under international human rights law and international humanitarian law which are complementary though different as to their norms,

*Recalling* that international law contains the obligation to prosecute perpetrators of certain international crimes in accordance with international obligations of States and the requirements of national law or as provided for in the applicable statutes of international judicial organs, and that the duty to prosecute reinforces the international legal obligations to be carried out in accordance with national legal requirements and procedures and supports the concept of complementarity,

<sup>11</sup> United Nations, *Treaty Series*, vol. 1520, No. 26363.

<sup>12</sup> *Ibid.*, vol. 1144, No. 17955.

<sup>13</sup> *Ibid.*, vol. 213, No. 2889.

*Noting* that contemporary forms of victimization, while essentially directed against persons, may nevertheless also be directed against groups of persons who are targeted collectively,

*Recognizing* that, in honouring the victims' right to benefit from remedies and reparation, the international community keeps faith with the plight of victims, survivors and future human generations and reaffirms the international legal principles of accountability, justice and the rule of law,

*Convinced* that, in adopting a victim-oriented perspective, the international community affirms its human solidarity with victims of violations of international law, including violations of international human rights law and international humanitarian law, as well as with humanity at large, in accordance with the following Basic Principles and Guidelines,

*Adopts* the following Basic Principles and Guidelines:

**I. Obligation to respect, ensure respect for and implement international human rights law and international humanitarian law**

1. The obligation to respect, ensure respect for and implement international human rights law and international humanitarian law as provided for under the respective bodies of law emanates from:

- (a) Treaties to which a State is a party;
- (b) Customary international law;
- (c) The domestic law of each State.

2. If they have not already done so, States shall, as required under international law, ensure that their domestic law is consistent with their international legal obligations by:

(a) Incorporating norms of international human rights law and international humanitarian law into their domestic law, or otherwise implementing them in their domestic legal system;

(b) Adopting appropriate and effective legislative and administrative procedures and other appropriate measures that provide fair, effective and prompt access to justice;

(c) Making available adequate, effective, prompt and appropriate remedies, including reparation, as defined below;

(d) Ensuring that their domestic law provides at least the same level of protection for victims as that required by their international obligations.

**II. Scope of the obligation**

3. The obligation to respect, ensure respect for and implement international human rights law and international humanitarian law as provided for under the respective bodies of law, includes, inter alia, the duty to:

(a) Take appropriate legislative and administrative and other appropriate measures to prevent violations;

(b) Investigate violations effectively, promptly, thoroughly and impartially and, where appropriate, take action against those allegedly responsible in accordance with domestic and international law;

(c) Provide those who claim to be victims of a human rights or humanitarian law violation with equal and effective access to justice, as described below, irrespective of who may ultimately be the bearer of responsibility for the violation; and

(d) Provide effective remedies to victims, including reparation, as described below.

### **III. Gross violations of international human rights law and serious violations of international humanitarian law that constitute crimes under international law**

4. In cases of gross violations of international human rights law and serious violations of international humanitarian law constituting crimes under international law, States have the duty to investigate and, if there is sufficient evidence, the duty to submit to prosecution the person allegedly responsible for the violations and, if found guilty, the duty to punish her or him. Moreover, in these cases, States should, in accordance with international law, cooperate with one another and assist international judicial organs competent in the investigation and prosecution of these violations.

5. To that end, where so provided in an applicable treaty or under other international law obligations, States shall incorporate or otherwise implement within their domestic law appropriate provisions for universal jurisdiction. Moreover, where it is so provided for in an applicable treaty or other international legal obligations, States should facilitate extradition or surrender offenders to other States and to appropriate international judicial bodies and provide judicial assistance and other forms of cooperation in the pursuit of international justice, including assistance to, and protection of, victims and witnesses, consistent with international human rights legal standards and subject to international legal requirements such as those relating to the prohibition of torture and other forms of cruel, inhuman or degrading treatment or punishment.

### **IV. Statutes of limitations**

6. Where so provided for in an applicable treaty or contained in other international legal obligations, statutes of limitations shall not apply to gross violations of international human rights law and serious violations of international humanitarian law which constitute crimes under international law.

7. Domestic statutes of limitations for other types of violations that do not constitute crimes under international law, including those time limitations applicable to civil claims and other procedures, should not be unduly restrictive.

### **V. Victims of gross violations of international human rights law and serious violations of international humanitarian law**

8. For purposes of the present document, victims are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term "victim" also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

9. A person shall be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted, or convicted and regardless of the familial relationship between the perpetrator and the victim.

**VI. Treatment of victims**

10. Victims should be treated with humanity and respect for their dignity and human rights, and appropriate measures should be taken to ensure their safety, physical and psychological well-being and privacy, as well as those of their families. The State should ensure that its domestic laws, to the extent possible, provide that a victim who has suffered violence or trauma should benefit from special consideration and care to avoid his or her re-traumatization in the course of legal and administrative procedures designed to provide justice and reparation.

**VII. Victims' right to remedies**

11. Remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim's right to the following as provided for under international law:

- (a) Equal and effective access to justice;
- (b) Adequate, effective and prompt reparation for harm suffered;
- (c) Access to relevant information concerning violations and reparation mechanisms.

**VIII. Access to justice**

12. A victim of a gross violation of international human rights law or of a serious violation of international humanitarian law shall have equal access to an effective judicial remedy as provided for under international law. Other remedies available to the victim include access to administrative and other bodies, as well as mechanisms, modalities and proceedings conducted in accordance with domestic law. Obligations arising under international law to secure the right to access justice and fair and impartial proceedings shall be reflected in domestic laws. To that end, States should:

- (a) Disseminate, through public and private mechanisms, information about all available remedies for gross violations of international human rights law and serious violations of international humanitarian law;
- (b) Take measures to minimize the inconvenience to victims and their representatives, protect against unlawful interference with their privacy as appropriate and ensure their safety from intimidation and retaliation, as well as that of their families and witnesses, before, during and after judicial, administrative, or other proceedings that affect the interests of victims;
- (c) Provide proper assistance to victims seeking access to justice;
- (d) Make available all appropriate legal, diplomatic and consular means to ensure that victims can exercise their rights to remedy for gross violations of international human rights law or serious violations of international humanitarian law.

13. In addition to individual access to justice, States should endeavour to develop procedures to allow groups of victims to present claims for reparation and to receive reparation, as appropriate.

14. An adequate, effective and prompt remedy for gross violations of international human rights law or serious violations of international humanitarian law should include all available and appropriate international processes in which a person may have legal standing and should be without prejudice to any other domestic remedies.

#### **IX. Reparation for harm suffered**

15. Adequate, effective and prompt reparation is intended to promote justice by redressing gross violations of international human rights law or serious violations of international humanitarian law. Reparation should be proportional to the gravity of the violations and the harm suffered. In accordance with its domestic laws and international legal obligations, a State shall provide reparation to victims for acts or omissions which can be attributed to the State and constitute gross violations of international human rights law or serious violations of international humanitarian law. In cases where a person, a legal person, or other entity is found liable for reparation to a victim, such party should provide reparation to the victim or compensate the State if the State has already provided reparation to the victim.

16. States should endeavour to establish national programmes for reparation and other assistance to victims in the event that the parties liable for the harm suffered are unable or unwilling to meet their obligations.

17. States shall, with respect to claims by victims, enforce domestic judgements for reparation against individuals or entities liable for the harm suffered and endeavour to enforce valid foreign legal judgements for reparation in accordance with domestic law and international legal obligations. To that end, States should provide under their domestic laws effective mechanisms for the enforcement of reparation judgements.

18. In accordance with domestic law and international law, and taking account of individual circumstances, victims of gross violations of international human rights law and serious violations of international humanitarian law should, as appropriate and proportional to the gravity of the violation and the circumstances of each case, be provided with full and effective reparation, as laid out in principles 19 to 23, which include the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

19. *Restitution* should, whenever possible, restore the victim to the original situation before the gross violations of international human rights law or serious violations of international humanitarian law occurred. Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property.

20. *Compensation* should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as:

- (a) Physical or mental harm;
- (b) Lost opportunities, including employment, education and social benefits;
- (c) Material damages and loss of earnings, including loss of earning potential;
- (d) Moral damage;

- (e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.
21. *Rehabilitation* should include medical and psychological care as well as legal and social services.
22. *Satisfaction* should include, where applicable, any or all of the following:
- (a) Effective measures aimed at the cessation of continuing violations;
  - (b) Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim's relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations;
  - (c) The search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification and reburial of the bodies in accordance with the expressed or presumed wish of the victims, or the cultural practices of the families and communities;
  - (d) An official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim;
  - (e) Public apology, including acknowledgement of the facts and acceptance of responsibility;
  - (f) Judicial and administrative sanctions against persons liable for the violations;
  - (g) Commemorations and tributes to the victims;
  - (h) Inclusion of an accurate account of the violations that occurred in international human rights law and international humanitarian law training and in educational material at all levels.
23. *Guarantees of non-repetition* should include, where applicable, any or all of the following measures, which will also contribute to prevention:
- (a) Ensuring effective civilian control of military and security forces;
  - (b) Ensuring that all civilian and military proceedings abide by international standards of due process, fairness and impartiality;
  - (c) Strengthening the independence of the judiciary;
  - (d) Protecting persons in the legal, medical and health-care professions, the media and other related professions, and human rights defenders;
  - (e) Providing, on a priority and continued basis, human rights and international humanitarian law education to all sectors of society and training for law enforcement officials as well as military and security forces;
  - (f) Promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, as well as by economic enterprises;
  - (g) Promoting mechanisms for preventing and monitoring social conflicts and their resolution;

(h) Reviewing and reforming laws contributing to or allowing gross violations of international human rights law and serious violations of international humanitarian law.

**X. Access to relevant information concerning violations and reparation mechanisms**

24. States should develop means of informing the general public and, in particular, victims of gross violations of international human rights law and serious violations of international humanitarian law of the rights and remedies addressed by these Basic Principles and Guidelines and of all available legal, medical, psychological, social, administrative and all other services to which victims may have a right of access. Moreover, victims and their representatives should be entitled to seek and obtain information on the causes leading to their victimization and on the causes and conditions pertaining to the gross violations of international human rights law and serious violations of international humanitarian law and to learn the truth in regard to these violations.

**XI. Non-discrimination**

25. The application and interpretation of these Basic Principles and Guidelines must be consistent with international human rights law and international humanitarian law and be without any discrimination of any kind or on any ground, without exception.

**XII. Non-derogation**

26. Nothing in these Basic Principles and Guidelines shall be construed as restricting or derogating from any rights or obligations arising under domestic and international law. In particular, it is understood that the present Basic Principles and Guidelines are without prejudice to the right to a remedy and reparation for victims of all violations of international human rights law and international humanitarian law. It is further understood that these Basic Principles and Guidelines are without prejudice to special rules of international law.

**XIII. Rights of others**

27. Nothing in this document is to be construed as derogating from internationally or nationally protected rights of others, in particular the right of an accused person to benefit from applicable standards of due process.



## Applicable International Legal Treaties & Norms

Human Rights Norms Relevant to the Feb/March 2002 Gujarat Violence and its Aftermath		
1948	Universal Declaration of Human Rights (UDHR) <sup>†</sup>	India voted in favor of the Declaration's adoption by the UN General Assembly in 1948.
1965	International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) <sup>*</sup>	India <b>ratified</b> on Dec. 3, 1968.
1966	International Covenant on Economic, Social and Cultural Rights (ICESCR) <sup>*</sup>	India <b>acceded</b> on Apr. 10, 1979.
1966	International Covenant on Civil and Political Rights (ICCPR) <sup>*</sup>	India <b>acceded</b> on Apr. 19, 1979.
1979	Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) <sup>*</sup>	India <b>ratified</b> on July 9, 1993.
1979	Code of Conduct for Law Enforcement Officials	Adopted without a vote by the UN General Assembly resolution 34/169 on Dec. 17, 1979.
1981	Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief	Adopted without a vote by the UN General Assembly resolution 36/55 on Nov. 25, 1981.
1984	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Torture Convention) <sup>†</sup>	India <b>signed</b> on Oct. 14, 1997. Article 2 of Torture Convention deemed to be binding as a matter of customary international law. <sup>477</sup>
1985	Basic Principles on the Independence of the Judiciary	Adopted by the Seventh UN Congress on the Prevention of Crime and the Treatment of Offenders, Milan, Italy, 26 Aug. to 6 Sept. 1985, and endorsed by the General Assembly resolutions 40/32 of 29 Nov. 1985 and 40/146 of 13 Dec. 1985.
1985	Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power	Adopted without a vote by the UN General Assembly resolution 40/34 on Nov. 29, 1985.
1989	Convention on the Rights of the Child (CRC) <sup>*</sup>	India <b>acceded</b> on Dec. 11, 1992.
<sup>*</sup> Binding as per treaty ratification		
<sup>†</sup> Binding as per customary international law		

<b>Human Rights Norms Relevant to the Feb/March 2002 Gujarat Violence and its Aftermath</b>		
1990	Guidelines on the Role of Prosecutors	Adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 Aug. to 7 Sept. 1990
1992	Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities	Adopted without a vote by the UN General Assembly resolution 47/135 on Dec. 18, 1992.
2002	The Bangalore Principles of Judicial Conduct	Recommended for consideration, consistent with their domestic legal systems, by the UN Economic and Social Council to Member States on July 27, 2006
2005	Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law	Adopted without a vote by the UN General Assembly resolution 60/147 on Dec. 16, 2005.

## Endnotes

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<sup>1</sup> See *infra*, EN 57

<sup>2</sup> See e.g., Parvis Ghassem-Fachandi, *POGROM IN GUJARAT: HINDU NATIONALISM AND ANTI-MUSLIM VIOLENCE IN INDIA* (Princeton University Press: 2012). See also e.g., S.N. Vijetha, *Ten Years on, no Justice for Gujarat Carnage Victims, says Sanjiv Bhatt*, THE HINDU, Mar. 10, 2012, <http://www.thehindu.com/news/national/ten-years-on-no-justice-for-gujarat-carnage-victims-says-sanjiv-bhatt/article2961104.ece>.

<sup>3</sup> See *Gujarat Riot Death Toll Revealed*, BBC NEWS, May 11, 2005, [http://news.bbc.co.uk/2/hi/south\\_asia/4536199.stm](http://news.bbc.co.uk/2/hi/south_asia/4536199.stm) (In 2005, the Gujarat government released official figures that 1044 individuals had been confirmed dead, with another 223 missing [and assumed killed]. Earlier reports estimated the number dead around 2000, due in large part to the ongoing uncertainty about the death toll at the time). See HUMAN RIGHTS WATCH, *Compounding Injustice: the Government's Failure to Redress Massacres in Gujarat* 10, Jul. 2003, [hereinafter "HRW 2003"], <http://www.hrw.org/reports/2003/india0703/India0703full.pdf> ("In a matter of days more than 2,000 people were killed"); HUMAN RIGHTS WATCH, *Discouraging Dissent: Intimidation and Harassment of Witnesses Human Rights Activists, and Lawyers Pursuing Accountability for the 2002 Communal Violence in Gujarat* 1, Sep 2004, [hereinafter "HRW 2004"], <http://www.hrw.org/legacy/backgrounders/asia/india/gujarat/gujarat0904.pdf>, ("as many as 2,000"); AMNESTY INTERNATIONAL, *India: Justice the Victim – Gujarat State Fails to Protect Women from Violence* 3, AI Index: ASA 20/001/2005, Jan. 2005, [hereinafter "AI 2005"], <http://www.amnesty.org/en/library/asset/ASA20/001/2005/en/110d0c4c-d53a-11dd-8a23-d58a49c0d652/asa200012005en.pdf>, ("[s]ome 2000 people"); *The Godhra Verdict: Will There Be Closure?* REUTERS, Feb. 21, 2011, <http://blogs.reuters.com/great-debate-in/2011/02/21/godhra/>, ("more than 2,500" according to Human Rights groups, but official death toll around 1,000); AMNESTY INTERNATIONAL, *India: Five Years On – the Bitter and Uphill Struggle for Justice in Gujarat* 2, AI Index: ASA 20/007/2007, Feb. 29 2012, [hereinafter "AI 2007"], <http://www.amnesty.org/en/library/asset/ASA20/007/2007/en/c8dec07c-d3ac-11dd-a329-2f46302a8cc6/asa200072007en.pdf>, ("more than 2,000 people were killed"); HUMAN RIGHTS WATCH, *India: A Decade on, Gujarat Justice Incomplete*, Feb. 24, 2012, <http://www.hrw.org/news/2012/02/24/india-decade-gujarat-justice-incomplete>, [hereinafter "HRW 2012"], ("nearly 2,000 people"); AMNESTY INTERNATIONAL, *India: a Decade on From the Gujarat Riots, an Overwhelming Majority of Victims Await Justice in India*, AI Index: ASA 20/006/2012, Feb. 29 2012, <http://www.amnesty.org/en/library/asset/ASA20/006/2012/en/e77dabb7-151f-410e-93c9-68513bd3eebc/asa200062012en.html> ("at least 2,000").

<sup>4</sup> *Gujarat Riot Death Toll Revealed*, *supra* note 3.

<sup>5</sup> Correspondence with Mihir Desai, Prominent Human Rights advocate, (2014).

<sup>6</sup> See *infra*, EN 222.

<sup>7</sup> B. Muralidhar Reddy, *It's Official: Modi is BJP's Choice*, THE HINDU, Sept. 14, 2013, <http://www.thehindu.com/news/national/its-official-modi-is-bjps-choice/article5124375.ece>.

<sup>8</sup> See e.g., Ashish Khetan, *Twice Burnt Still Simmering*, Tehelka.com, Nov. 3, 2007, [http://archive.tehelka.com/story\\_main35.asp?filename=Ne031107TwiceBurntStillSimmering.asp](http://archive.tehelka.com/story_main35.asp?filename=Ne031107TwiceBurntStillSimmering.asp) ("The truth about Godhra underlies everything cataclysmic that happened afterwards. The truth about Godhra underlies one of the most dangerous and polarising faultlines in India. The truth about Godhra underlies the very way we see ourselves as a nation.")

<sup>9</sup> See Concerned Citizens Tribunal, *Crime Against Humanity*, Volumes I & II, (Anil Dharkar: Mumbai, 2002) [hereinafter "Concerned Citizens Tribunal I" and "Concerned Citizens Tribunal II"]; National Human Rights

Commission, (Case No. 1150/6/2001-2002), May 31, 2002. In addition, a controversial commission tasked with conducting an inquiry into the Gujarat violence has yet to release its findings. See Nikunj Soni, *136 Months After it was Set up to Probe 2002 Gujarat Riots, Nanavati Commission Gets 20<sup>th</sup> Extension for 6 Months*, DNA, July 3, 2013, <http://daily.bhaskar.com/article/GUJ-AHD-136-months-after-it-was-set-up-to-probe-2002-gujarat-riots-nanavati-commission-g-4309340-NOR.html> (the Nanavati-Mehta commission was initially chaired by Justices G.T. Nanavati and J.G. Shah, thus it is often also referred to as the Nanavati-Shah commission, especially in the period prior to 2008. In 2008, Justice Shah died, and was replaced by Justice A. Mehta. The commission divided its inquiry into two parts, inquiring first into the events leading up to the burning of the S-6 rail carriage in Godhra, and next into the post Godhra riots. The commission released its report into the Godhra tragedy in 2008, but has yet to release a report on the subsequent riots).

- <sup>10</sup> See GUJARAT: THE MAKING OF A TRAGEDY, Ch. 8, (Siddharth Varadarajan ed., Penguin, 2002) at 271 [*hereinafter* "SIDDHARTH, THE MAKING OF A TRAGEDY"], ("[T]he national media did not flinch from bearing witness to the complicity of the ruling party and state administration in the violence. This was true of the English language media as for much of the vernacular, non-Gujarati press.") One regional commission formed to study minority rights across south Asia found in a review of the media coverage of the situation in Gujarat, that "English media, mainly 'The Indian Express' and 'The Hindu', was neutral because if it had taken the communal stand then it would have had to compete with regional media," but also that "[l]ocal English media in Gujarat, however, was better; regional editions of most national newspapers covered the situation well in Ahmedabad." (SOUTH ASIAN PEOPLE'S COMMISSION FOR THE RIGHTS OF MINORITIES, INCLUDING THE EXCLUDED, 106-107 (Meghna Guhathakurta, ed., 2006).
- <sup>11</sup> See RELIGION AND HUMAN RIGHTS: AN INTRODUCTION 357 (John Witte, and Christian Green, eds., Oxford University Press 2012) (citing in fn. 21 A. RASHIED OMAR, THE GUJARAT MASSACRE (unpublished paper), 2009, in which "Omar notes that more than 60 national and international agencies [have] investigated the 2002 Gujarat violence [and] concluded that officials of the Gujarat state were complicit"); See also HRW 2003, *supra* note 3, at 5, (stating that "no less than forty reports have been released by human rights and citizens' groups documenting the scale of the violence, the complicity of the state government, the military-like planning of the attacks, and the failure to rehabilitate the victims and prosecute the offenders.")
- <sup>12</sup> See e.g., CITIZENS FOR JUSTICE AND PEACE, <http://www.cjponline.org>, (last visited Feb. 8, 2014); COUNTERCURRENTS.ORG, *Gujarat Pogrom*, <http://www.countercurrents.org/gujarat.htm>, (last visited Feb. 8, 2014); GUJARAT RIOTS: THE TRUE STORY, <http://www.gujaratriots.com>, (last visited Feb. 8, 2014); ONLINEVOLUNTEERS.ORG, <http://www.onlinevolunteers.org/index.htm>, (last visited Feb. 8, 2014); TRUTH OF GUJARAT, <http://www.truthofgujarat.com>, (last visited Feb. 8, 2014).
- <sup>13</sup> REPORT BY THE COMMISSION OF INQUIRY CONSISTING OF MR. JUSTICE G.T. NANAVATI AND MR. JUSTICE AKSHAY H. MEHTA, 1, Sept. 18, 2008, <http://home.gujarat.gov.in/homedepartment/downloads/godharaincident.pdf>, [*Hereinafter* "Nanavati-Mehta Commission Report"].
- <sup>14</sup> See HUMAN RIGHTS WATCH, WE HAVE NO ORDERS TO SAVE YOU: STATE PARTICIPATION AND COMPLICITY IN COMMUNAL VIOLENCE IN GUJARAT, 4, Apr. 30, 2002, <http://www.hrw.org/reports/2002/04/30/we-have-no-orders-save-you>, [*Hereinafter* "HRW 2002"] ("The violence in Gujarat began after a Muslim mob in the town of Godhra attacked and set fire to two carriages of a train carrying Hindu activists").
- <sup>15</sup> See generally *Timeline: Ayodhya Holy Site Crisis*, BBC NEWS – SOUTH ASIA, Dec. 6, 2012, <http://www.bbc.co.uk/news/world-south-asia-11436552>.
- <sup>16</sup> See Kamal Mitra Chenoy, et al., *Gujarat Carnage 2002: A Report to the Nation by An Independent Fact Finding Mission*, OUTLOOKINDIA.COM, Section 2, Apr. 11, 2002, [*hereinafter* "Chenoy Report"] <http://www.outlookindia.com/article.aspx?215160>, ("The fact that the Chief Minister immediately branded the

event as ISI and Pakistani-inspired, followed by Union Home Minister Advani, in the absence of any evidence or inquiry, further inflamed the situation.”); *see also Central IB Officer Floated ISI Conspiracy Theory for Godhra*, THE TIMES OF INDIA (Ahmedabad), Feb. 3, 2012, 5 (quoting testimony by R.B. Sreekumar (retired police intelligence officer) “[the then Director General of Police (DGP – or Gujarat Chief of Police)] told me that Central [Intelligence Bureau] joint director, Ahmedabad, Rajendra Kumar had come out with the theory of ISI conspiracy behind the Godhra incident and he had cajoled the DGP to pursue investigation, treating the Godhra incident as a conspiracy.”)

<sup>17</sup> See Ashish Khetan, *Burn After Reading*, TEHELKA Vol. 8:9, Mar. 5, 2011, (“since mob fury could not pass muster as terrorism without introducing the element of conspiracy, six days after [the Prevention of Terrorism Act] was invoked, on 9 March, the police invoked section 120(b) of the Indian Penal Code, which pertains to criminal conspiracy.”). *See also Central IB Officer Floated ISI Conspiracy Theory for Godhra*, *supra* note 16, (“This [conspiracy] theory was vigorously pursued by the state government by invoking [the Prevention of Terrorism Act] against the accused.”)

<sup>18</sup> Ashish Khetan, *Twice Burnt Still Simmering*, *supra* note 8 (“Subtract the political and religious names from the list of Godhra accused and what remains is a criminal but spontaneous act of arson”); *see also* CONCERNED CITIZENS TRIBUNAL – II, *supra* note 9, at 12-17, (eyewitnesses who testified before the Concerned Citizens Tribunal alleged that stone throwing and iron-bar-wielding crowd of Muslims had assembled in response to provocations by Hindu activists on the train); Chenoy Report, *supra* note 16, Section 1, (“[The attack at Godhra] was an instance of a ghastly communal riot, in a place that has a long history of communal riots.”)

<sup>19</sup> See MARTHA NUSSBAUM, THE CLASH WITHIN: DEMOCRACY, RELIGIOUS VIOLENCE, AND INDIA’S FUTURE (Harvard University Press 2008), at 19 (“The one view that nobody seemed to defend at the time is the one that now, in retrospect, seems the most likely, namely that the explosion was a tragic accident.”); *Godhra Train Fire Accidental: Banerjee Report*, THE TIMES OF INDIA, Mar. 4, 2006, [http://articles.timesofindia.indiatimes.com/2006-03-04/india/27826223\\_1\\_banerjee-report-godhra-train-fire-justice-banerjee](http://articles.timesofindia.indiatimes.com/2006-03-04/india/27826223_1_banerjee-report-godhra-train-fire-justice-banerjee).

<sup>20</sup> See Ashish Khetan, *Burn After Reading*, *supra* note 17.

<sup>21</sup> *Id.* (Six of those initial defendants were later released. Only two of the Godhra municipal council members were subsequently convicted.)

<sup>22</sup> *Id.*

<sup>23</sup> See Ashish Khetan, *Burn After Reading*, *supra* note 17. See also Ashish Khetan, *Twice Burnt Still Simmering*, *supra* note 8; Statement by Teesta Setalvad, Secretary Citizens for Justice and Peace, before the Special Investigation Team (SIT) appointed by the Hon’ble Supreme Court through its Order dated 26.3.2008, May 9, 2008, SIT Office Gandhinagar.

<sup>24</sup> Ashish Khetan, *Twice Burnt Still Simmering*, *supra* note 8, (quoting two of the key witnesses to testify in the Godhra trial, both of whom admitted to an undercover journalist to not have been present at the attack. Kakul Pathak: “This is the work of Hindutva... We must do whatever the party commands;” Murli Mulchandani: “he would stick to his word since he cannot betray Hinduism.”)

<sup>25</sup> Ashish Khetan, *Twice Burnt Still Simmering*, *supra* note 8, (Ranjitsingh Patel, one of the two petrol pump employees who had testified that they had sold 140 litres of petrol to the accused during the night of February 26, admitted to a journalist “that he was paid RS 50,000 by Noel Parmar. . . . He said a similar amount was also paid to his colleague, Prabhatsingh. He also said that Parmar had told him that when he time came to identify the accused in the court, he would show the accused to Ranjitsingh in advance and on the sly so that he could remember their faces and pin them down in court.”). *See also ‘Key Evidence Ignored in Godhra Train Fire Case,’* DNA INDIA (Ahmedabad) Jan. 24, 2012, <http://www.dnaindia.com/india/report-key-evidence-ignored-in-godhra>

[train-fire-case-1641679](#) (effort by one of the accused who received a death sentence to challenge that sentence based on the Tehelka sting operation evidence).

- <sup>26</sup> See *Godhra Case: Witness Claims Police Tortured Him*, THE HINDU, Feb. 23, 2010, <http://www.thehindu.com/news/national/other-states/godhra-case-witness-claims-police-tortured-him/article112176.ece> (“Ilyas Hussain Mulla, a resident of Godhra in Gujarat. . . [claims] ‘I was in Palej village which is more than 150 km away from Godhra.’ . . . ‘I signed the confessional statement in court and became a witness in the case as [the police] had then kept my father in illegal detention and [were] threatening to implicate me along with my father in the case.’”); Vidya Subrahmaniam *Godhra “Witness” Escapes to Tell his Story*, THE HINDU, Feb 25, 2010, <http://www.hindu.com/2010/02/25/stories/2010022561051300.htm>, (Mr. Mulla . . . says he was not held in “protective custody” but was abducted and tortured by the police, including the SIT’s assisting staff, with the intention of compelling him to say a dictated line in court.”); *Missing Godhra Witness Files Petition in SC*, THE INDIAN EXPRESS (Vadodara), Feb. 24, 2010, <http://indianexpress.com/article/cities/ahmedabad/missing-godhra-witness-files-petition-in-sc/99/>, (“Around 3.15 pm, the applicant was detained by the SIT Police in a white Tata Sumo vehicle bearing GJ1- 4448, and handcuffed, states the application. Further, the applicant was taken to a government guest house in Shehra, about 20 km from Godhra, on February 17 where he was beaten up by police officials allegedly in presence of Panchmahals Superintendent of Police J R Mothaliya. I was asked to sign on blank sheets, which were to be sent to Additional Sessions Judge in Sabarmati and a copy to SIT Director R K Raghavan in which I was made to retract the statements that I had faxed to the judge before about my being forced into confessing that I am an eyewitness and I had pulled the chain of Sabarmati Express on the advice of one Salim Badam, stated Ilyas in his application.”). See also Ashish Khetan, *Twice Burnt Still Simmering*, *supra* note 8 (“In an interview with TEHELKA, the two narrated how they were illegally confined and tortured by Noel Parmar and his team. ‘Every night the cops would come and put a log of wood on my legs and then walk over it.’ Said Ilyas. ‘I was given electric shocks on my genitals.’ Said Kalandar. They were made to memorise a statement handed to them by the police.”)
- <sup>27</sup> See *Godhra Train Burning ‘Witness’ Died in 1995: Defence*, THE INDIAN EXPRESS (Ahmedabad), Mar. 1, 2011, <http://archive.indianexpress.com/news/godhra-train-burning--witness--died-in-1995-defence/593513/>.
- <sup>28</sup> Ashish Khetan, *Burn After Reading*, *supra* note 17.
- <sup>29</sup> See *Id.*, (“despite all his own astute conclusions which contravenes the position, Judge Patel still upheld the police theory that the Godhra carnage was the result of a premeditated conspiracy.”).
- <sup>30</sup> Nikunj Soni, *Godhra Case: SIT May Appeal Against Acquittal of Umarji, 62 Others*, DNA (Ahmedabad) 4, Feb. 26, 2011; Parimal Dabhi, *One More Accused Acquitted in 2002 Godhra Train Carnage Case*, THE INDIAN EXPRESS, Nov. 30, 2013, <http://www.indianexpress.com/news/one-more-accused-acquitted-in-2002-godhra-train-carnage-case/1201593/>, (describing the subsequent acquittal of one final suspect in the Godhra case).
- <sup>31</sup> Parimal Dabhi, *supra* note 30.
- <sup>32</sup> See HRW 2012, *supra* note 3, (“While investigations in the Godhra train attack proceeded rapidly, investigations into cases related to the anti-Muslim riots that followed were deliberately slowed down or simply not pursued, Human Rights Watch said.”); see also HRW 2002, *supra*, note 14, at 14 (describing how the suspects were initially charged under the controversial Prevention of Terrorism Ordinance (POTO), and citing in fn. 21 an anonymous interviewee: “POTO is being put up but why has the government not filed a POTO case against the VHP? Is the law only against Muslims? It should be applied equally against everyone.”); see also Clinton *Criticizes Modi Govt Over Gohdra*, THE ECONOMIC TIMES, Mar. 3, 2003, [http://articles.economictimes.indiatimes.com/2003-03-03/news/27545255\\_1\\_modi-govt-india-today-conclave-godhra](http://articles.economictimes.indiatimes.com/2003-03-03/news/27545255_1_modi-govt-india-today-conclave-godhra) (“Clinton . . . pointed out that while the accused in the Godhra incident had been booked ‘under the

draconian Pota,' the prosecution of those responsible for the retaliatory large-scale killings of Muslims was yet to start.”)

<sup>33</sup> YALE BOOK OF QUOTATIONS, (Fred R. Shapiro, ed.; Yale University Press: 2006), 269-70.

<sup>34</sup> The State of Gujarat v. N.A. Chhara, Special Ct. for Conducting the Speedy Trial of Riot Cases (Ahmedabad), Aug. 29, 2012, 1937-1938, <http://www.cjponline.org/gujaratTrials/narodapatiya/NP%20Full%20Judgmnt/Naroda%20Patiya%20-%20Common%20Judgment.pdf> [hereinafter “Naroda Patia Decision”] (“Every citizen of this country must understand, that one lives in the society where rule of law very much survives. . . . It is true that predominant feeling among the convicts was to take revenge of the Godhra carnage but, that amounts to taking law into one’s own hands[,] which cannot be taken lightly by this Court”).

<sup>35</sup> SIDDHARTH, THE MAKING OF A TRAGEDY, *supra* note 10, at 22, (citing a speech given by Mr. Modi in which he described the attack that killed Ehsan Jafri as “a chain of action and reaction,” referring to Ehsan’s alleged shooting of a gun at the marauding mob in defense of those sheltering in the Gulbarg society as the “action” provoking the subsequent “reaction.” Echoing this comment, the RSS in mid March of 2002 issued a resolution in which it stated that “[t]he reaction of this murderous incident in Gujarat was natural and spontaneous.” (*id.*, at 21) In May of 2002, VHP leader Ashok Singhal described the situation in Gujarat as “a matter of pride” and “a befitting reply to what has been perpetrated on the Hindus in the past 1,000 years.” (*id.*, at 23) His VHP comrade Pravin Togadia heralded Gujarat as a “Hindu awakening.” (*id.*, at 23) Prime Minister Vajpayee explained in April of 2002, that “we should not forget how the tragedy of Gujarat started. The subsequent developments were no doubt condemnable, but who lit the fire? How did the fire spread?” (*id.*, at 25)); *see also* Sheela Bhatt, *It Had to be Done, VHP Leader Says of Riots*, Rediff.com, Mar. 12, 2002, available at <http://www.rediff.com/news/2002/mar/12train.htm>, (quoting a senior VHP leader who, while describing of one particular community of rioters, exclaimed that: “they have done an amazing job!”).

<sup>36</sup> HRW 2002, *supra* note 14, at 4.

<sup>37</sup> *See* Tuhin A. Sinha, *Marching With the Times*, THE TIMES OF INDIA, Jul. 12, 2010, <http://timesofindia.indiatimes.com/home/opinion/edit-page/Marching-With-The-Times/articleshow/6155480.cms>, (“a bandh imply the community or political party declaring it [expects] the general public to stay in their homes and strike work.”). *For examples of recent bandhs, see e.g., Pune Bandh Turns Violent, Sena Workers Held*, CNN-IBN, Dec. 28, 2010, <http://ibnlive.in.com/news/pune-bandh-turns-violent-sena-workers-held/138749-3.html> (“The bandh call by Shiv Sena [] turned violent as Sena workers went on a rampage to protest the removal of a statue of Shivaji's guru Dadoji Konddev. Shiv Sena activists pelted stones at buses in Pune and stopped two trains near Lonavala.”); Prasanta Mazumdar, *Assam Bandh Turns Violent, 1 Killed*, DNA INDIA (Guwahati), Aug. 29, 2012, <http://www.dnaindia.com/india/report-assam-bandh-turns-violent-1-killed-1733995> (In a *bandh* in the state of Assam, “[t]he bandh supporters blocked rail traffic, pelted stones at vehicles and fought pitched battles with the police and public at many places. Several TV journalists and camerapersons were injured after they were attacked by the bandh activists at Goalpara, Barpeta Road, Sonitpur and Sivasagar. . . . At Barpeta Road in Barpeta district, a 50-year-old man died and 27 others were injured when the bandh supporters clashed with traders. The protestors also set ablaze some shops”); *Bharat Bandh Turns Violent, Buses Set on Fire in Karnataka*, INDIA TV, May 31, 2012, <http://www.indiatvnews.com/news/india/bharat-bandh-turns-violent-buses-set-on-fire--16247.html>, (“BJP and Left leaders were detained at several places amid reports of buses and commercial establishments refusing to down their shutters being targeted by their activists.”); *Bandh Enters Day Two: 65 Held for Violence*, YAHOO! INDIA NEWS, Feb. 21, 2013, <http://in.news.yahoo.com/bandh-enters-day-two--65-held-for-violence-050008075.html>, (“On day one of the strike, mobs of workers attacked factories that were open and set fire to

vehicles of their owners as well as fire tenders. At least one factory complex was also torched, officials and witnesses said. Also, a hosiery unit in Noida was ransacked, police sources said. Hours later, strike supporters stoned factories and outlets in sectors 81, 82 and 84 of Greater Noida. Glass panes in many factories were shattered even as the security guards tried to pacify the mobs and later fired in the air, a police officer told IANS"); *Violence, Arrests Mar Bharat Bandh; Normal Life Hit*, ZEE NEWS, Feb. 21, 2013, [http://zeenews.india.com/news/nation/violence-arrests-mar-bharat-bandh-normal-life-hit\\_830241.html](http://zeenews.india.com/news/nation/violence-arrests-mar-bharat-bandh-normal-life-hit_830241.html) ("School children and office-goers suffered the most as most auto-rickshaw and taxi drivers either refused or overcharged them. Passengers at major railway stations and bus stands were stranded for hours and forced to shell out more fares to reach their destinations. Radio taxis, however, were on the roads."). *Stray Violence Mars Bihar Bandh*, DECCAN HERALD, JUN. 18, 2013, <http://www.deccanherald.com/content/339493/stray-violence-mars-bihar-bandh.html> ("The bandh [in the state of Bihar] affected normal life with BJP workers forcing closure of shops, market places and disrupting movement of trains in the districts like Darbhanga and Nalanda - the native district of the Chief Minister, official sources said. Bandh supporters also blocked roads in Aurangabad, Purnia, Muzaffarpur and other districts"); *Stray Violence Mars Bandh in Rayalseema*, THE NEW INDIAN EXPRESS, Aug. 3, 2013, [http://www.newindianexpress.com/states/andhra\\_pradesh/Stray-violence-mars-bandh-in-Rayalseema/2013/08/03/article1715702.ece#UxaNwtzVtgN](http://www.newindianexpress.com/states/andhra_pradesh/Stray-violence-mars-bandh-in-Rayalseema/2013/08/03/article1715702.ece#UxaNwtzVtgN) (describing the violence, threats against small business owners, and property damage that accompanied a *bandh* called in response to efforts to divide Andhra Pradesh into two separate states)

<sup>38</sup> See *supra*, note 37. See also e.g., *Bandhs Become Illegal in Assam*, INDIA TODAY (Guwahati), Aug. 29, 2012, <http://indiatoday.intoday.in/story/bandhs-become-illegal-in-assam/1/215224.html>, ("There were 75 days of bandhs in Assam in 2005").

<sup>39</sup> See generally *Judiciary Stands Firm, Says All Bandhs, Strikes Illegal*, CNN-IBN, Oct. 1, 2007, <http://ibnlive.in.com/news/judiciary-stands-firm-says-all-bandhs-strikes-illegal/49712-3.html>; See also *DMK Bandh Illegal: SC*, THE TIMES OF INDIA, Oct. 1, 2007, <http://timesofindia.indiatimes.com/india/DMK-bandh-illegal-SC/articleshow/2417506.cms> ("In 1998, the apex court had upheld a full court judgment of the Kerala high court banning bandhs. This was a general order not aimed at any political party. [The Supreme Court judgment on Sep. 30, 2007 estopping politicians in Tamil Nadu from holding a *bandh*] virtually created history as it pre-empted a political coalition from holding a bandh."); *SC Stops TN Shutdown by DMK: Bandhs are Illegal*, THE INDIAN EXPRESS, Sep. 30, 2007, <http://archive.indianexpress.com/news/sc-stops-tn---shutdown-by-dmk-bandhs-are-illegal/222973/0> ("According to the bench, a bandh call essentially paralysed public life and was violative of the Fundamental Rights guaranteed under Article 19 (Freedom of Speech) and Article 21 (Right To Liberty) of the Constitution.")

<sup>40</sup> See e.g., Swati Deshpande, *Shutdown Call Illegal and in Contempt of Court*, THE TIMES OF INDIA, May 31, 2012, <http://timesofindia.indiatimes.com/city/mumbai/Shutdown-call-illegal-in-contempt-of-court/articleshow/13681152.cms>, (describing a 2012 call by BJP and Shiv Sena to call a *bandh*); *Darjeeling Bandh Declared Illegal, 72-Hour Ultimatum to Call it Off*, THE NEW INDIAN EXPRESS (Darjeeling/Kolkata), Aug. 11, 2013, <http://www.newindianexpress.com/nation/Darjeeling-bandh-declared-illegal-72-hour-ultimatum-to-call-it-off/2013/08/11/article1729105.ece#UxaZONzVtgN>, (describing a 8+ day *bandh* in the state of West Bengal); *Congress Terms Bandh Call Illegal*, THE HINDU, Sep. 19, 2012, <http://www.thehindu.com/todays-paper/tp-national/tp-karnataka/congress-terms-bandh-call-illegal/article3913272.ece>, (describing the response to a countrywide *bandh* call by the BJP and others).

<sup>41</sup> Chenoy Report, *supra* note 16, Section 2; HRW 2002, *supra* note 14, at 21

<sup>42</sup> See Chenoy Report, *supra* note 16, Section 3 ("Since it was clear that an immediate post-Godhra *bandh* could only lead to communal violence, the Chief Minister should have forced the VHP to withdraw the *bandh*, failing



which he should have suppressed it by deploying the entire might of the State and requisitioning extra forces from outside. He clearly failed to do so, and instead did the very opposite. By doing this the VHP and Gujarat government, in effect, prepared the grounds for the riots.”); see also Manas Dasgupta, *Saffronised Police Show their Colour*, THE HINDU, Mar. 3, 2002, <http://hindu.com/2002/03/03/stories/2002030303170800.htm> (“The police may not have demonstrated such impotency without a tacit approval from above which they received from the ruling party extending support to the *bandh* call. In such a situation, the police would always be hesitant to act lest it hurt the interests of the political bosses.”)

- <sup>43</sup> See Special Investigation Team, Report in Compliance to the Order Dtd. 12.09.2011 of the Hon’ble Supreme Court of India in the Complaint Dtd. 08.06.2006 of Smt. Jakia Nasim Ahasan Jafri, 29, [hereinafter “SIT Jafri Closure Report”], available at <http://www.cjponline.org/zakia/SITClosReport/SIT%20Clos%20Voll%201-100.pdf>, (reporting Bhatt’s testimony that “[Mr. Modi had] impressed upon the gathering . . . ‘that for too long the Gujarat Police had been following the principle of balancing the actions against the Hindus and Muslims while dealing with the communal riots in Gujarat. This time the situation warranted that the Muslims be taught a lesson to ensure that such incidents do not recur ever again. The Chief Minister Shri Narendra Modi expressed the view that the emotions were running very high amongst the Hindus and it was imperative that they be allowed to vent out their anger’”); See also Ashish Khetan, *Senior IPS Officer Sanjeev Bhatt Arrested in Ahmedabad*, TEHELKA, Vol. 8:7, Feb. 19, 2011, [http://archive.tehelka.com/story\\_main48.asp?filename=Ne190211EXPLOSIVE.asp](http://archive.tehelka.com/story_main48.asp?filename=Ne190211EXPLOSIVE.asp) (reporting the “exact incendiary words” that Mr. Modi allegedly spoke: “[t]here is a lot of anger in the people. This time a balanced approach against Hindus and Muslims will not work. It is necessary that the anger of the people is allowed to be vented”); Raju Ramachandran, Report by the *Amicus Curiae* Dated 25.07.2011 Submitted Pursuant to the Order of This Hon’ble Court Dated 05.05.2011, 7, [hereinafter “Amicus Curiae report”] available at <http://www.cjponline.org/zakia/FINAL%20REPORT%20-%20RAJU%20RAMACHANDRAN.pdf>.
- <sup>44</sup> See Ashish Khetan, *Senior IPS Officer Sanjeev Bhatt Arrested in Ahmedabad*, *supra* note 43 (describing an undercover investigation conducted by Tehelka, in which “Godhra BJP [Member of the state Legislative Assembly] and [] rabid Bajrang Dal leader, Haresh Bhatt [] told [the reporter of the article] . . . that Modi had given rioters approval to run amok for three days;” and that “Arvind Pandya, the Modi government’s special prosecutor in the Justice Nanavati-Shah Commission, was also captured on a spy-cam saying it was Modi’s strong leadership that had made the post-Godhra pogrom possible.”)
- <sup>45</sup> See *id.*, (describing: (1) testimony that former BJP MLA Haren Pandya had allegedly made on May 13, 2002 before two retired judges chairing the Concerned Citizens Tribunal, that “he had attended a meeting on 27 February 2002 night at the residence of Modi in which the latter had made it clear that should there be a backlash from the Hindus the police should not come in their way;”)
- <sup>46</sup> See Manas Dasgupta, *Saffronised police show their colour*, *supra* note 42, (“Insiders in the BJP admit that the police were under instructions from the Narendra Modi administration not to act firmly”).
- <sup>47</sup> Amicus Curiae report, *supra* note 43, at 7.
- <sup>48</sup> Amicus Curiae report, *supra*, note 43, at 4.
- <sup>49</sup> See *infra*, EN 130.
- <sup>50</sup> HRW 2002, *supra* note 14, at 21 (citing, in fn. 50, *Time Line*, HINDUSTAN TIMES, Mar. 3, 2002); see also Ashish Khetan, *Exclusive: Headlines Today Probe Reveals Gujarat Riots Were Not Spontaneous and Sudden*, INDIA TODAY, Apr. 15, 2013, [hereinafter “Ashish Khetan – Communiqués”] <http://indiatoday.intoday.in/story/gujarat-riots-2002-godhra-sudden-spontaneous-backlash-frantic-police-warnings-ignored/1/262413.html> (citing numerous leaked State Intelligence Bureau Fax Messages sent from around Gujarat to the central police offices in

Ahmedabad and Gandhinagar detailing patterns of incendiary speeches by VHP or other *sangh parivar* activists, followed by outburst of mob violence, as early as the afternoon of February 27, 2002).

- <sup>51</sup> See Ashish Khetan – Communiqués, *supra* note 50; see also Mrs. Zakia Ahsan Jafri vs. Mr. Narendra Modi & Others, PROTEST PETITION ON THE COMPLAINT DATED 8.6.2006 AND AGAINST THE FINAL REPORT OF THE SPECIAL INVESTIGATION TEAM DATED 8.2.2012, Part I & II, 44-50, available at <http://www.cjponline.org/zakia/protpetition/Protest%20Petition%20PART%20I.pdf>, [hereinafter “Jafri Protest Petition”], (alleging that Mr. Modi authorized Patel to transport the bodies by road from Gohra to Ahmedabad, notwithstanding the fact that Mr. Patel had no authority to handle the bodies or manage their autopsies and funerals).
- <sup>52</sup> *Supra*, note 51.
- <sup>53</sup> See Ashish Khetan – Communiqués, *supra* note 50.
- <sup>54</sup> *Gujarat Riots: Witness Says Patel, Kodnani Instigated Mob*, ZNews, Mar. 13, 2010, [http://zeenews.india.com/news/gujarat/gujarat-riots-witness-says-patel-kodnani-instigated-mob\\_610791.html](http://zeenews.india.com/news/gujarat/gujarat-riots-witness-says-patel-kodnani-instigated-mob_610791.html).
- <sup>55</sup> ELECTION COMMISSION OF INDIA, Press Note: General Elections to the Gujarat Legislative Assembly, No. ECI/PN/35/2002/MCPS, Aug. 16, 2002, 15, available at <http://www.cjponline.org/gujaratTrials/statecomp/pdf%20files/pdfs/2002%2016%20AUG%20CEC%20Postpones%20Elections.pdf>.
- <sup>56</sup> *Id.*; see also CONCERNED CITIZENS TRIBUNAL I, *supra* note 9, at 19 (estimating 16 seriously affected provinces).
- <sup>57</sup> see CONCERNED CITIZENS TRIBUNAL II, *supra* note 9, at 26 (“From the evidence placed before us it is clear that starting from February 28, within the first 72 hours, even as Shri Modi claimed the situation to be under control, there was unprecedented loss of life and property. Thereafter, violence continued in 3-4 distinct stages right up to mid-May”); HRW 2002 *supra* note 14, at 21.
- <sup>58</sup> HRW 2002 *supra* note 14, at 22 (“Dozens of witnesses interviewed by Human Rights Watch described almost identical operations.”).
- <sup>59</sup> *Id.*; see also CONCERNED CITIZENS TRIBUNAL I, *supra* note 9, at 19-20.
- <sup>60</sup> See CONCERNED CITIZENS TRIBUNAL II, *supra* note 9, at 44-7.
- <sup>61</sup> *Id.*, at 48-50; HRW 2002 *supra* note 14, at 31.
- <sup>62</sup> CONCERNED CITIZENS TRIBUNAL II, *supra* note 9, at 38-43; HRW 2002 *supra* note 14, at 27-29.
- <sup>63</sup> CONCERNED CITIZENS TRIBUNAL II, *supra* note 9, at 25-26; HRW 2002 *supra* note 14, at 30-31; see also Radha Sharma, and Sanjay Pandey, *Mob Almost Wipes out Locality, Return for More*, THE TIMES OF INDIA (Delhi), Mar. 2, 2002, (“‘A mob stormed our house and pulled me and my parents out. They doused us with petrol and set us ablaze... My parents are dead and see what they have done to me,’ sobbed 15-year old Shah Jahan, a resident of Noorani Masjid in Naroda-Patia, her face dripping in blood.”)
- <sup>64</sup> *Gulberg Society Riot Death Toll now 69*, THE INDIAN EXPRESS, May 19, 2009, <http://archive.indianexpress.com/news/gulberg-society-riot-death-toll-now-69/462128/>.
- <sup>65</sup> See SIDDHARTH, THE MAKING OF A TRAGEDY, *supra* note 10, at 140.
- <sup>66</sup> See *Id.*, at 140-44; see also ‘I Saw Him Stripped, Chopped Off and then Burnt Alive,’ THE INDIAN EXPRESS (Ahmedabad), 5, Oct. 23, 2010 (Zakia Jafri testimony, estimating the mob at 3000 strong); *Instead of Sending Help, Modi Abused Jafri, Gulbarg Riot Survivor Tells Court*, AHMEDABAD MIRROR, 2, Nov. 5, 2009 (Imtiaz Pathan testimony, estimating the mob at 4000 strong).

- <sup>67</sup> See *Jafri Had Called up Advani, Modi: Gulberg Witness*, AHMEDABAD MIRROR, 7, Dec. 16, 2009 (Sairabanu Salim Sandhi testimony, alleging that Ehsan Jafri called LK Advani—then Home Minister of Gujarat, Mr. Modi, Amarsinh Chaudhary—former Chief Minister of Gujarat; Congress Party, and Badruddin Sheikh—leader of Ahmedabad Congress Party for help, but none of them responded); See *FINAL SOLUTION* (Rakesh Sharma, Dir 2004) (interviewing witness who claims Mr. Jafri also called Ahmed Patel (senior national-level Congress politician), as well as sent a “fax to Delhi”); *Another Riot Witness Says Jaffery Had Called up Modi*, THE ECONOMIC TIMES, 2, Nov. 11, 2009 (Roopa Mody testimony); ‘*When Jafri Called Modi for Help During Riots, CM Abused Him*,’ THE INDIAN EXPRESS (Ahmedabad), 3, Nov. 5, 2009 (Imtiaz Saeed Khan Pathan testimony); HRW 2002, *supra* note 14, at 18. *Instead of Sending Help, Modi Abused Jafri, Gulberg Riot Survivor Tells Court*, AHMEDABAD MIRROR, 2, Nov. 5, 2009 (Imtiaz Pathan testimony)
- <sup>68</sup> See *infra*, EN 130.
- <sup>69</sup> *But cf.* Ashish Khetan – Communiqués, *supra* note 50 (documenting, via an analysis of leaked messages sent to the State Intelligence Bureau headquarters from field officers, that “there were three alerts about the impending massacre at Gulberg,” one at 12:15 pm warning: “Mob is surrounding the place. Strict watch should be kept there,” another at 2:50 pm warning: “Mob of 3000 rioters has surrounded Gulberg Society, take immediate action,” and a final message at 5:00 pm, reporting: “Mob attacked the society from all sides Ehsan Jaffri and women and children burnt alive. Houses are ablaze. Mob is looting from homes.”).
- <sup>70</sup> From an interview witnessed with Haala (pseudonym), 2013; See also ‘*When Jafri Called Modi for Help During Riots, CM Abused Him*,’ *supra* note 67 (Imtiaz Saeed Khan Pathan testimony); *Another Riot Witness Says Jaffery Had Called up Modi*, *supra* note 67; *Jafri Called up Cops, CM for Help, Says Riot Survivor*, AHMEDABAD MIRROR, 11, Nov. 18, 2009 (Nadim Sheikh testimony: “[Mr. Jafri] said he called up Chief Minister Narendra Modi for help, but Modi abused him instead of sending the police”); *Witness Claims Jafri Had Called Modi for Help*, THE AGE (Mumbai), 6, Nov. 5, 2009 (Imtiaz Pathan testimony: “Mr. Pathan claimed that he had asked [Mr. Jafri] about what Mr. Modi said, to which the ex-MP had replied that Mr. Modi instead of sending help had used offensive language with him on phone (*sic*)).
- <sup>71</sup> See *Instead of Sending Help, Modi Abused Jafri, Gulberg Riot Survivor Tells Court*, *supra* note 67 (Imtiaz Pathan testimony: “The then police chief P C Pande and Meghaninagar PI K G Erda came here. [Mr. Jafri] asked them for *bandobast* [police protection]. The cops promised to send help soon and left. In a few seconds, a 4,000-strong mob gathered outside the society.”); *Jafri Called up Cops, CM for Help, Says Riot Survivor*, *supra* note 70 (Nadim Sheikh testimony: “when I asked [Mr. Jafri] what they talked about, he told me the police officers had promised to send a big police force to the society for protection. Fifteen minutes after the police officers left, a mob attacked our society.”)
- <sup>72</sup> See *Jaffri Had Called up Advani, Modi: Gulberg Witness* *supra* note 67, (“On that day, she had seen Jagrupsinh Rajput, former [BJP] deputy mayor, and Meghsinh Chaudhary, a local [VHP] leader, instigating the mobs to attack us”), HRW 2002, *supra* note 14, at 18.
- <sup>73</sup> See *Police Asked Killers to Look for Azhar: Rupa Mody*, THE TIMES OF INDIA (Ahmedabad) 4, Nov. 11, 2009, (Rupa Mody testimony: “Mody had further stated that she had seen 4 to 5 naked bodies lying in the Jafri’s garden while she was coming out after the police arrived.”); *Jafri Called up Cops, CM for Help, Says Riot Survivor*, *supra* note 70 (Nadim Sheikh testimony: “I saw Lakhio and Lala Yogendra raping Saijidabano and the unknown woman”)
- <sup>74</sup> See *Charge to be Filed in Naroda Patia Case*, Rediff.com, Jun. 4, 2002, <http://www.rediff.com/news/2002/jun/04train1.htm> (reference to charge sheet being issued the day before in Gulberg Society case). See also Manoj Mitta, *Two Years on, Gujarat Riot Cases Still Dragging*, THE TIMES OF INDIA (New Delhi), 9, Dec. 31, 2005.

- <sup>75</sup> See *Jafri Had Called CM for Help Parzania Mother Tells Court*, AHMEDABAD MIRROR, 10, Nov. 11, 2009 (Rupa Mody testimony: “Rupa also alleged that the policemen got her to change her statement before the Nanavati Commission. ‘The policemen told me that if I told the panel that they had arrived to help us before 5 pm, they will find my child. I trusted them and did what they asked,’ she said.”).
- <sup>76</sup> See *Gulberg Massacre Case: Key Witness Hints at Tampering of Evidence*, THE INDIAN EXPRESS (Ahmedabad) 1, Nov. 18, 2009 (Saeedkhan Pathan testimony: “at the time of leaving the society, when the police had taken control of the Gulberg Society, he had seen many bodies lying around and he could identify many of them. . . . Pathan said. . . [o]n March 2, they were asked by the camp authorities to go to the graveyard to identify bodies recovered from Gulberg Society. ‘I did not go there due to ill health, but my son, Imtiaz, had gone there. He told me that when we had left Gulberg Society, the bodies were quite identifiable. But the bodies brought to the graveyard were charred and unidentifiable.”)
- <sup>77</sup> 31 Accused in Ambasana Riot Acquitted—Trial in Gulberg Society Riot Case Also Began With Framing of Charges, AHMEDABAD MIRROR (page and date unknown); see also *Gulberg Accused Chargesheeted*, DNA (Saturday-Ahmedabad) 3, Dec. 13, 2008.
- <sup>78</sup> See *Trial Begins in Gulberg Massacre Case*, THE INDIAN EXPRESS (Ahmedabad), 1, May 15, 2009; *Seven Years on, Gulberg Massacre Trial Begins*, TIMES OF INDIA (Ahmedabad), 1, May 15, 2009.
- <sup>79</sup> The Gujarat High Court on Aug. 5, 2010, ruled that the witnesses’ advocate would no longer be able to address the court *directly* (as S.M. Vora had done up to that point), but rather only through the public prosecutors. The ruling applied not only to the Gulberg Society case (where witnesses up to that point had enjoyed representation), but also to the Naroda Patia and Naroda Gam cases, where witnesses had up to that point not been allowed to have legal representation. *Riot Cases: Witnesses Allowed to Hire Lawyers*, THE TIMES OF INDIA (Ahmedabad) 4, Aug. 6, 2010.
- <sup>80</sup> *Id.*
- <sup>81</sup> See, e.g., *Witnesses Call Trial Judge Biased*, THE INDIAN EXPRESS (Ahmedabad) 3, Jan. 26, 2010 (Witnesses “cited various instances from the trial proceedings in their allegations against Joshi. They have said that Joshi has prejudged the authenticity of their depositions and so they have no hope of getting any justice from his court. . . . [They] also said that Joshi has been treating the witnesses worse than even the accused.”); *‘Riot Case Judge Biased,’ DNA* (Saturday-Ahmedabad), 4, Mar. 6, 2010 (“[T]he judge has been blatantly aggressive and biased towards eye-witnesses.”); *Gulberg Society Massacre: Witnesses Accuse Judge of Bias, Seek Transfer of Case*, THE INDIAN EXPRESS (Ahmedabad) 3, Mar. 5, 2010; *Court’s Approach Unfair, Say Gulberg Massacre Witnesses*, AHMEDABAD MIRROR 6, Jan. 12, 2010; *Judge Remarks Miffs Gulberg Witnesses*, THE TIMES OF INDIA (Ahmedabad) 3, Jan. 12, 2010; *Gulberg Riots: 7 Eyewitnesses Call Trial Court ‘Biased,’* THE INDIAN EXPRESS (Ahmedabad) 1, Jan. 12, 2010.
- <sup>82</sup> See *supra* note 81.
- <sup>83</sup> See Nikunj Soni, *Why Gulberg Was Only Case He Quit in 46 Yrs*, DNA (Sunday-Ahmedabad) 4, Mar. 14, 2010 (Shah and Bhatt resigned “allegedly due to non-cooperation of the officers of the SIT and biased approach of the judge.”); *Lawyers’ Letter Blames Judge, SIT for Quitting Gulberg Trial*, THE TIMES OF INDIA (Ahmedabad) 4, Mar. 11, 2010.
- <sup>84</sup> *Lawyers’ Letter Blames Judge, SIT for Quitting Gulberg Trial*, *supra* note 83.
- <sup>85</sup> *SC Stays Gulberg Probe, Seeks Report from SIT on Allegations*, THE TIMES OF INDIA (Ahmedabad) 1, Mar. 16, 2010.
- <sup>86</sup> *Govt Appoints New PP for Gulberg Riots Case*, THE TIMES OF INDIA (Ahmedabad) 3, Jun. 23, 2010; *State Appoints Special Public Prosecutor in Gulberg Case*, THE INDIAN EXPRESS (Ahmedabad) 4, Jun. 23, 2010.

- <sup>87</sup> See *HC Rejects Plea to Change Judge in Gulbarg Massacre Case*, THE TIMES OF INDIA (Ahmedabad) 5, Jul. 30, 2010. See also *Judge Refuses to Stay Gulbarg Trial*, DNA (Ahmedabad) 4, Feb. 2, 2010 (detailing Judge Joshi's refusal to stay the trial pending the High Court's decision regarding witnesses' efforts to have him removed as presiding judge in the Gulbarg trial).
- <sup>88</sup> *Gulbarg Case Gets New Judge*, THE TIMES OF INDIA (Ahmedabad), Feb. 12, 2011, [http://articles.timesofindia.indiatimes.com/2011-02-12/ahmedabad/28546415\\_1\\_gulbarg-case-gulbarg-society-bu-joshi](http://articles.timesofindia.indiatimes.com/2011-02-12/ahmedabad/28546415_1_gulbarg-case-gulbarg-society-bu-joshi).
- <sup>89</sup> *Gulbarg Case: Designated Court Judge Retires, No Successor Named*, BUSINESS STANDARD, Sept. 1, 2013, [http://www.business-standard.com/article/pti-stories/gulbarg-case-designated-court-judge-retires-no-successor-named-113090100643\\_1.html](http://www.business-standard.com/article/pti-stories/gulbarg-case-designated-court-judge-retires-no-successor-named-113090100643_1.html).
- <sup>90</sup> *Id.* ("The case, which had attracted nationwide attention, is in the last stage of completion as hearing of final arguments from both defence and prosecution is over. With Dhandha's retirement, the new judge may have to hear final arguments from all the parties again.").
- <sup>91</sup> See *Demand for Including Top Cop as Accused*, THE INDIAN EXPRESS (Ahmedabad) 3, Dec. 24, 2009.
- <sup>92</sup> *Id.*; see also *Gulbarg Case: HC Says no to Making Tandon Accused*, THE TIMES OF INDIA (Ahmedabad) 4, Feb. 25, 2010.
- <sup>93</sup> Roshan Kumar, *Tandon Can't be Made Accused: SIT to Court*, DNA (Ahmedabad) 4, Jan. 7, 2010. See also *Court Notice to Jingar in Gulbarg Massacre Case*, DNA (Ahmedabad) 3, Jan. 19, 2010 ("[L]ack of evidence, alibi and death of one of the eight accused have been mentioned as the reasons why they cannot be arraigned as accused.").
- <sup>94</sup> *Gulbarg Case: HC Says no to Making Tandon Accused*, *supra* note 92; *Gulbarg Massacre: HC Turns Down Plea for Naming Cops as Accused*, THE INDIAN EXPRESS (Ahmedabad) 5, Feb. 25, 2010 (no charges filed against "former Joint Commissioner of Ahmedabad M K Tandon and the then Inspector of Meghaninagar police station N D Parmar"); *HC Rejects Plea to Arraign Former dy Mayor, 2 Others*, THE TIMES OF INDIA (Ahmedabad) 2, Sep. 11, 2010 (no charges filed against "former deputy mayor Jagrupsinh Rajput, Manish Splendor and Mahendra Pukhraj");
- <sup>95</sup> *Gulbarg Riot: Court Orders to Name Marwadi as Accused*, THE INDIAN EXPRESS (Ahmedabad) 3, Feb. 9, 2010, (joining Babu Marwadi); *Gulbarg Case: Court Admits Plea on Naming Constable as Accused*, AHMEDABAD MIRROR 3, Jan. 19, 2010 (joining Rajesh Jinjar, police constable); *Court Notice to Jingar in Gulbarg Massacre Case*, *supra* note 93.
- <sup>96</sup> See Manas Dasgupta, *Plea to Arraign Four Police Officers as Accused in Gulbarg Case*, THE HINDU, May 14, 2011, <http://www.hindu.com/2011/05/14/stories/2011051461432400.htm>.
- <sup>97</sup> See Manas Dasgupta, *SIT Gives Clean Chit to Four Former Police Officers in Gulbarg Case*, THE HINDU, May 28, 2011, <http://www.thehindu.com/todays-paper/tp-national/sit-gives-clean-chit-to-four-former-police-officers-in-gulbarg-case/article2056069.ece>; *Gulbarg: Court Won't 'Entertain' Plea to Call in Ex-Cops as Accused*, THE INDIAN EXPRESS (Ahmedabad), Jun. 1, 2011, <http://archive.indianexpress.com/news/gulbarg-court-won-t-entertain--plea-to-call-in-excops-as-accused/797961/>.
- <sup>98</sup> *Gulbarg Witnesses Urge Court to Call Four Top Cops*, THE TIMES OF INDIA (Ahmedabad) 3, Oct. 4, 2011.
- <sup>99</sup> *SIT Refuses to Produce Gulbarg File in Trial Court*, THE INDIAN EXPRESS (Ahmedabad) 3, Oct. 19, 2011
- <sup>100</sup> *'SIT Hiding Evidence to Protect Politicians'*, DNA (Ahmedabad) 4, Nov. 15, 2011 (quoting S.M.Vohra, lawyer representing victims' interests in the Gulbarg Society case).
- <sup>101</sup> See *Gulbarg Case: Special Court Rejects Plea to Stay Trial*, DNA (Ahmedabad) 5, Nov. 19, 2011.

- <sup>102</sup> See *Gulberg Riot Victim Moves HC for Stay on Trial Proceedings*, THE INDIAN EXPRESS (Ahmedabad) 3, Dec. 22, 2011; *Court Refuses to Stay Gulberg Society Trial*, THE HINDU 10, Dec. 30, 2011.
- <sup>103</sup> Naroda Patia Decision, *supra* note 34, at 301-04, (describing the Naroda Police Station area as an area of Ahmedabad with approximately 450,000 persons, about 4.44% of whom were Muslim, and further describing most of those witnesses who testified in the Naroda Patia case as “concentrating on their livelihood and family more than anything else.”)
- <sup>104</sup> *Id.*, at 13.
- <sup>105</sup> See *Naroda Patia Witness Accuses Cops of Partial Treatment*, THE TIMES OF INDIA (Ahmedabad) 5, May 26, 2010, (Bashirkhan Mansuri testimony “During his deposition, Mansuri identified former state minister Maya Kodnani, Bipin Panchal and Suresh Langda [arrested October 2012 in Maharashtra after fleeing justice]. Narrating what he witnessed on February 28 morning at Patia, the witness said that a mob had gathered near Natraj Hotel and Kodnani came and addressed police personnel in the morning. Immediately after she left the spot, policemen opened fire against Muslims. He said that he saw two persons becoming victims of police firing, in which he also sustained injuries on his left shoulder.”); *Naroda Witness Deposes Against Kodnani*, DNA (Ahmedabad), 3, May 26, 2010, (Bashir Khan Nanhe Khan Mansuri testimony: “Mansuri in his deposition also said that while he was standing near the spot, he saw Maya Ben Kodnani reaching there and after talking to police who were already deployed at the place, she left the spot. Minutes later Kodnani left (*sic*), the police at the site started firing in the air. At the same time, one Bipin Autowallah started firing on the Muslim mob with his revolver and a Suresh Langda, began pelting stones. Mansuri stated that in the firing, Maksood died on the spot from bullet injuries while he and another person, Abid, sustained severe wounds.”); *Kodnani Had Fired From Her Revolver*, DNA, Jan. 21, 2010, available at <http://cjponline.org/gujaratTrials/pressclip/dna210110.htm> (Aminaben Abbas Bhei Balif testimony: “Amina, who identified Kodnani and Bipin Autowallah who were present in the court, charged them of inciting the mob and firing from their guns. . . . On February 28. . . an armed mob had assembled near Natraj Hotel and was shouting slogans against the minority community. Amina. . . was standing near Natraj Hotel when she noticed Kodnani incite the mob to target her community.”); *Naroda Patiya Riot: Eyewitness Identifies Kodnani, 4 Others*, THE INDIAN EXPRESS (Ahmedabad) Mar. 24, 2010, (Mohammed Salim Sheikh testimony: “After a while, Sheikh came out of the house to ascertain if there was any danger. At that time, he saw Kodnani talking to policemen. She was wearing a white sari and a saffron scarf, he said.”); *Naroda Riots: Witness Identifies Maya, Jaideep*, THE TIMES OF INDIA (Ahmedabad) Mar. 13, 2010, (Aiyub Lalumiya Qureshi testimony).
- <sup>106</sup> *Kodnani had Fired From Her Revolver*, *supra* note 105, (Aminaben Abbas Bhei Balif testimony: “[Kodnani] also asked them to damage Noorani Masjid”).
- <sup>107</sup> Naroda Patia Decision, *supra* note 34, at 768 (citing interview recorded by PW 322 with A-21: “Mayaben. . . said, ‘Kill them. I am and will be with you always. You will always have my backing.’”)
- <sup>108</sup> *Kodnani had Fired From Her Revolver*, *supra* note 105, (Aminaben Abbas Bhei Balif testimony: “Later, Kodnani fired from her gun targeting at the minority community and left the spot.”)
- <sup>109</sup> Naroda Patia Decision, *supra* note 34 at 1957-69. See also Manas Dasgupta, *Ex-BJP Minister Among 32 Convicted of Naroda-Patiya Massacre*, THE HINDU (Ahmedabad), Aug. 30, 2012, <http://www.thehindu.com/news/national/other-states/exbjp-minister-among-32-convicted-of-narodapatiya-massacre/article3835078.ece>.
- <sup>110</sup> Roshan Kumar, *Naroda Patia Victim Breaks Down in Court*, DNA (Ahmedabad), 4, May 28, 2010, (Rafiqan Bano testimony: “When the situation worsened in he afternoon, Bano, along with her children and other Muslim members, left their house to take refuge in the nearby SRP quarters. However, despite pleading with the SRP security, Bano and the other Muslims were not allowed to enter the quarters. As the group moved towards the

Gopinath society, they were attacked by rioters armed with sharp weapons, petrol bombs, and other inflammable material. Bano recounted that a mob led by Guddu Chhara [deceased as of November 2012] and Tinho Marathi [in prison 08.19.2005 and subsequently found guilty of murder], also responsible for killing her daughters, forced her son Samsad to consume petrol and then threw him into the fire.”); *They Burnt my Kids Alive: Naroda Patia Riots Witness Tells Special Court*, THE TIMES OF INDIA (Ahmedabad), 4 May 28, 2010, (referring also to Rafiqan Bano testimony: “We were told by SRP personnel that there were orders to kill us, [Bano] told the court”); see also *Ex-DGP Puts SRP Officer in Dock for Naroda Massacre*, THE INDIAN EXPRESS, (Ahmedabad), Feb. 3, 2012, <http://indianexpress.com/article/cities/ahmedabad/exdgp-puts-srp-officer-in-dock-for-naroda-massacre/>. See also ‘Muslim Cops Allowed Naroda Patia to Happen,’ THE TIMES OF INDIA (Ahmedabad), Feb. 3, 2012 (reporting statement to the SIT by retired DGP and then Chief of SRPF, R.B. Sreekumar how two Muslim police officers (Khurshid Ahamed and his subordinate Qureshi), allegedly “def[ie]d his instructions and did not allow the Naroda Patia victims to enter SRP quarters. . . . [F]ollowing this incident, the [] officers were given special favours by the state government.”).

<sup>111</sup> Naroda Patia Decision, *supra* note 34, at 246-47, 553-750 (27 of the 62 defendants that were still living in 2011 were charged as being party to this conspiracy under §120(B) of the Indian Penal Code).

<sup>112</sup> See *infra*, notes 131-138 and accompanying text. Indeed, some of the survivor testimony at the trial seemed to support this latter conspiratorial theory, alleging that there had been incidents in Naroda Patia prior to the 2002 riots where *Sangh Parivar* activists had hinted of an imminent revenge attack. See *Patia Witness Identifies Kodnani*, DNA (Ahmedabad), 3, Mar. 23, 2010, (Mohammed Salim Sheikh testimony: “Witness Mohammed Salim Sheikh said that in 2001, the BJP and other *Sangh Parivar* organizations had given *bandh* call in Ahmedabad protesting against the killing of Kashmiri Pandits in the J&K valley. On the day of the *bandh* call he was standing near Ambaji Mandir at Naroda Patiya when two persons approached him and said that they wanted to take revenge for the Kashmiri Pandit killings. However, Kishan Korani, who was one of the two persons, said that the time was not appropriate for revenge and asked to wait and watch for developments.”)

<sup>113</sup> Naroda Patia Decision, *supra* note 34, at 246, 749.

<sup>114</sup> See e.g., Naroda Patia Decision, *supra* note 34, at 526 (“In [a] nutshell, the previous investigation or say the investigation until SIT took over, is not dependable, not reliable, not keeping the faithful record, was prepared in panic condition and was in the impact of fear in the minds and hearts of the victims etc.”); see also *Naroda Charge-Sheet: Victims Turn Instigators*, THE TIMES OF INDIA (Ahmedabad) 1, Jun. 5, 2002; *Big Names Missing From Naroda-Patia Charge-Sheet*, TIMES OF INDIA (Ahmedabad) 3, Jun. 5, 2002; *Naroda Chargesheet Reveals Loose Ends*, THE TIMES OF INDIA (Mumbai) 11, Jun. 6, 2002 (describing the police narrative of what happened at Naroda Patia as an example of two communities clashing with each other, among other now completely discredited theories of what happened and who was responsible); Stavan Desai, *Naroda-Patiya Toll: It Doesn’t Add Up*, THE INDIAN EXPRESS (Ahmedabad) 1, Aug. 29, 2002; ‘Instigator’ of Naroda-Patiya Massacre Held, THE TIMES OF INDIA (Ahmedabad) 5, Nov. 16, 2002 (one of the first arrests was of a Muslim man whom police accused of instigating the Naroda Patia massacre by allegedly kidnapping an autorickshaw driver, whereupon “[t]his triggered off the carnage of several members of the minority community.”); *Panel Urged to Order Fresh Probe in Naroda-Patia Case*, DNA (Money-Ahmedabad) 3, Sept. 11, 2007.

<sup>115</sup> Naroda Patia Decision, *supra* note 34, at 481-535, 515 (“the sincerity, sensitivity and more importantly the desire to do proper investigation was missing in the previous investigators and the attempt not to include names of certain accused in the crime was constant and common for all the previous investigators including all the I.O. of Crime Branch.”); *Naroda Patia Witness Accuses Cops of Partial Treatment*, *supra* note 105 (Bashirkhan Mansuri testimony: “he narrated how the Naroda police and the city crime branch officials did not

record their complaint in proper manner, and why their statements before SIT vary from the ones earlier recorded" [sic]).

- <sup>116</sup> See e.g., *19 Arrested in Naroda Patia Case*, THE TIMES OF INDIA (New Delhi) 7, Apr. 19, 2002; *Faceless FIRs Set to Get Closer Look*, THE TIMES OF INDIA (Ahmedabad) 1, May 21, 2002 ("Police are in fact starting from scratch with the investigations looking closely at some of the FIRs which, it is suspected, were designed to let the culprits off the hook."); Raveen Thukral, *23 Charged in Naroda Patia Case*, HINDUSTAN TIMES (New Delhi) 9, Jun. 5, 2002; *Two More Naroda Accused in Custody*, THE TIMES OF INDIA (Ahmedabad) 3, Jun. 6, 2002; *Five Naroda Accused in Judicial Custody*, THE TIMES OF INDIA (Ahmedabad) 3, Jun. 8, 2002; *Naroda-Patia Carnage Absconders Asked to 'Show up' by Feb. 15*, THE TIMES OF INDIA (Ahmedabad) 4, Feb. 7, 2003 (regarding a court request to six accused to show up at court); *Naroda-Patiya Accused Attacks Cops, Injures 3*, THE INDIAN EXPRESS (Ahmedabad) 1, Jan. 4, 2004 (regarding the arrest of Mukesh Chhara alias Guddu); *Naroda Riot Accused Nabbed*, THE TIMES OF INDIA (Ahmedabad) 3, Feb. 4, 2004, (regarding the arrest of Ashok Bhil); Roshan Kumar, *Court Issues Warrant Against Two Naroda Patia Case Accused*, DNA (Ahmedabad) 5, Aug. 7, 2009; *Naroda Patia Witness Accuses Cops of Partial Treatment*, supra note 105 (Bashirkhan Mansuri testimony: "the court took [witness Bashirkhan] Mansuri's statement on record in which he narrated how the Naroda police and the city crime branch officials did not record their complaint in proper manner.")
- <sup>117</sup> *Naroda 'Ringleaders' in Police Net, Finally*, THE TIMES OF INDIA (Ahmedabad) 1, May 29, 2002 ("In what is being termed as a major breakthrough in investigations, three persons said to have been leaders of mobs that butchered and burnt 86 persons at Naroda-Patia on February 28 were arrested by the Crime Branch in the wee hours of Tuesday. . . . Some of those arrested [were]: Babu Bajrangji, Padmendra Singh alias PJ Rajput and Kishan Khubchand Korani. Police said Bajrangji was associated with the Bajrang Dal, while Rajput had links with the VHP."); *3 Parivar Men Held for Naroda Killings*, THE ASIAN AGE 1, May 29, 2002.
- <sup>118</sup> *Compare reports of bail granted: Court Grants Bail to Maya Kodnani, Jaydeep Patel in Naroda Riot Cases*, THE INDIAN EXPRESS (Ahmedabad) 1, May 20, 2009; *Fast-track Court Grants Bail to Two Riot Accused*, DNA (Ahmedabad) 5, Jun. 23, 2009; *2 Naroda Patia Accused Granted Bail*, TIMES OF INDIA (Ahmedabad), Jun. 23, 2009; *HC Breather for Babu Bajrangji, Bail Stands*, THE INDIAN EXPRESS (Ahmedabad) 4, Dec. 27, 2011; *with reports of bail denied: Naroda Patia Case: Court Rejects Bail Plea of Accused*, DNA (Saturday-Ahmedabad) 6, Jul. 4, 2009; *Naroda Patiya Riot: Court Cancels Bail of Two Accused*, (Ahmedabad) 4, Nov. 7, 2009; *HC Denies Bail to 2 Naroda Patia Accused*, TIMES OF INDIA (Sunday-Ahmedabad) 6, May 23, 2010.
- <sup>119</sup> See Manoj Mitta, *Two Years On, Gujarat Riot Cases Still Dragging*, supra note 74.
- <sup>120</sup> The reports generated by the police in response to citizen allegations of criminal wrongdoing are commonly referred to as First Incident Reports ("FIRs"). See generally Code Of Criminal Procedure, 1973, [Hereinafter "CoCP 1973"], Ch.XII, ¶154 ("Information in cognizable cases. (1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read [o]ver to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf. (2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant.").
- <sup>121</sup> See Roshan Kumar, *Club All Cases Related to Naroda Patia, Says Court*, DNA (Ahmedabad) 3, Sep. 14, 2009. See also *infra* p.36 for discussion of omnibus FIRs.
- <sup>122</sup> See *Charges Framed Against 60 in Naroda Patia Massacre*, THE TIMES OF INDIA (Ahmedabad) 3, Oct. 9, 2009.
- <sup>123</sup> See e.g., *Govt Doc Busts Naroda Patia Fetus Story*, THE TIMES OF INDIA (Ahmedabad) 4, Mar. 18, 2010; *2002 Riot Victim's Embryo Was Not Torn out of Womb: Doctor*, AHMEDABAD MIRROR 10, Mar. 18, 2010; *Naroda Witness*



*Says she Was Not Raped*, DNA (Saturday-Ahmedabad) 5, Aug. 28, 2010; *Naroda Riot Witness Disowns Affidavit, Says Did Not See Any Rape*, THE INDIAN EXPRESS (Ahmedabad) 3, Oct. 16, 2010. *But see* Citizens for Justice and Peace, Report for the Committee for the Elimination of Discrimination Against Women (CEDAW), 2010, 5. [http://www.cjponline.org/CJPSURVIVORSJUNE%202010\\_.pdf](http://www.cjponline.org/CJPSURVIVORSJUNE%202010_.pdf) (referring to the incident at Naroda Patia where “a nine month pregnant woman had been the victim of one of the most brutalized killings that had come to typify the barbarity of what happened in 2002. . . . Eight years down, senior and highly paid counsel for the State in New Delhi and Gujarat have made all out bids to claim not only that this vile incident had not taken place but worse till, discredit human rights defenders. . . for ‘cooking up stories like Kauserbano’s killing.’”).

<sup>124</sup> *See, e.g., Riot of Laughter in a Grave Case*, THE TIMES OF INDIA (Ahmedabad) 4, Jan. 9, 2010 (Ganibhai Mansuri testimony); ROSHAN Kumar, ‘Kodnani Had Fired from her Revolver,’ DNA (Ahmedabad) 4, Jan. 21, 2010, (Aminaben Abbas Bhai Balif testimony); *Naroda Riots: Witness Identifies Maya, Jaideep*, THE TIMES OF INDIA (Ahmedabad), Mar. 13, 2010 (Aiyub Lalumiya Qureshi testimony); *Patia Witness Identifies Kodnani*, DNA (Ahmedabad) 3, Mar. 23, 2010, (Mohammed Salim Sheikh testimony); *Naroda Patiya Riot: Eyewitness Identifies Kodnani, 4 Others*, THE INDIAN EXPRESS (Ahmedabad), Mar. 24, 2010 (Mohammed Salim Sheikh testimony); *Witness Identifies Jaideep Patel*, DNA (City-Ahmedabad) 4, Mar. 31, 2010 (Ayum Umar Mansuri testimony); *Naroda Witness Deposes Against Kodnani*, DNA (Ahmedabad) 3, May 26, 2010 (Bashirkhan Mansuri testimony); *Naroda Patia Witness Accuses Cops of Partial Treatment, supra* note 105 (Bashirkhan Mansuri testimony); *They Burnt my Kids Alive: Naroda Patia Riots Witness Tells Special Court, supra*, note 105 (Rafiqanbanu Rahimbhai Saiyed testimony); Roshan Kumar, *Naroda Patia Victim Breaks Down in Court*, DNA (City-Ahmedabad) 4, May 28, 2010 (Rafiqan Bano testimony); ‘How Did so Many People Survive, Cops Asked us,’ DNA (Saturday-Ahmeabad) 6, May 29, 2010;

<sup>125</sup> From an interview witnessed with Laila (pseudonym), 2013 (“The Judge was very empathetic. She kept reassuring me to speak to truth without efear, don’t look at the accused and say what you have to say. I told the judge I needed time. The judge gave me time.”); From an interview witnessed with Farhina (pseudonym), 2013, (“The judge protected us like children”)

<sup>126</sup> *See, e.g., 2002 Naroda Patiya Riot: Court Refuses Contempt Proceedings Against Witness*, THE INDIAN EXPRESS (Ahmedabad) 3, May 28, 2010, (Judge rejects defense counsel’s suggestions that one witness’ agitation at being aggressively cross-examined amounts to contempt of court: “it is very tough for someone to lose three children even due to natural cause (*sic*). But here the witness lost her children in riots and herself sustained serious injuries. As such, Rafiqan’s approach should be considered in the background of the factual circumstances and should not be construed as contemptuous, the judge said.”)

<sup>127</sup> From an interview witnessed with Aasmaa (pseudonym), 2013, (“[Our judge ran a more humane courtroom] because [she] could see what had happened to the women, the gender violence. She did a site visit to Naroda Patia. . . . It is because she is a woman judge and because there was such great gender violence [that she understood us].”)

<sup>128</sup> *See Naroda Patiya: Witness Wants Further Probe*, DNA (Ahmedabad) 4, Feb. 26, 2010, (relying on §173(8) of the CrPC in his petition, which applies to situations where additional information pertinent to a case comes available after the case has already begun); *SIT Probe Incomplete Says Naroda Witness*, THE TIMES OF INDIA (Ahmedabad) 5, Feb. 20, 2010, (“The applicant has charged the SIT of not doing analysis of the mobile phone data contained in the CD furnished by IPS officer Rahul Sharma. This could have easily proved the conspiracy. Moreover, SIT has not taken any step against in-charge police officers, whose negligence led to this massacre.”). *Naroda Patia Investigation: Verdict Likely on March 4*, DNA 7, Mar. 1, 2010, (quoting a lawyer involved in the petition: “[t]he SIT and police had arrested only those persons who had been present at the spot during the incident or who had been named by the witness and survivors of the case. There were still a

large number of people alleged to be behind the conspiracy of massacre, who remained to be arrested.”); *Another NGO Wants Further Probe into Naroda Patia Riot* THE TIMES OF INDIA (Ahmedabad) 5, Feb. 26, 2010.

<sup>129</sup> ‘No Further Probe in ’02 Naroda Patia Riot,’ THE TIMES OF INDIA (Ahmedabad) 4, Mar. 5, 2010.

<sup>130</sup> Narendra Modi, Statement of Shri Narendra Modi to SIT, March 27-8, 2010, 16, [*hereinafter* “Modi SIT Statement”] available at <http://issuu.com/pallavatwork/docs/modi?e=4461360/6121743>, (“Those who have read the history of Gujarat would definitely be aware that communal violence in Gujarat has a very old history. Since long and even before my birth, Gujarat has witnessed series of incidents of such communal violence. As per available history, from 1714 AD to uptill now, in Gujarat, thousands of incidents of communal violence have been recorded.”)

<sup>131</sup> See, e.g., Brief for Petitioner, Jakia N.A.H. Jafri et. al v. State of Gujarat et. al, in the Supreme Court of India, at 24, ¶15, Mar. 3, 2008, [*hereinafter* “2008 Jafri Supreme Court Petition”] available at <http://www.cjponline.org/zakia/Zakia%20CJP%20SLP%201088%20of%202008%20final.pdf>, (“The cynical subversion of the law and deliberate non compliance with known and time-tested measured (sic) to maintain public peace began prior to the Godhra mass arson of February 27, 2002. Intelligence silence or failure, and subsequent lack of precautionary measures (including calling in the army as a precaution), in 2002, is shocking and startling given the reported background and potential threat to peace by the provocative behavior by kar sevaks, demonstrated repeatedly in their journeys to and from Gujarat in the past (between 1989-2002]. In 1992, such incidents were reported from Palej, Dahod and Godhra soon after the Babri Mosque demolition. With this history, should not the police have kept strict watch and vigil over the departure and return of kar sevaks, especially when the climate in the country was tense and belligerent?”); Jafri Protest Petition, *supra* note 51, at 278 (“The fact that *karsevaks* were expected [to pass through Godhra by train] and the fact that Godhra has a fragile communal history were and are themselves enough for additional precautionary deployment.”); accord R.B.Sreekumar Affidavit to the Justice K.G.Shah an Justice Nanavati Commission, Jul. 15, 2002, at 4-5 [*hereinafter* July 2002 Sreekumar Affidavit], (detailing how the Gujarat State Intelligence Bureau had monitored the VHP as they recruited and prepared volunteers to participate in the *Ram Maha Yagna* at Ayodhya, how they disseminated warnings to several key political and police authorities in Gujarat that “if the law and order situation deteriorated at Ayodhya it would have very serious repercussions in Gujarat and it might lead to severe loss of lives and property, as it happened during the riots in 1992, following the demolition of the Babri Masjid.”).

<sup>132</sup> July 2002 Sreekumar Affidavit, *supra* note 131, at 9 ¶21 (“The State Intelligence Bureau had inputs about the likely repercussions of the Godhra incident on 27.2.2002. Accordingly, the SIB had sufficiently alerted all the Police Commissioners and Supdts. of Police of all Districts for taking precautionary steps to prevent likely communal clashes in their jurisdiction.”).

<sup>133</sup> See CONCERNED CITIZENS TRIBUNAL II, *supra* note 9, at 28-30, 55-74, (This important study, relying on over 1,500 interviews with victim-survivors in the immediate aftermath of the violence, alleged “detailed military-style pre-planning” as evidenced by “prior mobilisation of men and materials, and an organisation in place that made possible the systematic and calculated preparations that preceded many of the massacres.”).

<sup>134</sup> *Id.*, at 55.

<sup>135</sup> CONCERNED CITIZENS TRIBUNAL II, *supra* note 9, at 56 (“All the information so gathered was to be passed on in the form of a written report that was maintained by the [more senior VHP activist-trainers]”); see also Sheela Bhatt, *supra* note 35; see also HRW 2002 *supra* note 14, at 22 (stating that rioters targeted Muslim properties with “computer printouts listing the addresses of Muslim families and their properties, information obtained from the Ahmedabad municipal corporation among other sources”).

- <sup>136</sup> See CONCERNED CITIZENS TRIBUNAL II, *supra* note 9, at 55. See also Sheela Bhatt, *supra* note 35, (interview with Chairman of the Gujarat unit of the VHP, in which he confirms that a team of 50 lawyers had been formed to provide pro-bono legal assistance to those accused of rioting and looting “because they believe in the RSS ideology.”)
- <sup>137</sup> See Raheel Dhattiwala, *Deliberateness and Spontaneity in Violence*, THE HINDU, Dec. 31, 2013, available at <http://www.thehindu.com/opinion/lead/deliberateness-and-spontaneity-in-violence/article5519691.ece>.
- <sup>138</sup> Raheel Dhattiwala and Michael Biggs, *The Political Logic of Ethnic Violence: The Anti-Muslim Pogrom in Gujarat, 2002*, POLITICS AND SOCIETY, 40:4 483-516, 504 (“Muslims were most vulnerable where the BJP had previously won 33-36 percent of the vote, indicating that the party had to attract more voters to secure victory at the next election. We also demonstrate that violence did indeed boost the BJP’s vote in the subsequent election.”) See also Steven Wilkinson, *Votes and Violence: Electoral Competition and Ethnic Riots in India*, (New York, Cambridge University Press, 2004).
- <sup>139</sup> See *supra* notes 111-113 and accompanying text (describing how the judge in the Naroda Patia case found that a criminal conspiracy had been formed sometime between the morning of February 27, 2002 and the morning of February 28, 2002, when the co-conspirators in that case met at Naroda Patia).
- <sup>140</sup> Sheela Bhatt, *supra* note 35. See also SIT Jafri Closure Report, *supra* note 43, at 306, (In discussing this evidence, the SIT stated merely that Professor K.K. Shastri had “expired” on Sept. 9, 2006, ignoring entirely the evidentiary significance of his statements in the immediate aftermath of the violence.)
- <sup>141</sup> See, HRW 2002, *supra* note 14, at 23. See also *Misuse of Voters List in Gujarat Riots Alleged*, THE TIMES OF INDIA, Mar. 12, 2002, <http://timesofindia.indiatimes.com/india/Misuse-of-voters-list-in-Gujarat-riots-alleged/articleshow/3541858.cms>.
- <sup>142</sup> Kamal Mitra Chenoy, Vishnu Nagar, Prasenjit Bose, Vijoo Krishnan. *Ethnic Cleansing in Ahmedabad: A preliminary report by the SAHMAT Fact Finding Team to Ahmedabad*. Mar. 10-11, 2002. <http://www.outlookindia.com/article.aspx?214962-0>. (Hereinafter “Chenoy et al., *Ethnic Cleansing in Ahmedabad*”).
- <sup>143</sup> See HRW 2002, *supra* note 14, at 22; Chenoy et al., *Ethnic Cleansing in Ahmedabad*, *supra* note 142.
- <sup>144</sup> SIT Jafri Closure Report, *supra* note 43, at 138.
- <sup>145</sup> See, e.g., FINAL SOLUTION, *supra* note 67, at minute 17 (noting that “the Army had to be deployed in various parts of Gujarat to curb the violence” and that “violence in Gujarat continued for several months after the army was withdrawn.”).
- <sup>146</sup> See HRW 2002, *supra* note 14, at 21 (“Though the army arrived in Gujarat soon after the Godhra carnage, the state government refused to deploy the soldiers until twenty-four hours after they arrived and only once the worst violence had ended.”); and Jafri Protest Petition, *supra* note 51, at 284-85, (detailing the delay in deploying army troops to Godhra).
- <sup>147</sup> See SIT Jafri Closure Report, *supra* note 43, at 138 (“the allegation that there was an undue delay in requisition and deployment of the Army is . . . not established.”).
- <sup>148</sup> HRW 2002, *supra* note 14, at 21; see also Ashish Khetan, “Here’s the Smoking Gun. So How Come the SIT is Looking the Other Way?” TEHELKA Vol. 8:6, Feb. 12, 2011, available at [http://archive.tehelka.com/story\\_main48.asp?filename=Ne120211coverstory.asp](http://archive.tehelka.com/story_main48.asp?filename=Ne120211coverstory.asp).
- <sup>149</sup> See e.g., CONCERNED CITIZENS TRIBUNAL II, *supra* note 9, at 62, (“the period between February and April, 2002 saw the proliferation of such [hate pamphlets]. . . . It is astounding that no action was initiated by any wing of the

Gujarat state intelligence or police against such hateful and incendiary writing; nor did the judiciary take *suo motu* action, which it is empowered to do.”)

<sup>150</sup> See e.g., Sheela Bhatt, *supra* note 35, (quoting Gujarat VHP Chairman, Prof. Keshavram Kashiram Shastri—two weeks after the outbreak of violence—as saying: “We don’t support it. But we can’t condemn it because they are our boys. If my daughter does something, will I condemn it? We don’t believe that the boys have done something wrong, because this was the result of an outburst. But we do feel that they should not have gone so far. But that’s an afterthought. We needed to do something.”); *but see* Modi SIT Statement, *supra* note 130, at Qs 16, 28 & 35 (in testimony to the SIT, Mr. Modi disavows having personally been involved with the decision to support even the VHP-declared *bandh*, and instead “appealed to [the] public through [the media] for [the] maintenance of peace.”)

<sup>151</sup> HRW 2002, *supra* note 14, at 22.

<sup>152</sup> See Ashish Khetan – Communiqués, *supra* note 50.

<sup>153</sup> See e.g., Roxy Gagdekar, *How Only Four Cops Saved 1,200 Muslim Lives During Gujarat Riots*, DNA (Ahmedabad), Mar. 1, 2012, <http://www.dnaindia.com/india/report-how-only-four-cops-saved-1200-muslim-lives-during-gujarat-riots-1657047> (detailing how four police officers deterred a mob “of around 10,000 people” that had allegedly “planned a massacre” in the village of Ginjar, Kheda district, and saved 1,200 Muslims whom the mob had already cornered when they arrived at the scene); *see also* Ashish Khetan, *Senior IPS Officer Sanjeev Bhatt Arrested in Ahmedabad*, *supra* note 43, (quoting Sanjeev Bhatt, former Indian Police Service Officer in Ahmedabad, in his statements to the SIT: “Two days after the Godhra train incident, . . . I was passing by Saraspur area. To my right I saw a mob trying to demolish a masjid known as Mancha Masjid. I told my driver to stop. The moment I stepped out of the car, the mob started dispersing.”).

<sup>154</sup> HRW 2002, *supra* note 14, at 16.

<sup>155</sup> See *supra*, note 110.

<sup>156</sup> *Id.*, at 25-27; *see also* Naroda Patia Witness Accuses Cops of Partial Treatment, *supra* note 105 (Bashirkhan Mansuri testimony: “Narrating what he witnessed on February 28 morning at [Naroda Patia, Bashirkhan Mansuri] said that a mob had gathered near Natraj Hotel and Kodnani came and addressed police personnel in the morning. Immediately after she left the spot, policemen opened fire against Muslims. He said that he saw two persons becoming victims of police firing, in which he also sustained injuries on his left shoulder.”); *see also* FINAL SOLUTION, *supra* note 67, at minute 15:45.

<sup>157</sup> HRW 2002, *supra* note 14, 25.

<sup>158</sup> *Id.*

<sup>159</sup> See e.g., *Gujarat Police Paralyzed*, DNA (Ahmedabad) 3, Aug. 24, 2013.

<sup>160</sup> *Id.*, at 53; *see also* National Human Rights Commission Preliminary Comments, Recommendations, ¶v, Apr. 1, 2002 (As early as April 2002, the National Human Rights Commission recommended that “[p]olice desks should be set-up (*sic*) in the relief camps to receive complaints, record FIRs and forward them to Police Stations having jurisdiction.”)

<sup>161</sup> See *Court Rejects Imtiaz’s Plea*, DNA (Ahmedabad) 5, Nov. 6, 2009 (“[Imtiaz Khan] Pathan had submitted an affidavit to the city police commissioner and an application to Meghaninagar [Principal Investigator] stating that when the incident took place and the first complain (*sic*) were registered, ND Parmar, the investigating officer who registered the complaint, did not file an FIR in accordance with his statements, and of lacunae in the FIR.” Pathan’s plea to introduce his written complaints to the police protesting their alterations as evidence in the Gulberg Society trial was rejected by the presiding judge). *See also* Naroda Patia Witness Accuses Cops of Partial Treatment, *supra* note 105 (Bashirkhan Mansuri testimony: “The court took [witness Bashirkhan]

Mansuri's statement on record in which he narrated how the Naroda police and the city crime branch officials did not record their complaint in [the] proper manner.”).

- <sup>162</sup> HRW 2002 *supra* note 14, at 47, fn. 224 (citing Rupak Sanyal, *Indian police reports say governing party official and Hindu nationalist leaders led mobs*, ASSOCIATED PRESS, Mar. 5, 2002.)
- <sup>163</sup> See *Memo to the Governor of Gujarat, Annexure 1: Reward and Punishment*, available at <http://www.cjponline.org/prelease/Annexure%201%20Reward%20and%20Punishment.pdf> (written submission to Governor of Gujarat prepared by a delegation of eminent citizens of Gujarat and Mumbai on Aug. 17, 2011, compiling at least 14 instances of the State “punish[ing] those few officers who . . . performed their duties according to the law.”) See also R.B. Sreekumar, *Submission of Affidavit on Harassment and Victimization for Depositing Before the Justice G.T.Nanavati & Justice K.G.Shah Commission*, Apr. 9, 2005; R.B. Sreekumar, *Submission of Affidavit on the On-Going Harassment and Victimization for Depositing Before the Justice G.T.Nanavati & Justice K.G.Shah Commission*, by Gujarat State Government, Oct. 27, 2005.
- <sup>164</sup> *Modi Government Arrests Sanjiv Bhatt*, THE HINDU, Oct. 23, 2011, <http://www.thehindu.com/news/national/article2500664.ece>; *India Court Stays Trial of Gujarat Riots Policeman*, BBC, Apr. 20, 2012, <http://www.bbc.com/news/world-asia-india-17781286>.
- <sup>165</sup> See generally *Gujarat Riots: Whistleblower Cop Rahul Sharma Chargesheeted by Modi Govt*, NDTV, Aug. 13, 2011, <http://www.ndtv.com/article/india/gujarat-riots-whistleblower-cop-rahul-sharma-chargesheeted-by-modi-govt-126362>; *2002 Riots: Stop Revenge Against Honest Officers, Ex-Gujarat DGP Tells Modi*, FIRSTPOST INDIA, Jan. 7, 2014, <http://www.firstpost.com/india/2002-riots-stop-revenge-against-honest-officers-ex-gujarat-dgp-tells-modi-1327707.html>.
- <sup>166</sup> See *2002 Riots: Stop Revenge Against Honest Officers, Ex-Gujarat DGP Tells Modi*, *supra* note 165; see also Mahesh Langa, *Role of IPS Sreekumar in Exposing Gujarat CM*, HINDUSTAN TIMES, Feb. 21, 2012, <http://www.hindustantimes.com/india-news/role-of-ips-sreekumar-in-exposing-gujarat-cm/article1-814940.aspx>.
- <sup>167</sup> HRW 2002 *supra* note 14, at 48, fn 227 (citing *Modi Protects BJP, VHP Men*, ASIAN AGE, Mar. 4, 2002, (“It is politically incorrect to arrest them and we are under tremendous pressure to not to act against them,’ a top police official told. These six persons [involved in the Naroda Patia attacks], notorious for their fanaticism, have not been arrested by the police so far and top home department officials say that this is because of the state government’s instructions. A senior Indian Police Service official admitted, ‘While most of the policemen have consciously avoided naming any BJP, VHP or Bajrang Dal activist in the FIRs, some conscientious police officials have done so. Now they are under severe pressure to make amends.”)); HRW 2003, *supra* note 3, at 15-16.
- <sup>168</sup> HRW 2002 *supra* note 14, at 47, fn 224, (quoting Rupak Sanyal, *Indian Police Reports Say Governing Party Official and Hindu Nationalist Leaders Led Mobs*, ASSOCIATED PRESS, Mar. 5, 2002).
- <sup>169</sup> *Id.*, at 47, fn 225, (quoting Rupak Sanyal, *Indian Police Reports Say Governing Party Official and Hindu Nationalist Leaders Led Mobs*, ASSOCIATED PRESS, Mar. 5, 2002).
- <sup>170</sup> *Id.*
- <sup>171</sup> Stavan Desai, *The FIR Story that Keeps Changing*, THE INDIAN EXPRESS, 1, 3, Sep. 18, 2002, (“On February 28 . . . [Natwar Tapu Vala,] the then Assistant Sub-Inspector (ASI) of Naroda police station filed a First Information Report (FIR No 98/2002) after eight persons were killed and several houses and shops owned by the minority community set ablaze by rioters in Naroda village. . . . [O]n May 6, another statement was recorded by Vala . . . [claiming] that he did not identify any of the five persons—Babu Bajrangji, Kishan Korani, P J Rajput, Haresh Rohera and Raju Chaubal—named in the February 28 FIR as being part of the mob which had attacked the Muslim Mohalla and other minority-dominated localities. Instead, in the new statement Vala stated that it was

at the insistence of the then Senior Police Inspector, K K Mysorewala that he had signed on the FIR. . . . Vala, who was till then an ASI, was promoted to the post of Police Sub-Inspector (PSI) on April 3, a month before he changed his statement. . . . On July 22, in a statement . . . Vala went back on his May 6 claims and stated that the FIR registered on February 28 was in accordance with what he had narrated and that there was no discrepancies (*sic*) between what he had told and what was recorded. . . . Meanwhile, in reply to the allegations made by Vala in his May 6 statement, PI Mysorewala. . . has in a statement . . . [claimed] that he wasn't present at the Naroda police station when Vala had registered his complaint.")

<sup>172</sup> HRW 2002 *supra* note 14, at 48, fn 228, (quoting *Pro-VHP officer to prove worst massacres*, ASIAN AGE, Mar. 25, 2002).

<sup>173</sup> *Id.*, at 47, fn 222 (citing Robin David and Leena Misra, *Legal experts fear manipulation of FIRs*, TIMES OF INDIA, Mar. 26, 2002).

<sup>174</sup> Joydeep Ray, *BD Man Most Wanted, Say Cops*, THE INDIAN EXPRESS (Ahmedabad) 1-2, Mar. 5, 2002, ("None of the 15 persons named in the [Gulberg Society and Naroda Patia cases] has been arrested. Joint police Commissioner M K Tandon said their first priority was restoring peace in the city; investigation would begin later."). See also (*with regard to the Gulberg Society Case*), *HC Rejects Plea to Arraign Former dy Mayor, 2 Others*, *supra* note 94 (describing the rejection by the judge in the Gulberg Society case of a plea by Imitiyaz Pathan seeking to add three individuals—including former Deputy Mayor Jagrupsinh Rajput—as accused); *Gulberg Riot: Court Orders to Name Marwadi as Accused*, *supra* note 95, (describing the court-ordered inclusion of Babu Marwadi as an accused in that case. Marwadi was one of eight individuals witnesses asked to be included as accused); *Evidence Only Against constable in Gulburg Case*, THE TIMES OF INDIA (Ahmedabad) 7, Jan. 19, 2010, (describing the inclusion of police constable Rajesh Jinger as an accused in the Gulburg Society case); *Gulburg Witnesses Urge Court to Call Four Top Cops*, THE TIMES OF INDIA (Ahmedabad) 3, Oct. 4, 2011, (describing how upon reading the SIT's closure report in the Jafri case, witnesses in the Gulburg Case urged the court to re-consider their previously dismissed petition to bring charges against four high-ranking police officers in connection with the Gulburg Society case). See also (*with regard to the Naroda Patia Case*) *Naroda-Patia Carnage Absconders Asked to 'Show up' by Feb 15*, *supra* note 116; *Naroda Riot Accused Nabbed*, *supra* note 116; *Civil Rights Body Submits Written Complaint to Top Cop, Says VHP Leader Abetted Riots*, THE INDIAN EXPRESS (Ahmedabad) 1, Nov. 8, 2007, (describing efforts to bring charges against high-level VHP official who was shown to have been in contact with named accused in the Naroda Patia and Naroda Gam cases); *Naroda Patia Accused Nabbed*, DNA (Sunday-Ahmedabad) 5, Jul. 19, 2009. See also (*with regard to political office*) Negendar Sharma and Stavan Desai, *Modi Govt Says Minister Led Mob That Killed 95*, HINDUSTAN TIMES (Mumbai) 1, Feb. 21, 2009 ("Kodnani continues to attend to her official duties"); Deepal Trivedi, *Riot Accused is BJP Ward Chief*, THE AGE (Mumbai) 6, Dec. 24, 2009 ("As a reward to a riot accused, the Gujarat BJP has made Phulabhai Vyas, one of the main accused in the 2002 Naroda village massacre case, president of the New Naroda ward BJP").

<sup>175</sup> SOUTH ASIAN PEOPLE'S COMMISSION FOR THE RIGHTS OF MINORITIES, INCLUDING THE EXCLUDED, *supra* note \*, at 108 ("Generally Dalits, including those brought in from different parts of India upon payment of a meager 'salary', committed the crimes during the riots. Therefore, they were the ones who were caught. Subsequent riots showed that Dalits were not so much a part of the Hindutva fold."); see also HRW 2003, *supra* note 3, at 58-61.

<sup>176</sup> Complaint by Ms. Jakia Nasim Ahesan Hussain Jafri Against Chief Minister Narendra Modi et. al., Jun. 8, 2006 [*hereinafter* "Jafri FIR"]

<sup>177</sup> *Id.*

<sup>178</sup> 2008 Jafri Supreme Court Petition, *supra* note 131, at 4.

<sup>179</sup> *Id.*, at 4.

<sup>180</sup> *Id.*

<sup>181</sup> See SIT Jafri Closure Report, *supra* note 43, at 5 (highlighting the inescapable weakness of the Jafri petition, by noting that the allegations are “mostly based on media reports as well as other documents like affidavits filed by Shri R.B. Shreekumar about which she had no personal knowledge.”).

<sup>182</sup> Jafri Protest Petition, *supra* note 51, at 16 ¶24 (over time, the petitioners have supplemented their original complaint as more and more documents have been made public).

<sup>183</sup> Petitioners have submitted a voluminous dossier of supporting evidence and documents to bolster their claims (*Id.*, at 22, (“[Zakia Jafri’s] complaint/information and the allegations therein against the accused arrayed in the said complaint/information, as to their complicity and conspiracy in the commission of the alleged offenses, are not the mere ipse dixit of the complainant/the petitioners.”)). This record includes the judicial record of the Best Bakery case (see below, p. 48), the investigation records of the Nanavati Shah Commission of Inquiry, the records and report of the National Human Rights Commission, the records and report of the Concerned Citizens Tribunal – Gujarat 2002 (an independent civil society initiative to investigate the Gujarat violence), the SIT investigation files (which Ms. Jafri and her lawyers fought to gain access to following the SIT’s closure report), and finally Ms. Jafri’s own experience as a survivor of the massacre at the Gulberg Society (*Id.*, at 23).

<sup>184</sup> See Citizens for Justice and Peace, *Time Line and Chronology of the Case*, <http://www.cjponline.org/zakia/timeline.htm> (last visited March 14, 2014).

<sup>185</sup> *Id.*

<sup>186</sup> 2008 Jafri Supreme Court Petition, *supra* note 131.

<sup>187</sup> Supreme Court of India—Record of Proceedings, Petition(s) for Special Leave to Appeal (Crl) No(s).1088/2008, Jakia Nasim Ahesan & An R. vs. State of Gujarat & Ors, Apr. 27, 2008.

<sup>188</sup> Supreme Court of India—Record of Proceedings, Petition(s) for Special Leave to Appeal (Crl) No(s).1088/2008, Jakia Nasim Ahesan & An R. vs. State of Gujarat & Ors, Mar. 3, 2008.

<sup>189</sup> MANOJ MITTA, Book Extract: DON’T ASK, DON’T TELL, *Outlook India.com* Feb. 17, 2014, available at <http://www.outlookindia.com/article.aspx?289455>, [hereinafter Mitta, DON’T ASK, DON’T TELL]. See also regarding testimony by M.K. Tandon (retired IPS officer) before SIT: *Gulbarg Riots Case: SIT Quizzes Tandon*, HINDUSTAN TIMES (New Delhi), Sep. 22, 2010; regarding testimony by P.B. Gondia (IPS Officer) before SIT: *Gulbarg Massacre: SIT Grills Gondia*, AHMEDABAD MIRROR 8, Sep. 22, 2010; regarding testimony by Maya Kodnani (BJP MLA and former Minister of Gujarat Government), Gordhan Zaaphia (former MoS Home), and Babu Patel alias Babu Bajrangji (former leader of Bajrang Dal) before SIT: *Former Minister Maya Kodnani Questioned by SIT*, THE TIMES OF INDIA (Ahmedabad) 2, Aug. 31, 2010; regarding testimony by Pravin Togadia (VHP leader) before SIT: *Togadia Files Defamation Action against Zakia Jafri, Son*, AHMEDABAD MIRROR, 6, May 16, 2010; regarding testimony by Nalin Bhatt (former Gujarat BJP General Secretary) before SIT: *Gulberg Riots: After Modi, SIT Summons Nalin Bhatt*, THE INDIAN EXPRESS (Vadodara) Mar. 12, 2010.

<sup>190</sup> Modi SIT Statement, *supra* note 130; see also *SIT Summons Modi in Gulbarg Killing Case*, AHMEDABAD MIRROR 5, Mar. 12, 2010; *Modi Issued Summons in Gulbarg Case*, THE PIONEER (New Delhi) 6, Mar. 12, 2010; *Gulberg Case: Modi Gets SIT Summons*, THE INDIAN EXPRESS (Ahmedabad) 1, Mar. 12, 2010; *Now, Modi will also have Sleepless Nights: Zakia*, THE INDIAN EXPRESS (Ahmedabad) 3, Mar. 12, 2010; *SIT Summons Modi in Jaffrey Murder Enquiry*, THE HINDU (Delhi) 1, Mar. 12, 2010; *8 Years After Godhra, Law Gives Modi a Call*, DNA (Ahmedabad) 1, Mar. 12, 2010; *Jafri Widow Speaks Against Modi, Has Faith in Justice*, THE AGE (Mumbai) 4, Mar. 12, 2010; *SIT Summoning Modi is Relevant, says Suresh Mehta*, THE TIMES OF INDIA (Ahmedabad) 5, Mar. 19, 2010; *Gulberg Riot: Summoning of Modi Relevant, Says Ex-CM*, THE INDIAN EXPRESS (Ahmedabad) 3, Mar. 19, 2010; Manish Mistry, *Der Hai, Ander Nahin*, AHMEDABAD MIRROR 8, Mar. 21, 2010.

- <sup>191</sup> See Citizens for Justice and Peace, *Time Line and Chronology of the Case*, *supra* note 184.
- <sup>192</sup> See *How the Case Progressed*, DNA (Ahmedabad) 1, Sep. 13, 2011.
- <sup>193</sup> *Id.*
- <sup>194</sup> Raju Ramachandran, In the Supreme Court of India, Criminal Appellate Jurisdiction, Special Leave Petition (CRL) No. 1088 of 2008, in the Matter of Jakia Nasim Ahesan & Anr. vs. State of Gujarat & Ors., NOTE BY THE AMICUS CURIAE, Jan. 20, 2011, available at <http://www.cjponline.org/zakia/INTERIM%20REPORT%20-%20RAJU%20RAMACHANDRAN.pdf>.
- <sup>195</sup> See Citizens for Justice and Peace, *Time Line and Chronology of the Case*, *supra* note 184.
- <sup>196</sup> Supreme Court of India—Record of Proceedings, Petition(s) for Special Leave to Appeal (Crl) No(s).1088/2008, Jakia Nasim Ahesan & An R. vs. State of Gujarat & Ors, May 5, 2011.
- <sup>197</sup> Manas Dasgupta, *SIT Planning Closure Report on Modi, says Shreekumar*, THE HINDU (Delhi) 18, Feb. 4, 2012; *Riots: Activists Write to CJI Amid Rumors of SIT 'Closure Report.'* THE INDIAN EXPRESS (Ahmeabad) 3, Feb. 7, 2012.
- <sup>198</sup> See SIT Jafri Closure Report, *supra* note 43.
- <sup>199</sup> *Id.*, (for example, on p. 47, with regard to Sanjiv Bhatt: “Shri Sanjiv Bhatt, IPS is known to be a police officer with a dubious character facing several criminal cases of serious nature and whenever he wants a favour from the Govt., he creates a situation whereby the Govt. is compelled to help him.”)
- <sup>200</sup> *Id.*, (for example, on p. 5 of the complaint, alleging that petitioner “had no personal knowledge” of the allegations she was making, and that they were “general in nature, mostly based on media reports as well as other documents”; on p. 16: “The allegations are vague, general and stereotyped and nothing specific has been mentioned in respect of the following accused persons. . .”).
- <sup>201</sup> See Jafri Protest Petition, *supra* note 51, at 51-3, ¶183 (listing Mr. Sanjiv Bhatt, then DCP of intelligence, Mr. Sreekumar, former Intelligence Officer who reported on statements allegedly made to him by Mr. K. Chakravarti, DG of Police, Mr. Haren Pandya, since deceased former Home Minister, who made a statement to the Concerned Citizens Tribunal about the February 27, 2002 meeting, and retired Justices P.B. Sawant and Suresh, former Supreme Court Justices who chaired the Concerned Citizens Tribunal and testified to the SIT about Pandya’s comments); See also Ashish Khetan, *Senior IPS Officer Sanjeev Bhatt Arrested in Ahmedabad*, *supra* note 43 (listing also corroborative statements captured in an undercover investigation by Haresh Bhatt (Godhra BJP MLA and Bajrang Dal leader) and Arvind Pandya (Gujarat State Government’s Special Prosecutor in the Justice Nanavati-Shah Commission).
- <sup>202</sup> See SIT Jafri Closure Report, *supra* note 43, at 29, (reporting Bhatt’s testimony that “[Mr. Modi had] impressed upon the gathering . . . that for too long the Gujarat Police had been following the principle of balancing the actions against the Hindus and Muslims while dealing with the communal riots in Gujarat. This time the situation warranted that the Muslims be taught a lesson to ensure that such incidents do not recur ever again. The Chief Minister Shri Narendra Modi expressed the view that the emotions were running very high amongst the Hindus and it was imperative that they be allowed to vent their anger”); See also Ashish Khetan, *Senior IPS Officer Sanjeev Bhatt Arrested in Ahmedabad*, *supra* note 43, (reporting the “exact incendiary words” that Mr. Modi allegedly spoke as: “[t]here is a lot of anger in the people. This time a balanced approach against Hindus and Muslims will not work. It is necessary that the anger of the people is allowed to be vented”); Amicus Curiae report, *supra* note 43, at 7; *SIT Cuts Short Key Testimony Against Narendra Modi*, THE TIMES OF INDIA, Mar. 23, 2011, [http://articles.timesofindia.indiatimes.com/2011-03-23/india/29177553\\_1\\_narendra-modi-gulberg-society-k-g-menon](http://articles.timesofindia.indiatimes.com/2011-03-23/india/29177553_1_narendra-modi-gulberg-society-k-g-menon); *IPS Officer Implicates Narendra Modi in 2002 Gujarat Riots*, INDIA TODAY (New Delhi), Apr. 22, 2011, <http://indiatoday.intoday.in/story/2002-gujarat-riots-ips-officer-implicates-narendra-modi/1/136004.html>.



- <sup>203</sup> SIT Jafri Closure Report, *supra* note 43.
- <sup>204</sup> Amicus Curiae report, *supra* note 43.
- <sup>205</sup> Amicus Curiae report, endnote 43, at 22 (“In my opinion, the offences which can be made out against Shri Modi, at this *prima facie* stage, are offences *inter alia* under Sections 153A(1)(a) & (b) [Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to the maintenance of harmony], 153(1)(c) [Imputations, assertions prejudicial to national integration], 166 [Public servant disobeying law, with intent to cause injury to any person], and 505(2) [Statements concerning public mischief] of the IPC).
- <sup>206</sup> SIT Jafri Closure Report, *supra* note 43, at 5.
- <sup>207</sup> Amicus Curiae report, *supra* note 43, at 25-7.
- <sup>208</sup> Supreme Court of India: Criminal Appellate Jurisdiction, *Jakia Nasim Ahesan & Anr. vs. State of Gujarat & Ors.* Criminal Appeal No. 1765 of 2011, Sept. 12, 2011.
- <sup>209</sup> Roxy Gagdekar, *Zakia to Wait Longer for Report*, DNA (Sunday-Ahmedabad) 5, Feb. 12, 2012 (SIT submitted report to magisterial court on Feb. 8, 2012 in a sealed cover).
- <sup>210</sup> SIT Jafri Closure Report, *supra* note 43, at 383-541.
- <sup>211</sup> Compare e.g., Rajnish Sharma, *Modi Gets SIT ‘Clean Chit’ in Gulberg Killing*, THE ASIAN AGE (Mumbai) 1, Apr. 11, 2012, with *Clean Chit for Modi? Not Yet*, DNA (Ahmedabad) 1, Apr. 11, 2012.
- <sup>212</sup> Supreme court of India: Criminal Appellate Jurisdiction, *Jakia Nasim Ahesan & Anr. vs. State of Gujarat & Ors.* Criminal Appeal No. 1765 of 2011, Sept. 12, 2011, *supra* note 208, at 7-8.
- <sup>213</sup> *Id.*
- <sup>214</sup> See Roxy Gagdekar, *Zakia to Wait Longer for Report*, *supra* note 209. The full file was only delivered on March 14, 2012. See *SIT Submits Zakia Report Documents*, DNA (Ahmedabad) 5, Mar. 14, 2012.
- <sup>215</sup> See *No SIT Report for Jafri Yet*, THE TIMES OF INDIA (Ahmedabad) 1, Feb. 16, 2012 (“Elections in Uttar Pradesh end on March 6. SIT lawyer R.S. Jamuvar had asked time till March 6 to 8 to submit all evidence”); Manas Dasgupta, *Zakia Jafri’s Plea to Make Public SIT Report Rejected*, THE HINDU (Delhi) 8, Mar. 4, 2012, (“magistrate M.S. Bhatt ruled that since the SIT was yet to submit its full report along with the accompanying documents and annexure, no action was required on the report at this stage”); *Zakia Jafri Files Fresh Plea for Access to SIT Report*, HINDUSTAN TIMES (New Delhi) 8, Mar. 16, 2012, (“the SIT sought time to file reply.”); *Will Zakia Get Report? Verdict on April 10*, DNA (Ahmedabad) 13, Mar. 28, 2012, (“Zakia should be given a copy of the report only after the court decides whether to prosecute those named in her complaint or close the case against them: SIT’s lawyer, RS Jamuar”); *Real Fight Begins Now, Says Zakia*, THE INDIAN EXPRESS (Ahmedabad) 3, Apr. 11, 2012 (court agreed to give her the file); *‘Zakia not Given Key SIT Papers,’* THE TIMES OF INDIA (Ahmedabad) 1, May 11, 2012 (“[Zakia] is seeking 19 important documents missing from the copy of “relevant documents” given to her”); *SIT Opposes Zakia’s Plea for ‘Missing’ Documents*, THE INDIAN EXPRESS (Ahmedabad) 4, May 26, 2012; *2002 Riots: Court Allows Zakia to Examine SIT Documents*, THE INDIAN EXPRESS (Ahmedabad) 5, May 29, 2012; *SIT Opposes Teesta’s Plea to Inspect Original Documents*, THE TIMES OF INDIA (Ahmedabad) 5, May 31, 2012; *SIT Didn’t Submit Call Records of CMO: Teesta*, DNA (Ahmedabad) 3, Jun. 3, 2012; *Court Rejects Zakia’s Plea for SIT’s Preliminary Report*, AHMEDABAD MIRROR 5, Jul. 17, 2012; *Gujarat Riots: SC Bench Refuses to go into Zakia Jafri’s Plea*, HINDUSTAN TIMES (New Delhi) 8, Dec. 11, 2012; *SIT Supplies More Papers to Zakia*, TIMES OF INDIA (Sunday-Ahmedabad) 5, Dec. 16, 2012.
- <sup>216</sup> Jafri Protest Petition, *supra* note 51.
- <sup>217</sup> *Id.*, at 4, ¶8.

- <sup>218</sup> CoCP 1973, *supra* note 120, ¶¶ 202-4.
- <sup>219</sup> Supreme Court of India: T.P. (Crl) Nos. 194-202 of 2002, in the matter of National Human Rights Commission & Ors. vs. State of Gujarat and others and T.P.(Crl.) Nos.66-72 of 2004, Citizens for Justice and Peace & Others vs. State of Gujarat & Others, Mar. 26, 2008, at 5 (*hereinafter* “Supreme Court of India, Mar. 26, 2008”) (“[f]or the purposes of the cases covered by these directions, the SIT shall take over the functions of the concerned Police Stations qua investigating agencies and accordingly exercise powers and jurisdiction in consonance with the scheme and provisions of the Code of Criminal Procedure, 1973.”)
- <sup>220</sup> Ahmedabad Metropolitan Court No. 11, Zakia Jafri Case Judgment (Dec. 26, 2013) (Gujarati-language decision), available at <https://www.dropbox.com/s/bxz81z4f3krgg02/Zakia%20Jafri%20Judgment%2026.12.2013.PDF> (The Magistrate came to the conclusion that the SIT had not been asked to investigate about the larger conspiracy and disbelieved the testimony of several independent witnesses—all serving police officers at the time when the riots happened (Rahul Sharma, Sreekumar, Kuldip Sharma, and Sanjiv Bhatt)—as well as the Tehelka sting operation conducted by independent journalist Ashish Khetan. The Magistrate also refused to apply the Genocide principles on the ground that it was a foreign principle not applicable in India); *See also* English-language analysis of the decision Teesta Setalvad, We Will Soldier On (Zakia Jafri Case) <http://teestasetalvad.blogspot.com/2013/12/we-will-soldier-on-zakia-jafri-case.html> (Dec. 27, 2013).
- <sup>221</sup> 2002 Riots: Zakia Jafri Moves Gujarat HC Against Clean Chit to Narendra Modi, ZEE NEWS, March 18, 2014, [http://zeenews.india.com/news/gujarat/2002-riots-zakia-jafri-moves-gujarat-hc-against-clean-chit-to-narendra-modi\\_918707.html](http://zeenews.india.com/news/gujarat/2002-riots-zakia-jafri-moves-gujarat-hc-against-clean-chit-to-narendra-modi_918707.html).
- <sup>222</sup> According to one prominent blogger, by October 2012 “there have been a total of 443 convictions [arising out of the Gujarat violence], including 332 Hindus and 111 Muslims, according to official records.” This estimate listed a total of 50 cases, and included in its tally the 31 individuals who were convicted in February 2011 for their role in the Godhra train incident. (Anonymous, “Gujarat Riots – The True Story,” Myth 21: No one was brought to justice for the riots, posted Oct. 8, 2012, available at <http://www.gujaratriots.com/485/myth-21-no-one-was-brought-to-justice-for-the-riots/>). A separate 2007 study gathering aggregate data on the state of criminal cases opened following the Gujarat violence concluded that out of an initial 4,252 criminal cases filed, the State authorities initially closed over 2000 cases. After the Supreme Court intervened to force the Gujarat authorities to re-consider those initial case closures, the state reopened 1,602 of the previously closed cases, but later shut down over 500 of those cases again. In late 2007, only 202 of the cases had resulted in a verdict, of which only 9 resulted in criminal convictions of any sort, with an additional 13 acquittals on appeal at the High Court. (Joydeep Ray, *Riot Cases – Justice Aborted in Gujarat*, GUJARATFILES.NET, Nov. 6, 2007, [http://www.gujaratfiles.net/news/riot\\_cases\\_justice\\_aborted\\_gujarat.html](http://www.gujaratfiles.net/news/riot_cases_justice_aborted_gujarat.html))
- <sup>223</sup> MINISTRY OF HOME AFFAIRS: NATIONAL CRIME RECORDS BUREAU, CRIME STATISTICS INDIA-2012, available at [http://ncrb.nic.in/CD-CII2012/Additional\\_Tables\\_CII\\_2012/Additional%20table%202012/Cases%20registered%20and%20their%20disposal%20under%20IPC%20crimes%20during%20-%202012.xls](http://ncrb.nic.in/CD-CII2012/Additional_Tables_CII_2012/Additional%20table%202012/Cases%20registered%20and%20their%20disposal%20under%20IPC%20crimes%20during%20-%202012.xls).
- <sup>224</sup> Supreme Court of India, Criminal Appellate Jurisdiction, Criminal Appeal Nos. 446-449/2004, Zahira Habibulla H. Sheikh and Anr. vs. State of Gujarat and Ors. [*hereinafter* “Best Bakery Case.”]
- <sup>225</sup> *See generally* *Bilkis Case Conviction Unique, says CBI Counsel*, HINDUSTAN TIMES, Jan. 18, 2008, available at <http://www.hindustantimes.com/india-news/bilkis-case-conviction-unique-says-cbi-counsel/article1-270342.aspx>; S. Anand, *Bilkis Bano’s Brave Fight*, TEHELKA MAGAZINE, 5:4, Feb 02, 2008, available at [http://archive.tehelka.com/story\\_main37.asp?filename=Ne020208bilkis.asp](http://archive.tehelka.com/story_main37.asp?filename=Ne020208bilkis.asp).
- <sup>226</sup> Best Bakery Case, *supra* note 224, at 7.

<sup>227</sup> CoCP 1973, *supra* note 120, Ch.XIII, ¶177.

<sup>228</sup> “Court Orders Gujarat Riot Review,” BBC NEWS, Aug. 17, 2004, [http://news.bbc.co.uk/2/hi/south\\_asia/3572296.stm](http://news.bbc.co.uk/2/hi/south_asia/3572296.stm)

<sup>229</sup> AI 2007 *supra* note 3 at 3-4.

<sup>230</sup> See Joydeep Ray, *Riot Cases – Justice Aborted in Gujarat*, *supra* note 222 (“ . . . but even of those [cases that the Gujarat government reopened under pressure from the Supreme Court of India], over 500 cases have been shut once again and are not [to] be reopened.”).

<sup>231</sup> See, most recently, HRW 2012, *supra* note 3.

<sup>232</sup> From an interview witnessed in 2013 (“There is a lot of satisfaction that we got most of the perpetrators.”); From an interview witnessed with Farhina (pseudonym), 2013 (“I was praying that [the case would be] resolved. I thanked the almighty.”); From an interview witnessed with Laila (pseudonym), 2013, (“I am very satisfied, I have some sense of security”).

<sup>233</sup> From an interview witnessed with Aasmaa (pseudonym), 2013.

<sup>234</sup> From an interview witnessed with Haala (pseudonym), 2013.

<sup>235</sup> From an interview witnessed with Laila (pseudonym), 2013.

<sup>236</sup> See e.g., 2008 Kandhamal Riots: BJP MLA Sentenced to 7 Years in Jail, NDTV, June 29, 2010, <http://www.ndtv.com/article/india/2008-kandhamal-riots-bjp-mla-sentenced-to-7-years-in-jail-34605> (concerning the conviction of a BJP Member of the (Odisha State) Legislative Assembly over the killing of a Christian in the State of Orissa). See also, *BJP Honoring Riot Accused MLAs May Stir up Fresh Trouble*, THE HINDU, Nov. 20, 2013, <http://www.thehindu.com/news/national/other-states/bjp-honouring-riot-accused-mlas-may-stir-up-fresh-trouble/article5367732.ece> (describing the honoring by the BJP of two Members of the (Uttar Pradesh State) Legislative Assembly who were accused and arrested for their alleged role in the September 2013 communal riots in Muzaffarnagar, Uttar Pradesh)

<sup>237</sup> See e.g., Utkarsh Anand, *2002 Gujarat riots: SC extends interim bail of Maya Kodnani*, INDIAN EXPRESS (New Delhi), Feb. 13, 2014, <http://indianexpress.com/article/india/india-others/2002-gujarat-riots-sc-extends-interim-bail-of-maya-kodnani/>; *Gujarat Massacre Accused Babu Bajrangji Granted Temporary Bail*, INDIATV, Feb. 22, 2014, <http://www.indiatvnews.com/news/india/gujarat-massacre-accused-babu-bajrangji-granted-temporary-bail-33822.html>.

<sup>238</sup> S. Anand, *Bilkis Bano’s Brave Fight*, *supra* note 225.

<sup>239</sup> From an interview witnessed with Haala (pseudonym), 2013.

<sup>240</sup> From an interview witnessed with Aasmaa (pseudonym), 2013, (according to Aasma, several organizations had approached the survivor community seeking to represent them, but “[they gave us] no guidance about the legal system. [They would assure us that they] would fight for justice, but I was not convinced. I didn’t think they were serious about it.”)

<sup>241</sup> *Id.*

<sup>242</sup> From interviews witnessed with Aasmaa (pseudonym), 2013 (“When we got in touch with CJP, they explained step by step what will happen, including delays in the court.”) and Maanasi (pseudonym), 2013 (“CJP gave me realistic, step by step advice”).

<sup>243</sup> From interviews witnessed with Laila (pseudonym), 2013 (“CJP stuck with us for so long that it gave us courage.”) and Aasmaa (pseudonym), 2013 (“I got a lot of courage because I found CJP..”).

- <sup>244</sup> See Jafri Protest Petition, *supra* note 51, at 112-7 (focusing on the alleged hate speech appearing in *Sandesh*—Gujarat’s leading daily newspaper); accord SIDDHARTH, THE MAKING OF A TRAGEDY, *supra* note 10, at 279-303.
- <sup>245</sup> See Sruthi Gottipati, *A Conversation With: Zuber Jafri*, THE NEW YORK TIMES, Apr. 24, 2012, <http://india.blogs.nytimes.com/2012/04/24/a-conversation-with-zuber-jafri/>. (quoting Zuber Jafri, (Ehsan Jafri’s son): “I think Indian media has played mostly a positive role in keeping the issue and struggle for justice alive for the victims. Gujarat government would have closed all the cases within months if it weren’t for the activists and media bringing the real facts in front of the people after the riots.”); see also SIDDHARTH, THE MAKING OF A TRAGEDY, *supra* note 10, at 271 (“...the national media did not flinch from bearing witness to the complicity of the ruling party and state administration in the violence. This was as true of the English language media as for much of the vernacular, non-Gujarati press. The role of the Sangh Pariva and its front organizations like the [VHP] and Bajrang Dal also came into open view. As evidence of the orchestrated, targeted nature of the violence mounted, the mythic, politically harmless discourse about ‘riots’ in which ‘two communities’ clash made way for a new media narrative in which ‘carnage’, ‘pogrom’ and ‘genocide’ were the watchwords. No one who read or watched most of what was coming out of Gujarat during those days should have been in any doubt about one thing: That the violence did not stem from ‘Hindus’ attacking the ‘minority community’ but from the *carte blanche* the State gave members of the ruling political organization to attack Muslims.”).
- <sup>246</sup> See Ashish Khetan, *Burn After Reading*, *supra* note 17, (“After the initial years of outrage against the Godhra carnage and the bloody riots that followed, both the national media and opposition political parties have become less and less vigilant about unearthing the facts of what really happened or seeking accountability for it. Tehelka is often asked why it pursues the Gujarat story so aggressively. In the face of the stark and overwhelming evidence of foul play by the State, it is difficult to do otherwise.”)
- <sup>247</sup> Compare Jafri FIR, *supra* note 70, and Protest Petition, *supra* note 38. The SIT, in recommending that the Jafri case should be closed, commented that “the allegations in the complaint...were... mostly based on media reports as well as other documents like affidavits...” (SIT Jafri Closure Report, *supra* note 43).
- <sup>248</sup> *Supra* note 247.
- <sup>249</sup> See e.g., *Gulberg Case Undertrials on Fast in Jail, Want Speedy Trial or Bail*, THE INDIAN EXPRESS (Ahmedabad) 5, Aug. 2, 2012; *Kodnani Spends Time in Jail Reading*, DNA (Ahmedabad) 2, May 7, 2009; *Accused Moves SC, Says Don’t Victimize us for ‘Fair Trial,’* THE INDIAN EXPRESS (Ahmedabad) 3, Nov. 6, 2009.
- <sup>250</sup> See e.g., Sweta Ramanujan-Dixit and Stavan Desai, ‘Do you Know What it’s Like to Lose 19 Members of Your Family?’ HINDUSTAN TIMES (Mumbai) 9, Feb. 21, 2009; Roshan Kumar, *Gulbarg Witness Hopes to Get Justice*, DNA (Ahmedabad) 5, Nov. 5, 2009; Roshan Kumar, *8 Years later, Gulbarg Still Haunts*, DNA (Ahmedabad) 3, Mar. 1, 2010; *Jafri Widow Speaks Against Modi, Has Faith in Justice*, *supra* note 190; Vinod Kumar Menon and Pix Nirav Trivedi, ‘I Can Give up our Bungalow Plot for Free,’ SUNDAY MIDDAY 3, Mar. 28, 2010; ‘I Saw Him Stripped, Chopped Off and Then Burnt Alive,’ *supra* note 66; Ujjwala Nayedu and Adam Halliday, *As Modi Begins Fast, Gulberg’s Last Man Says Why he’s Still There*, THE INDIAN EXPRESS 1, Sept. 17, 2011; *Fed Up!* THE TIMES OF INDIA (Ahmedabad) 2, Feb. 7, 2012; Peter Nazareth, *Innocence Lost*, THE TIMES OF INDIA (Ahmedabad) Feb. 13, 2012; Avinash Nair, *Naroda Patiya 2012: Fear Rules, but Hope Lives*, THE INDIAN EXPRESS (Ahmedabad) 4, Feb. 28, 2012; Darshan Desai, *Past Depresses Them, but Future Beckons*, THE HINDU (Delhi) 11, Mar. 4, 2013.
- <sup>251</sup> For a broader critique of India’s track record with regard to the freedom of press, see Reporters Without Borders, Press Freedom Index (years 2002-2013), available at <http://en.rsf.org>, in which India’s global ranking dropped from 80<sup>th</sup> to 140<sup>th</sup> between 2002 and 2013; see also Suketu Mehta, *India’s Speech Impediments*, THE NEW YORK TIMES, Op-Ed, Feb. 5, 2013, <http://www.nytimes.com/2013/02/06/opinion/indias-limited-freedom-of-speech.html>.
- <sup>252</sup> See generally HRW 2002, *supra* note 14, at 60-62.

- <sup>253</sup> National Human Rights Commission, Sardar Patel Bhavan, New Delhi (Case No. 1150/6/2001-2002), Mar. 1, 2002, <http://nhrc.nic.in/gujratorders.htm>, (ordering that inquiries with the Gujarat state authorities begin).
- <sup>254</sup> National Human Rights Commission, Sardar Patel Bhavan, New Delhi (Case No. 1150/6/2001-2002), Apr. 1, 2002, <http://nhrc.nic.in/gujratorders.htm>, (recommending (i) in view of the widespread allegations that FIRs have been poorly or wrongly recorded and that investigations are being ‘influenced’ by extraneous considerations or players, the Commission is of the view that the integrity of the process has to be restored. It therefore recommends the entrusting of certain critical cases to the CBI. These include the cases relating to the: Godhra incident, which is at present being investigated by the GRP; Chamanpura (Gulberga Society) incident; Naroda Patiya incident; Best Bakery case in Vadodara; and the Sadarpura case in Mehsana district.”)
- <sup>255</sup> National Human Rights Commission, Sardar Patel Bhavan, New Delhi (Case No. 1150/6/2001-2002), May. 31, 2002, *supra* note 9.
- <sup>256</sup> *Id.*
- <sup>257</sup> See NHRC decides to move the Supreme Court in Best Bakery case Transfer application also moved in respect of 4 other serious cases, NATIONAL HUMAN RIGHTS COMMISSION: ORDERS PASSED BY THE COMMISSION ON GUJARAT, <http://nhrc.nic.in/gujratorders.htm#no13>.
- <sup>258</sup> See Khushwant Singh, *How the Myth Crumbles*, THE TELEGRAPH (Calcutta), Oct. 2, 2004, [http://www.telegraphindia.com/1041002/asp/opinion/story\\_3818911.asp](http://www.telegraphindia.com/1041002/asp/opinion/story_3818911.asp).
- <sup>259</sup> HRW-2002, *supra* note 14, at 62.
- <sup>260</sup> Report of the National Commission for Minorities’ Visit to Gujarat, October 13-17, 2006, *available at* <http://www.gujarat-riots.com/ReliefNCM.htm>.
- <sup>261</sup> Best Bakery Case, *supra* note 224.
- <sup>262</sup> *Second Riot Case Shift*, THE TELEGRAPH (Calcutta), Aug. 7, 2004, [http://www.telegraphindia.com/1040807/asp/frontpage/story\\_3595362.asp](http://www.telegraphindia.com/1040807/asp/frontpage/story_3595362.asp).
- <sup>263</sup> *Court Reopens Gujarat Riot Cases*, ALJAZEERA, Aug. 17, 2004, <http://www.aljazeera.com/archive/2004/08/2008410111917588171.html>.
- <sup>264</sup> See Manoj Mitta, *Two Years On, Gujarat Riot Cases Still Dragging*, *supra* note 74.
- <sup>265</sup> Supreme Court of India, Mar. 26, 2008, *supra* note 219, (In response to the petition by the NHRC to remove five cases from the Gujati court system, the Supreme Court in 2008 created the SIT, initially with a mandate to “reinvestigate” seven cases: (1) the Godhra cases; (2) the Gulberg Society case; (3) the Naroda Patia case; (4) the Sardarpura case; (5) the Ode cases; (6) the Naroda Gaon case, and (7) the Dipda Darwaja Case.
- <sup>266</sup> Supreme Court of India: Criminal Original Jurisdiction; Writ Petition (CRL). No.109 of 2003, National Human Rights Petition vs. State of Gujarat and Ors.: Judgment, May 1, 2009, 37 ¶¶46(i) & 46(ii) [*hereinafter* “NHRC vs. State of Gujarat”] (SC order for supplemental charge-sheets to be filed based on the SIT’s investigation, along with the creation of six special “Fast Track Courts” to try riot-related cases).
- <sup>267</sup> *Id.*, at 34 ¶42 (“It is therefore directed that if a person who is examined as a witness needs protection to ensure his or her safety to depose freely in a court he or she shall make an application to the SIT and the SIT shall pass necessary orders in the matter and shall take into account all the relevant aspects and direct such police official/officials as it considers proper to provide the protection to the concerned person.”).
- <sup>268</sup> See Ujjwala Nayudu, *Since its Birth in 2008, SIT Saw Many Shake-ups*, THE INDIAN EXPRESS, May 15, 2012, <http://archive.indianexpress.com/news/since-its-birth-in-2008-sit-saw-many-shakeups/949517/>. See also Jafri *Protest Petition*, *supra* note 51, at 6, ¶11 (Supreme Court of India order dated May 15, 2009, ordering the

replacement of Mr. C.B. Satpathy, Ex-DGP, who had recused himself, with two new members, namely, Mr. Paramvir Singh, Ex-DGP/Special Director, CBI and Mr. A.K. Malhotra, former DIG, CBI)

- <sup>269</sup> Supreme Court of India: Criminal Original Jurisdiction; Writ Petition (CRL). No.109 of 2003 *supra* note 266, at 18-23 ¶¶16-24 (drawing inspiration from Indian legislative action, comparative standards and practices in England & Wales, the United States, Australia, South Africa, Italy, Germany and the Netherlands as well as the international criminal tribunals (specifically the International Criminal Tribunal for Rwanda and the International Criminal Court), and finally the United Nations General Assembly, RESOLUTION: DECLARATION OF BASIC PRINCIPLES OF JUSTICE FOR VICTIMS OF CRIME AND ABUSE OF POWER, Nov. 29, 1985, A/RES/40/34, [hereinafter “Basic Principles of Justice for Victims of Crime and Abuse of Power”]. See also Parth Shastri, *Riot Witnesses get CISF Cover*, TIMES OF INDIA (Ahmedabad) 5, Oct. 28, 2009.
- <sup>270</sup> Correspondence with Teesta Setalvad, Feb. 4, 2014 (“The Supreme Court has intervened continuously; ever since CJP filed petitions based on the National Human Rights Commission recommendations in May 2002. The Supreme Court’s interventions began in August 2003. Since then, there have been over two-dozen active interventions and orders, applying the writ of continuing mandamus, largely and only because a group like the CJP kept appraising the highest court of developments on the ground through substantiated documentation, material, statistics, etc.”). See also HRW 2012, *supra* note 3 (quoting Meenakshi Ganguly, South Asia director at Human Rights Watch, “The Supreme Court has been indispensable in compelling the government to do its job to hold the people responsible for the Gujarat violence accountable.” Ganguly said. “Successful prosecutions of cases moved outside Gujarat show that the government can provide adequate protection to victims and witnesses when it wants to.”)
- <sup>271</sup> See *2002 Riots: SC Says Can’t Monitor Trial on Daily Basis*, THE INDIAN EXPRESS 3, Dec. 4, 2012 (observation by Justices D.K. Jain and Madan B. Lokur: “We cannot, on a day-to-day basis, monitor the trial in the case or monitor every particular regarding implementation of various orders”). See also ‘Unending’ Riots Probe Irks SC, THE TELEGRAPH, Feb. 19, 2014, [http://www.telegraphindia.com/1140219/jsp/nation/story\\_17967779.jsp](http://www.telegraphindia.com/1140219/jsp/nation/story_17967779.jsp) ().
- <sup>272</sup> International Covenant on Civil and Political Rights (ICCPR), United Nations, Treaty Series, vol. 999, 171, Dec. 16, 1966.
- <sup>273</sup> United Nations General Assembly, Resolution: Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Dec. 16, 2005, A/RES/60/147, (hereinafter “Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims”).
- <sup>274</sup> *Id.*, at 3.
- <sup>275</sup> *Id.*, at 3.
- <sup>276</sup> *Id.*, at 4-5, ¶3.
- <sup>277</sup> National Human Rights Commission, Sardar Patel Bhavan, New Delhi (Case No. 1150/6/2001-2002), May. 31, 2002, *supra* note 9 ¶10. (“...The Commission has [] reached the definite conclusion that the principle of ‘res ipsa loquitur’ applies in this case and that there was a comprehensive failure of the State to protect the Constitutional rights of the people of Gujarat, starting with the tragedy in Godhra on 27 February 2002 and continuing with the violence that ensued in the weeks that followed.”)
- <sup>278</sup> See *supra* notes 131-132 and accompanying text.
- <sup>279</sup> R.B.Sreekumar Affidavit to the Justice G.T. Nanavati & Justice K.G. Shah Commission, Oct. 6, 2004, and R.B.Sreekumar Affidavit to the Justice G.T. Nanavati & Justice Akshay Mehta Commission, May 3, 2010.
- <sup>280</sup> R.B. Sreekumar, in an affidavit to the Shah-Nanavati Commission stated in 2004 that: “[c]urrently no all-inclusive statutory, regulatory and administrative framework or guidelines for strict adherence by the

jurisdictional officialdom and its auxiliary staff, for anticipating, forewarning, preempting, preventing and containing communal, casteist and sectarian violence and thereafter normalizing / sustaining peace, are available. There is a need for issuing comprehensive instructions, by revising, updating and embellishing the circulars / instructions in the Police Manuals and in compilations like "Communal Peace." (R.B.Sreekumar Affidavit to the Justice G.T. Nanavati & Justice K.G. Shah Commission, Oct. 6, 2004, EN 279, ¶15).

<sup>281</sup> Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims, *supra* note 273 at 4-5, ¶3.

<sup>282</sup> See AI 2007, *supra* note 3, at 4 ("in many cases police registered the complaint themselves, identifying the perpetrators as *tola* (mobs), for instance "a mob of 1-2000 people" or an anonymous "unruly mob", making effective investigation and trial virtually impossible. When individual witnesses of the violence later approached the police to register their own complaints, police pointed to the existing First Information Reports (FIRs) and refused to take down individual complaints which would have details of victims and accused."); HRW 2002, *supra*, note 14, at 48-9, citing *Police Not Naming Names in FIRs*, TIMES OF INDIA, Mar. 26, 2002. ("Similar problems have been documented in rural Gujarat. Nearly 137 persons from Sabarkantha district, for example, have reportedly petitioned the high court claiming that the police have not filed their FIRs properly: 'Only cases referring to a mob attack are being registered. Police turn a deaf ear to others, where the perpetrators have been identified.'"); HRW 2003, *supra* note 3, at 15-25 ("Khalid Noor Mohammed Sheikh lost nine family members in the massacre in Naroda Patia, including his pregnant thirty-year-old daughter Kauser Bano. Her belly was cut open and the fetus was pulled out and hacked before she was killed. Though Sheikh is willing to testify to what he saw, he claims that the police refused to properly register his complaint and that other witnesses in the case are being forced to back down one by one." *id.*, at 18-19); and AI 2005, *supra* note 3, at 28-32 ("In some cases, police refused point blank to register complaints, often claiming that other important work had precedence. . . . Numerous cases have been reported in the media and documented by civil rights groups, in which police refused to take down names of perpetrators named by witnesses or of police telling complainants that an FIR would only be lodged if they deleted the names of the suspects. . . . A common feature of inadequately registered FIRs, was the omission of names and numbers of victims. . . . Police often did not read out statements to complainants, leading in many cases to complainants being unaware of the incomplete or distorted nature of the FIRs.").

<sup>283</sup> *Supra* note 161.

<sup>284</sup> Naroda Patia Decision, *supra* note 34, at 20.

<sup>285</sup> *Faceless FIRs Set to Get Closer Look*, *supra* note 116.

<sup>286</sup> See *supra*, note 282. See also Stavan Desai, *Naroda-Patia Toll: It Doesn't Add Up*, *supra* note 114 ("How many were killed at Naroda-Patiya, the scene of one of the biggest massacres in the city, on February 28? The official figure is 83. This is also the figure given in the chargesheet filed in court on June 4. But documents attached with the chargesheet indicate the figure is 112.")

<sup>287</sup> See *supra*, note 282.

<sup>288</sup> Sourav Mukherjee, *Reliving Horror to Retrace Killings*, TIMES OF INDIA (Ahmedabad) 3, May 23, 2002, ("a senior official told [the Times News Network], "Reconstructing the scenes of crime through eye-witness accounts will help prepare air-tight cases against the accused name in the half-baked FIRs that have been handed over to us more than two months after the violence.").

<sup>289</sup> See AI 2007, *supra* note 3, at 6 ("Activists have [] reported that many of the survivors and eye witnesses in these cases cannot return to their villages for fear of repercussions and so become, "refugees in their own land." Activists have also received reports of cases in which Muslims have been told by Hindus living in their neighbourhood to drop legal cases if they want to return home."); HRW 2003, *supra* note 3, at 15-25, (citing an

interview with the Commonwealth Human Rights Initiative, an NGO based in Delhi, “Witnesses are threatened in the middle of the night in their homes. They are told, ‘Don’t open your mouth. Remember February 28? That will happen to you.’ And there’s nothing we can do about it.”); and HRW 2004, *supra* note 3, at 28-29 (discussing threats to Ms. Bilkis Yakub Rasool, primary witness in what is often known as the Bilkis Bano case.); ELECTION COMMISSION OF INDIA, Press Note: General Elections to the Gujarat Legislative Assembly, *supra* note 55, at 24 (reporting on their factfinding mission to Gujarat in 2002, write “Everywhere there were complaints of culprits of the violence still moving around scot-free including some prominent political persons and those on bail. These persons threaten the displaced affected persons to withdraw cases against them, failing which they would not be allowed to return to their homes.”)

<sup>290</sup> CoCP 1973, *supra* note 120, at Ch.XII, ¶154.

<sup>291</sup> *Id.*, at Ch.XIV, ¶190, (“Cognizance of offences by Magistrates: (1) subject to the provisions of this Chapter [pertaining to categories of alleged offenses in which courts should *not* initiate trials], any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence- (a) upon receiving a complaint of facts which constitute such offence; (b) upon a police report of such facts; [and] (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.”).

<sup>292</sup> Amicus Curiae report, *supra* note 43 at 14-5, (“Though the SIT, as the investigating agency, has taken a view, the question whether Shri Bhatt was present at the meeting on 27.02.2002 and whether Shri Modi had indeed made such a statement (as spoken to by Shri Bhatt) can only be decided by a court of law. It would not be correct to disbelieve the version of Shri Bhatt, at this prima facie stage, on the various grounds set out by the SIT or because other participants in the meeting have denied (either categorically, or to the best of their memory) his presence and the alleged statement made by Shri Modi. If Shri Bhatt stands the test of cross-examination, then regardless of the fact that other witnesses have not supported his statement, a court of law may return a finding that Shri Bhatt indeed was present at the meeting on 27.02.2002, and that Shri Modi did make a statement as is being alleged by Shri Bhatt.”)

<sup>293</sup> Supreme Court of India, Mar. 26, 2008, *supra* note 265 at 5.

<sup>294</sup> CoCP 1973, *supra* note 120, ¶¶ 202-4.

<sup>295</sup> For a comprehensive review of the SIT, including a detailed discussion of the many critiques made against it, see Mitta, DON’T ASK, DON’T TELL, *supra* note 189. See also Prashant Dayal, *SIT Too a ‘Caged Parrot,’* THE TIMES OF INDIA (Ahmedabad) 1, May 15, 2013 (describing suspended IPS Officer Sanjiv Bhatt’s allegations that the “SIT selectively supplied reports to those who have actually been named as accused in complaints”); *Will SIT Probe its Own Member?* TIMES OF INDIA (Ahmedabad), Apr. 29, 2009, at 7 (describing how one of the members of the SIT looking into the Ode massacre case (Anand district) was also one of the alleged co-conspirators named in the Jafri case), CENTRAL BUREAU OF INVESTIGATION, AUTHENTICATION OF TEHELKA TAPES PURSUANT TO THE NHRC ORDER, (Mar. 5, 2008) at 6, available at <http://www.cjponline.org/gujaratTrials/statecomp/pdf%20files/pdfs/CBI%20Authentication%20of%20Tehelka%20Tapes.pdf>, (“It is appalling to what extent the SIT—even with the Supreme Court monitoring the cases—has gone to ensure that the valuable evidence provided by Tehelka’s Operation Kalank. . . are not brought into the ambit of the Trial Courts considering the heinous crimes committed in 2002.”)

<sup>296</sup> See Prashant Dayal, *SIT Too a ‘Caged Parrot,’* *supra* note 295; *SIT Hiding Evidence to Protect Politicians,* *supra* note 100 (describing how victims of the Gulberg Society massacre “accused the [SIT] of concealing evidences to protect politicians and high-ranking policemen”); Roshan Kumar, *Reconstitute SIT, Demand Survivors,* DNA (Ahmedabad), Mar. 1, 2010, at 3 (detailing efforts by survivors and their lawyer to reconstitute the SIT with



“members with direction to them,” alleging that the current members are biased and spend insufficient time in Gujarat).

<sup>297</sup> See Ashish Khetan, *Burn After Reading*, *supra* note 17, (“Though the court picked retired [Central Bureau of Investigation] direct R.K. Raghavan, a Tamil Nadu cadre officer, as chairman, the three crucial members of the probe team—[Inspector Generals] Ashish Bhatia, geeta Johri and Shivanand Jha—were all from the Gujarat police. It was these three officers who were entrusted with the direct supervision of the investigations. The entire supporting team of policemen was also picked from the Gujarat police.)

<sup>298</sup> See *id.*, (“[T]he most shocking appointment to the SIT was Noel Parmar, a deputy [Superintendent of Police] SP with the Gujarat Police. Parmar was the chief investigating officer of the Godhra carnage. It was he who had constructed the premeditated conspiracy theory which was supposedly under independent review by the SIT. . . . How could a probe officer be inducted into the SIT to review his own investigation, petitioners protested. Under pressure, the SIT reluctantly dropped him from the probe team. But, in another [] move, it inducted Parmar’s aide Ramesh Patel instead. The logic? Patel was familiar with the case so his presence would help the investigators.”)

<sup>299</sup> *Cong accuses SIT chief of shielding Modi*, THE TIMES OF INDIA (Ahmedabad) 3, Feb. 2, 2012 (a note from the leader of Congress Party, Shaktisinh Gohil “stated that the party believes the SIT chief is being offered undue facilities by the Narendra Modi government and Raghavan tries to protect [the CM] in his investigation.”); ‘SIT Reluctant to Examine Key Witnesses in Riot Cases,’ THE ECONOMIC TIMES 3, Jan. 7, 2012; *Ensure ‘Noticeably Fair’ Probe Into Zakia’s Complaint: Bhatt to Raghavan*, THE INDIAN EXPRESS (Ahmedabad) 4, Jan. 7, 2012 (quoting former IPS officer Sanjiv Bhatt: “It seems that the SIT, for some inexplicable reason, is continuing to intentionally disregard very important aspects of the investigation into the complaint of [Zakia Jafri].”); ‘SIT has Deliberately Ignored Vital Evidence,’ DNA (Ahmedabad) 3, Feb. 7, 2012 (in a letter sent to the Chief Justice of India, prominent activists including Cedric Prakash, Chunibhai Vaidhya, Suresh Mehta, Illaben Pathak and others alleged that “crucial evidence, including phone call records and police control room records, all point[ing] to the complicity of senior officials and politicians of the state in the riots of 2002” and that “the SIT has not taken into consideration these evidences.”)

<sup>300</sup> While the trial judge’s bias was the primary factor motivating the resignation, the prosecutor in his resignation letter also “hinted at how SIT members tried to protect police officers facing allegations by giving the prosecution very little scope to cross-examine them.” (*Lawyers’ Letter Blames Judge, SIT for Quitting Gulbarg Trial*, *supra* note 83).

<sup>301</sup> The SIT has publicly sought to discredit Ms. Jafri several times, describing her allegations as “nothing but fiction created by three-four persons.” (*Larger Conspiracy Behind Post-Godhra Riots all Fiction: SIT*, THE TIMES OF INDIA, Apr. 25, 2013, [http://articles.timesofindia.indiatimes.com/2013-04-25/india/38815921\\_1\\_zakia-jafri-protest-petition-sit-probe](http://articles.timesofindia.indiatimes.com/2013-04-25/india/38815921_1_zakia-jafri-protest-petition-sit-probe)) It has even accused Ms. Jafri of “instigating” potential communal disturbances in the state, and accused her of having “no respect” for the judiciary. (*SIT Terms Zakia Jafri’s Petition ‘Instigating.’* THE TIMES OF INDIA, Jun. 4, 2013, [http://articles.timesofindia.indiatimes.com/2013-06-04/india/39740046\\_1\\_protest-petition-clean-chit-sit-report](http://articles.timesofindia.indiatimes.com/2013-06-04/india/39740046_1_protest-petition-clean-chit-sit-report)).

<sup>302</sup> Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims, *supra* note 273, at 4, ¶13.

<sup>303</sup> See *supra*, note 263 and accompanying text.

<sup>304</sup> CoCP 1973, *supra* note 120, at Ch.XII, ¶157-58.

<sup>305</sup> *Id.*

<sup>306</sup> *Id.*

<sup>307</sup> *Id.*

<sup>308</sup> CoCP 1973, *supra* note 120, at Ch.XII, ¶¶170, 190, 200-03.

<sup>309</sup> See generally International Commission of Jurists, *International Principles on the Independence and Accountability of Judges, lawyers and Prosecutors: A practitioners' Guide*, Geneva, Switzerland, 2004 [*hereinafter* "ICJ Principles"]; see also United Nations Office of the High Commissioner for Human Rights, International Bar Association, *HUMAN RIGHTS IN THE ADMINISTRATION OF JUSTICE: A MANUAL ON HUMAN RIGHTS FOR JUDGES, PROSECUTORS AND LAWYERS*, 2003 [*hereinafter* "OHCHR Manual"] available at <http://www.ohchr.org/EN/PublicationsResources/Pages/TrainingEducationtwo.aspx>.

<sup>310</sup> Basic Principles on the Independence of the Judiciary, 7<sup>th</sup> UN Congress on the Prevention of Crime and the Treatment of Offenders, Milan, Italy, <http://www.unrol.org/doc.aspx?d=2248>, (*subsequently endorsed by the U.N. General Assembly Res. 40/32, SEVENTH UNITED NATIONS CONGRESS ON THE PREVENTION OF CRIME AND THE TREATMENT OF OFFENDERS*, Nov. 29, 1985 and U.N. General Assembly Res. 40/146, *HUMAN RIGHTS IN THE ADMINISTRATION OF JUSTICE*, Dec. 13, 1985) (These domains are: (1) the independence of the Judiciary, (2) the freedom of expression and association for judges, (3) the qualifications, selection and training necessary to become a judge, (4) the judicial conditions of service and tenure, (5) professional secrecy and immunity, and (6) the nature of the safeguards embedded to prevent the abuse of disciplinary, suspension and removal proceedings against sitting judges.). See also ICJ Principles, *supra* note 309, at 15-51 (the ICJ report breaks down the benchmarks of independence and impartiality as follows: (1) separation of powers, institutional independence of the tribunal, and the individual independence of judges, (2) actual and apparent impartiality of the tribunal and judge, (3) financial autonomy and sufficient resources, (4) the guarantee of fundamental freedoms also to judges, (5) the integrity of the judicial appointment procedures, (6) the conditions of judicial tenure and promotion, and (7) the safeguards preventing abuse of judicial accountability mechanisms.).

<sup>311</sup> ICJ Principles, *supra* note 309, at 26-30.

<sup>312</sup> *Id.*, at 28, (citing *Report on Terrorism and Human Rights*, OAS document OEA/Ser.L/V/II.116, Doc. 5 rev.1 corr., 22 October 2002, para.229 for the provision that "The impartiality of a tribunal must be evaluated from both a subjective and objective perspective, to ensure the absence of actual prejudice on the part of a judge or tribunal as well as sufficient assurances to exclude any legitimate doubt in this respect. These requirements in turn require that a judge or tribunal not harbor any actual bias in a particular case, and that the judge or tribunal not reasonably be perceived as being tainted with any bias.").

<sup>313</sup> Bangalore Principles of Judicial Conduct (2002), <http://www.unrol.org/doc.aspx?d=2328>, Adopted by the Judicial Group on Strengthening Judicial Integrity and subsequently adopted unanimously by the U.N. Commission on Human Rights on Apr. 29 2003; Res. 2003/43, <http://www.refworld.org/docid/43f313390.html> ("[n]oting the Bangalore Principles of Judicial Conduct. . . and "bringing those principles to the attention of Member States, the relevant United Nations organs and intergovernmental and nongovernmental organizations for their consideration"), Principle 2.5 ("A judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially. Such proceedings include, but are not limited to, instances where—(2.5.1) the judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings. . ."). See also ICJ Principles, *supra* note 309, at 30, ("The impartiality of a court can be defined as the absence of bias, animosity or sympathy towards either of the parties. Courts must be impartial and appear impartial. Thus, judges have a duty to step down from cases in which there are sufficient motives to put their impartiality into question.")

<sup>314</sup> See *supra* notes 81-88 and accompanying text.

<sup>315</sup> See *supra* note 81.

- <sup>316</sup> Bangalore Principles of Judicial Conduct, *supra* note 313, at 4 (“disqualification of a judge shall not be required if no other tribunal can be constituted to deal with the case or, because of urgent circumstances, failure to act could lead to a serious miscarriage of justice.”).
- <sup>317</sup> United Nations Guidelines on the Role of Prosecutors, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990 [*hereinafter* “UN Guidelines on the Role of Prosecutors”].
- <sup>318</sup> *Id.*, Guideline 1.
- <sup>319</sup> *Id.*, Guideline 2(a).
- <sup>320</sup> *Id.*, Guideline 4. *See also* ICJ Principles, *supra* note 309, at 72.
- <sup>321</sup> UN Guidelines on the Role of Prosecutors, *supra* note 317, Guideline 15.
- <sup>322</sup> *Id.*, Guideline 13.
- <sup>323</sup> 2008 Jafri Supreme Court Petition, *supra* note 131, at 58 & 61.
- <sup>324</sup> SIT Jafri Closure Report, *supra* note 43, at 144.
- <sup>325</sup> *Id.*, at 144.
- <sup>326</sup> Leaving aside for the moment that the Supreme Court in the Best Bakery Case found actual bias on the part of the public prosecutor, accusing the officer of having “acted more as a defence counsel than one whose duty was to present the truth to the Court.” (Best Bakery case, *supra* note 224, at 44).
- <sup>327</sup> *Supra* note 319.
- <sup>328</sup> *Supra* note 324.
- <sup>329</sup> Naroda Patia Decision, *supra* note 34, at 300.
- <sup>330</sup> *Id.*, at 378.
- <sup>331</sup> From an interview witnessed in 2013.
- <sup>332</sup> Naroda Patia Decision, *supra* note 34, at 379.
- <sup>333</sup> *Id.*, at 380.
- <sup>334</sup> Basic Principles of Justice for Victims of Crime and Abuse of Power, *supra* note 269, §4. *See also* OHCHR Manual, *supra* note 309, at 759 (this includes, among other requirements, an obligation for “police officers to avoid conveying the impression that the crime is trivial or otherwise not being taken seriously.”).
- <sup>335</sup> Basic Principles of Justice for Victims of Crime and Abuse of Power, *supra* note 269, §6(a).
- <sup>336</sup> *Id.*, §6(b).
- <sup>337</sup> *Id.*, §6(c). *See also* UN doc. A/CONF.144/20, Annex, Guide for Practitioners Regarding the Implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power [*hereinafter* “UN doc. A/CONF.144/20, Annex, Guide for Practitioners”], 15, ¶155 (“Giving evidence in court is a frightening experience. . . . In some cases, the provision of support in court can be very helpful, to ensure that the victim feels that he or she has been able to participate properly and that the court has the best evidence before it. Facilities also need to be provided to ensure that all witnesses are able to attend court easily (refreshments, transport, child care, etc.). In some countries, victim assistance schemes have supported individual victims in court, especially in the case of victims who have special problems (rape victims, child victims, etc.). In others, local court services for victim support have been set up to provide a generic service in that court, such as a trained counselor in a waiting room specially designed to provide a relaxed atmosphere. Where victims are very fearful at having to give evidence (for example, child victims of sexual assault), some jurisdictions have allowed the use of videoed

evidence or direct video links. In some, legal aid is available for victims so that they can have their own legal adviser in court and this is of course particularly important where victims are the prosecutors or where their civil claim is being heard at the same time.”).

<sup>338</sup> Basic Principles of Justice for Victims of Crime and Abuse of Power, *supra* note 269, §6(d). *See also* Convention on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UN Doc A/39/51 (1984), Jun. 26, 1987, Article 13 (“Any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.” The facts as alleged by some of the victims of the Gujarat carnage, where severe pain and suffering was inflicted on individuals to punish them for the alleged Muslim attack at Godhra, and where that violence was perpetrated at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity, would meet the definition of torture contained in the Convention – Article 1.)

<sup>339</sup> Basic Principles of Justice for Victims of Crime and Abuse of Power, *supra* note 269, §6(e).

<sup>340</sup> Basic Principles of Justice for Victims of Crime and Abuse of Power, *supra* note 269, §8-19.

<sup>341</sup> From an interview witnessed in 2013.

<sup>342</sup> *Id.*

<sup>343</sup> Law Commission of India, WITNESS IDENTITY PROTECTION 32, 198<sup>th</sup> Report, Aug. 31, 2006, <http://indiakanoon.org/doc/1093280/>.

<sup>344</sup> *Id.*, at 37.

<sup>345</sup> *Id.*, at 39.

<sup>346</sup> NHRC vs. State of Gujarat *Supra*, note 266.

<sup>347</sup> *Id.*, at 16, ¶18.

<sup>348</sup> *Id.*, at 16, ¶19.

<sup>349</sup> *Id.*

<sup>350</sup> *Id.*, at 219.

<sup>351</sup> *Id.*, at 83.

<sup>352</sup> *See e.g.*, Zahid Qureshi, *Naroda-Patiya Riots: Witness’ Family Attacked by Five Men*, AHMEDABAD MONITOR, 9, Aug. 11, 2009; *House of Naroda Patiya Witness Attacked*, THE INDIAN EXPRESS 3, Aug. 11, 2009.

<sup>353</sup> From an interview witnessed in 2013.

<sup>354</sup> From an interview witnessed in 2013 (“I used to be scared. Will I be able to do it right? Will I get attacked before I can testify? But somehow I found strength that what I was saying was truth. My testimony was 5 days. 8 lady police accompanied me, as well as 4 men from the CIF and 1 more. This was during all of the evidence. . . . I had the protection of the police then, so I felt safe.”).

<sup>355</sup> *Id.*, (“I’m not happy that five people are out of jail (four people are on ten-day parole and one is out on bail). This makes me very uncomfortable. Three of the four out on parole are very dangerous to my current life. They are the kind that will provoke violence anyways. I think something will happen in the next two to three days.”)

<sup>356</sup> *See supra*, notes 163-166 and accompanying text.

<sup>357</sup> From interviews witnessed in 2013 (“Sometimes even my family members would question ‘why do you keep doing this thing?’ Often I am taunted that I must be getting paid every time I go testify. . . . The relatives of [the accused] would say ‘You went to the extent to go to court. Wait for the day and we will get our revenge.’ These

threats come as I am going to and from work.”); *and* (a female survivor who testified during the trial stated that she faces “a lot of sexual threats, even from our own community,” but that on the day of the judgment people “from our community came and thanked us. They would say ‘you woman have actually managed it.’”).

<sup>358</sup> See e.g., *Gulbarg Massacre Witness Threatened with Death*, AHMEDABAD MIRROR 3, Jun. 19, 2009.

<sup>359</sup> From an interview witnessed in 2013 (speaking of the police protection she received during her testimony at trial: “the police would make me walk on the street for 500 meters surrounded by cops, in public. I became very visible in the neighborhood. I felt that they were trying to pinpoint the fact that a survivor was living in a Hindu area.”)

<sup>360</sup> *Gujarat Riots Witness Stabbed 28 Times to Death in Broad Daylight*, THE TIMES OF INDIA, Nov. 5, 2011, <http://timesofindia.indiatimes.com/india/Gujarat-riots-witness-stabbed-28-times-to-death-in-broad-daylight/articleshow/10619665.cms>; Basant Rawat, *Riot Witness Killed in Gujarat*, THE TELEGRAPH, Nov. 6, 2011, [http://www.telegraphindia.com/1111106/jsp/nation/story\\_14714725.jsp](http://www.telegraphindia.com/1111106/jsp/nation/story_14714725.jsp) (“Passers-by found Nadeem Saiyed lying on the ground. . . barely yards from a police post in Juhapura.”).

<sup>361</sup> *Gujarat 2002 Massacre Witness Murdered near ATS Hqs*, THE INDIAN EXPRESS, Nov. 6, 2011, <http://archive.indianexpress.com/news/gujarat-2002-massacre-witness-murdered-near-ats-hqs/871441/>.

<sup>362</sup> *Id.* See also *supra* note 109.

<sup>363</sup> Basant Rawat, *Riot Witness Killed in Gujarat*, *supra* note 360.

<sup>364</sup> See *Gujarat Riots Witness Stabbed 28 Times to Death in Broad Daylight*, *supra* note 360 (“Saiyed had also filed an FIR in August alleging that gangster Mehboob Senior had threatened to kill him if he did not change his statement in the Naroda Patia case.”).

<sup>365</sup> *Gujarat 2002 Massacre Witness Murdered near ATS Hqs*, *supra* note 361.

<sup>366</sup> *Id.*

<sup>367</sup> *2002 Gujarat Riots Witness Stabbed to Death*, HINDUSTAN TIMES (New Delhi), Nov. 5, 2011, <http://www.hindustantimes.com/india-news/newdelhi/2002-gujarat-riots-witness-stabbed-to-death/article1-765064.aspx> (quoting “a police official in Ahmedabad”).

<sup>368</sup> *Id.*, (quoting “a police official in Ahmedabad”).

<sup>369</sup> *Id.*, (quoting “a police official in Ahmedabad”).

<sup>370</sup> *Id.*, (quoting “a police official in Ahmedabad”).

<sup>371</sup> See *Gujarat Riots Witness Stabbed 28 Times to Death in Broad Daylight*, *supra* note 360 (“He was stabbed . . . allegedly for providing information on illegal slaughter of cattle to the police. . . . On October 29, a mob in Juhapura had set a police jeep on fire when the cops had gone there after receiving information that an illegal slaughter house was operating in the area. Two policemen were injured in the violence and some five men were arrested. Sources said, Saiyed had approached the police saying they had not arrested the right men and that the real culprits were roaming free, after which he was killed. . . . The Gujarat Animal Preservation (Amendment) Act 2011 became effective from October 24. The Act imposes a complete ban on cow slaughter besides transportation and selling of beef. It was passed in the State Assembly. Under the act, those involved in cow-slaughter and related activities can be subjected to imprisonment of up to seven years and a fine of RS 50,000.”); *2002 Gujarat Riots Witness Stabbed to Death*, *supra* note 367 (“Ahmedabad police, however, suspect that the murder was in connection with a recent clash between some illegal slaughterhouse owners and police.”); D.P. Bhattacharya, *2002 Gujarat Riot: Victims Protest Murder of Witness*, INDIA TODAY (Ghandinagar), Nov. 7, 2011, <http://indiatoday.intoday.in/story/gujarat-riots-nadeem-saiyed-naroda-patiya/1/159000.html> (“Recently the butcher mafia had torched a police van in Juhapura when the cops went looking for cows and

several people were picked up. Nadeem had reportedly told the police that those arrested were innocent, blaming Kalu Gardan and his accomplices – part of the mafia – instead. It is alleged that Kalu Gardan and his men murdered Nadeem.”); Gujarat 2002 riot witness Nadeem Sayeed attacked, killed in Ahmedabad

India Today Online Ahmedabad, November 5, 2011, <http://indiatoday.intoday.in/story/rti-activist-nadeem-sayeed-ahmedabad-2002-godhra-riots/1/158760.html> (“Sources close to Sayed said he was also a police informer in some cases, and his murder had some connection with the clash between the slaughter house owners and police early this week where two policemen were injured and a police jeep was torched by a mob.”).

<sup>372</sup> Zahid Qureshi, *Fear Factor*, AHMEDABAD MIRROR, Feb. 12, 2014.

<sup>373</sup> *Id.*, (“Dildar Umrav Saiyed, whose testimony hlanded former BJP MLA Maya Kodnani in jail” stated that “‘Thrice, unknown men in Naroda Patiya attacked me. Yet, I stuck to my statement. Today, Kodnani and many of her supporters are out on bail. I fear they will seek revenge and there is no one here to protect us. I called the police headquarters several times to report about the security lapse but no one heard out pleas,” the 70-year-old says.’ Fatimabibi Sheikh, a 60-year old resident of Jawan Nagar in Naroda Patiya, says “The constables are supposed to work in shifts and protect us day and night. The ones assigned to guard me give me their cellphone numbers and ask me to call whenever needed. I telephone them when I have to go out, but they rarely pick up the phone. . . . Witnesses Fatima Yasin Sheikh, Zulekha Chaudry and Jannatbibi Sheikh claim they face the same problem. ‘I go out every day as I sell snacks outside a school for a living. The policeman assigned to me shows his face every morning and then disappears,’ says Jannatbibi.”)

<sup>374</sup> Law Commission of India, WITNESS IDENTITY PROTECTION, *supra* note 343.

<sup>375</sup> See Gangadhar Patil, *5 Years on, Witness Protection Proposal Gathers Dust*, DNA (Mumbai), Jan. 14, 2013, <http://www.dnaindia.com/mumbai/report-5-years-on-witness-protection-proposal-gathers-dust-1788659>.

<sup>376</sup> See Leigh Toomey, INTERNATIONAL NETWORK TO PROMOTE THE RULE OF LAW (INPROL), *Witness Protection in Countries Emerging from Conflict* 6-8, Dec. 5, 2007, <http://www.inprol.org/sites/default/files/publications/2011/cr07008.pdf>.

<sup>377</sup> United Nations Office on Drugs and Crime (UNODC), Victim Assistance and Witness Protection, <http://www.unodc.org/unodc/en/organized-crime/witness-protection.html> (last accessed Mar 9, 2014).

<sup>378</sup> A review of these best practices goes beyond the scope of this paper, but should be considered in reviewing the protection afforded witnesses in riot-related cases by Indian State and federal authorities. For further guidance, see Leigh Toomey, INPROL, *supra* note 376 (providing general overview of principles and extensive further international and national sources for further guidance); United Nations Office on Drugs and Crime (UNODC), GOOD PRACTICES FOR THE PROTECTION OF WITNESSES IN CRIMINAL PROCEEDINGS INVOLVING ORGANIZED CRIME, (New York: 2008), at <http://www.unodc.org/documents/organized-crime/Witness-protection-manual-Feb08.pdf>; Special Court for Sierra Leone, *Best-Practice Recommendations for the Protection and Support of Witnesses*, 2008, <http://www.sc-sl.org/LinkClick.aspx?fileticket=0LBKqqzcrMc%3D&tabid=176>. See also Aruna Kashyap, *Ensuring Witness Safety Central to Rule of Law*, THE HINDU, Mar. 14, 2013, <http://www.thehindu.com/opinion/op-ed/ensuring-witness-safety-central-to-rule-of-law/article4508080.ece>.

<sup>379</sup> United Nations Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, Preamble.

<sup>380</sup> *Id.*

<sup>381</sup> See generally, HRW 2004, *supra*, note 3.

- <sup>382</sup> See *JSM Plans Action Against Naroda Patia Accused*, THE TIMES OF INDIA (Ahmedabad) 4, Dec. 25, 2010. See also *Bar Council Issues Notices to Riot Victims' Lawyers*, THE INDIAN EXPRESS (Ahmedabad) 5, Sep. 27, 2011 (describing the notices the BCG sent to the five accused lawyers almost a year later in response to the original complaint).
- <sup>383</sup> *JSM Plans Action Against Naroda Patia Accused*, *supra* note 382.
- <sup>384</sup> *BCG clears riot victims' lawyers of 'professional misconduct'*, ZEE NEWS, Apr. 15, 2014, [http://zeenews.india.com/news/gujarat/bcg-clears-riot-victims-lawyers-of-professional-misconduct\\_924780.html](http://zeenews.india.com/news/gujarat/bcg-clears-riot-victims-lawyers-of-professional-misconduct_924780.html).
- <sup>385</sup> See *Ex-CM Says Action Against him Futile*, THE TIMES OF INDIA (Ahmedabad), Feb. 11, 2011.
- <sup>386</sup> *Allegation Against Teesta Substantiated by Witnesses, SC Told*, THE PIONEER (New Delhi) 10, Jan. 30, 2012. In September 2011, the Supreme Court stayed proceedings against Setalvad arising from the Naroda Gaam case (*Teesta Gets Relief, Apex Court Stays Probe in Case of False Affidavits*, THE INDIAN EXPRESS, Sep. 3, 2011, <http://archive.indianexpress.com/news/teesta-gets-relief-apex-court-stays-probe-in-case-of-false-affidavits/840989/>).
- <sup>387</sup> *SC Slams Modi Govt for 'Spurious' Case Against Teesta Setalvad*, THE TIMES OF INDIA, [HTTP://TIMESOFINDIA.INDIATIMES.COM/INDIA/SC-SLAMMS-MODI-GOVT-FOR-SPURIOUS-CASE-AGAINST-TEESTA-SETALVAD/ARTICLESHOW/11975606.CMS](http://timesofindia.indiatimes.com/INDIA/SC-SLAMMS-MODI-GOVT-FOR-SPURIOUS-CASE-AGAINST-TEESTA-SETALVAD/ARTICLESHOW/11975606.cms). (In February 2012, the Supreme Court harshly chastised the Gujarat government, describing the case as “[one] hundred percent spurious,” and criticizing the State government saying “this type of case does no credit to the state of Gujarat in any way.”). See also *SC Asks Gujarat Govt to Stop Probe Against Teesta Setalvad*, THE TIMES OF INDIA, Apr. 13, 2012, <http://timesofindia.indiatimes.com/india/SC-asks-Gujarat-govt-to-stop-probe-against-Teesta-Setalvad/articleshow/12648811.cms/>. (Even after the court’s February holding, the state of Gujarat went forward with the cases nonetheless).
- <sup>388</sup> See, regarding the *Best Bakery case*: *'Best Bakery Perjurer' Surrenders*, BBC NEWS, Mar. 10, 2006, [http://news.bbc.co.uk/2/hi/south\\_asia/4784776.stm](http://news.bbc.co.uk/2/hi/south_asia/4784776.stm). See also Teesta Setalvad, *We Rest our Case, Part One*, TEESTA SETALVAD BLOGSPOT, Jan. 9, 2014, <http://teestasetalvad.blogspot.com/2014/01/we-rest-our-case-part-one.html>. Regarding the *Sardarpura Massacre case*: Teesta Setalvad, *We Rest our Case, Part One*, *id.*, Teesta Setalvad, *We Rest our Case, Part Two*, TEESTA SETALVAD BLOGSPOT, Jan. 29, 2014, <http://teestasetalvad.blogspot.com/2014/01/we-rest-our-case-part-two.html>; Regarding the *Naroda Gaam case*: *Teesta Gets Relief, Apex Court Stays Probe in Case of False Affidavits*, *supra* note 386. Regarding the *Naroda Patia case*: *Naroda Patia Decision*, *supra* note 34, at 332. See also Teesta Setalvad, *We Rest our Case, Part Two*, *id.* Regarding the *Gulberg Society case*: *SIT Questions Former Teesta Aid Rais Khan*, NDTV, Nov. 11, 2010, <http://www.ndtv.com/article/india/sit-questions-former-teesta-aide-rai-khan-65606>.
- <sup>389</sup> *Id.*
- <sup>390</sup> *Govt Trying to Derail Legal Process: Teesta*, DNA (Ahmedabad) 5, Jan. 31, 2012.
- <sup>391</sup> *Gujarat Police Registers FIR Against Teesta Setalvad, Others for Breach of Trust, Cheating*, THE INDIAN EXPRESS (Ahmedabad), Jan. 05, 2014, <http://archive.indianexpress.com/news/gujarat-police-registers-fir-against-teesta-setalvad-others-for-breach-of-trust-cheating/1215745/0>; *FIR Against Teesta for Alleged Misuse of Foreign Funds*, THE HINDU, Jan. 7, 2014, <http://www.thehindu.com/todays-paper/tp-national/tp-newdelhi/fir-against-teesta-for-alleged-misuse-of-foreign-funds/article5547514.ece>; Rohit Bhan, *Police Lodge FIR Against Activist Teesta Setalvad*, NDTV, Jan. 6, 2014, <http://www.ndtv.com/article/india/police-lodge-fir-against-activist-teesta-setalvad-467196>; *FIR Against Teesta: Gulbarg Residents Record Statements*, THE TIMES OF INDIA, Jan. 16, 2014, <http://timesofindia.indiatimes.com/city/ahmedabad/FIR-against-Teesta-Gulbarg-residents-record-statements/articleshow/28854086.cms>.

- <sup>392</sup> See, e.g., *Gujarat Police's Move Condemned*, THE HINDU, Jan. 12, 2014, <http://www.thehindu.com/news/national/other-states/gujarat-polices-move-condemned/article5568583.ece> (“Indian citizens have just got a disturbing glimpse of how the state would deal with dissidents and human-rights defenders should Narendra Modi come to power nationally. Hardly had the ink dried on a magistrate’s judgment exonerating Modi in the Zakia Jafri case, when the Gujarat police filed a First Information Report against Teesta Setalvad and other Citizens for Justice and Peace activists on patently trumped-up charges.”); *Withdraw FIR against Teesta: CPM*, THE TIMES OF INDIA, Jan. 7, 2014, <http://timesofindia.indiatimes.com/india/Withdraw-FIR-against-Teesta-CPM/articleshow/28488068.cms>.
- <sup>393</sup> Swati Deshpande, *Teesta Gets Interim Bail*, THE TIMES OF INDIA, Jan. 11, 2014, <http://timesofindia.indiatimes.com/city/mumbai/Teesta-gets-interim-bail/articleshow/28654636.cms>; *FIR Against Teesta for Alleged Misuse of Foreign Funds*, *supra* note **Error! Bookmark not defined.**; *Rais Khan Behind FIR Against Teesta*, THE TIMES OF INDIA, Feb. 8, 2014, <http://timesofindia.indiatimes.com/city/ahmedabad/Rais-Khan-behind-FIR-against-Teesta/articleshow/30022675.cms>; Vinaya Deshpande, *Teesta, Husband Denied Anticipatory Bail*, THE HINDU, Jan. 31, 2014, <http://www.thehindu.com/news/national/other-states/teesta-husband-denied-anticipatory-bail/article5639213.ece>; *Teesta, Hubby Denied Anticipatory Bail*, THE PIONEER, Feb. 3, 2014, <http://www.dailypioneer.com/nation/teesta-hubby-denied-anticipatory-bail.html>; *Gujarat Govt Opposes Teesta Setalvad, Husband's Petition Seeking Quashing of Case*, DNA, Mar. 12, 2014, <http://www.dnaindia.com/mumbai/report-gujarat-govt-opposes-teesta-setalvad-husband-s-petition-seeking-quashing-of-case-1968604>.
- <sup>394</sup> Correspondence with Mihir Desai, *supra* note 5.
- <sup>395</sup> Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims, *supra* note 273, Preamble, at 5.
- <sup>396</sup> Naroda Patia Decision, *supra* note 34, at 1019.
- <sup>397</sup> *Id.*, at 1702.
- <sup>398</sup> *Id.*, at 1701.
- <sup>399</sup> *Id.*, at 1697.
- <sup>400</sup> *Id.*, at 1701-2.
- <sup>401</sup> *Id.*, at 1702.
- <sup>402</sup> See generally, U.N. General Assembly, Human Rights Council 23:3 Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences, Rashida Manjoo, May 14, 2013 A/HRC/23/49 [*hereinafter* “Report of the Special Rapporteur on Violence Against Women”]; Redress, REDRESS FOR RAPE: USING INTERNATIONAL JURISPRUDENCE ON RAPE AS A FORM OF TORTURE OR OTHER ILL-TREATMENT, Oct. 2013, [www.redress.org](http://www.redress.org);
- <sup>403</sup> Report of the Special Rapporteur on Violence Against Women, *supra* note 402, at 7, ¶20.
- <sup>404</sup> Redress, REDRESS FOR RAPE, *supra* note 402, at 87 (according to Redress, this obligation entails (1) avoiding discriminatory “rape myths” from biasing the trial against the victim’s interests, (2) providing victims with information about the proceedings and giving them the possibility of being heard in them, and (3) taking specific measures to avoid further traumatization of the rape survivors (*id.*, at 87-90).
- <sup>405</sup> See e.g., Kim Thuy Seelinger, Helene Silverberg & Robin Mejia, *The Investigation and Prosecution of Sexual Violence*, Working Paper of the Sexual Violence & Accountability Project, Human Rights Center, University of California, Berkeley, May 2011, at 45-55 (describing better practices with regard to protective measures during trial, pre-trial preparation of the victim/survivor, and the role of the judge, as well as crucial post-trial measures



to protect the victim/survivors' interests), EUROPEAN PARLIAMENT: DIRECTORATE GENERAL FOR INTERNAL POLICIES, OVERVIEW OF THE WORLDWIDE BEST PRACTICES FOR RAPE PREVENTION AND FOR ASSISTING WOMEN VICTIMS OF RAPE, 2013, available at [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/493025/IPOL-FEMM\\_ET\(2013\)493025\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/493025/IPOL-FEMM_ET(2013)493025_EN.pdf). See also, e.g., CROWN PROSECUTION SERVICE, CPS POLICY FOR PROSECUTING CASES OF RAPE, (Revised 2012), available at [http://www.cps.gov.uk/publications/docs/rape\\_policy\\_2012.pdf](http://www.cps.gov.uk/publications/docs/rape_policy_2012.pdf).

<sup>406</sup> See, in particular, Justice J.S. Verma (Retd), Justice Leila Seth (Retd), and Gopal Subramaniam, REPORT OF THE COMMITTEE ON AMENDMENTS TO CRIMINAL LAW, Jan. 23, 2013 [hereinafter "Verma Commission Report"]. See also AI 2005, *supra* note 3 (comprehensive analysis of gendered violence during the 2002 riots, as well as survey of important legislative reforms at the federal level having to do with sexual violence and violence against women).

<sup>407</sup> See AI 2005, *supra* note 3, at 58-60 (describing various reform recommendations pertaining to victim-friendly trials, including: training of Magistrates on how to handle trial of case alleging rape and other forms of sexual violence; taking advantage of existing provisions allowing for *in camera* proceedings in sensitive trials, the use of video-conferencing technology to shield the victim from excessive retraumatization, etc.). See also 'Change Laws to Protect Rape Survivors,' THE TIMES OF INDIA, Dec. 27, 2013, <http://timesofindia.indiatimes.com/city/mumbai/Change-laws-to-protect-rape-survivors/articleshow/27988823.cms>, Rituparna Duttaa, *Indian Criminal Justice System and Rape Survivors: Reflections*, LIVELAW.in, Nov. 5, 2013, <http://www.livelaw.in/indian-criminal-justice-system-and-rape-survivors-reflections/>. ("Lawyers and Human Rights Groups point out that rape victims in India have always witnessed insensitive criminal justice system, a system which has never taken care of them medically and failed to deliver justice.").

<sup>408</sup> See generally, Subhradipta Sarkar, *The Quest for Victims' Justice in India*, 17 HUM. RTS. BRIEF 16 (2010) ("Protection and redress for victims of crime must become a primary concern in India.")

<sup>409</sup> See Report of the Special Rapporteur on Violence Against Women, *supra* note 402.

<sup>410</sup> Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims, *supra* note 273, at 7, ¶15.

<sup>411</sup> *Id.*, at 7, ¶16.

<sup>412</sup> *Id.*, at 7, ¶19.

<sup>413</sup> *Id.*, at 7, ¶20.

<sup>414</sup> *Id.*, at 8, ¶21.

<sup>415</sup> *Id.*, at 8, ¶22.

<sup>416</sup> *Id.*, at 8, ¶23.

<sup>417</sup> CONCERNED CITIZENS TRIBUNAL II, *supra* note 9, at 44; HRW 2003, *supra* note 3, at 46.

<sup>418</sup> HRW 2003, *supra* note 3, at 27 (citing concerned citizens tribunal II, Nov. 21, 2002).

<sup>419</sup> CONCERNED CITIZENS TRIBUNAL II, *supra* note 9, at 122 (citing "the State government's own assessment.")

<sup>420</sup> CONCERNED CITIZENS TRIBUNAL II, *supra* note 9, at 122 (citing unspecified "independent assessments.")

<sup>421</sup> CONCERNED CITIZENS TRIBUNAL II, *supra* note 9, at 122 (citing unspecified "independent assessments.")

<sup>422</sup> HRW 2003, *supra* note 3, at 40.

<sup>423</sup> *Id.*, at 38-40.

<sup>424</sup> Coalition Against Genocide, GENOCIDE IN GUJARAT - THE SANGH PARIVAR, NARENDRA MODI, AND THE GOVERNMENT OF GUJARAT 9, March 2005. <http://www.coalitionagainstgenocide.org/reports/2005/cag.02mar2005.modi.pdf>.

<sup>425</sup> Janvikas, GUJARAT'S INTERNALLY DISPLACED: TEN YEARS LATER 4, 2012. <http://janvikas.in/download/status-rep.pdf>.

- <sup>426</sup> In 2006, the Indian National Commission for Minorities described the conditions IDPs faced as “subhuman,” and called among other recommendations for the state government to provide “safe drinking water, street lights, approach roads, etc.” to the inhabitants of the camps. (National Commission for Minorities, REPORT OF THE NATIONAL COMMISSION FOR MINORITIES’ VISIT TO GUJARAT, Oct. 13-17, 2006, *Reproduced in full in COMMUNALISM COMBAT*, 13:124, Jul. 2007, <http://www.sabrang.com/cc/archive/2007/july07/fortherec2.html>. See also AI 2007 *supra* note 3 at 8). In 2008, a coalition of Gujarat-based NGOs and activists claimed in a submission to the United Nations Committee on Economic, Social and Cultural Rights that “Muslims in Gujarat continue to endure the lasting results of the pogroms in the form of ghettoized living conditions, often in ‘relief colonies’ that lack access to clean water and sanitation, causing severe health problems. They also suffer from unemployment, severely restricted access to schools, and social/cultural ostracism.” (Sophia Khan and Dr. Shakeel Ahmad et. al., THE MARGINALIZED STATUS OF MUSLIMS IN GUJARAT, SUBMISSION TO THE SECOND-FIFTH REPORTING SESSION OF THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS 2, [http://www2.ohchr.org/english/bodies/cescr/docs/info-ngos/Gujarat\\_India40.pdf](http://www2.ohchr.org/english/bodies/cescr/docs/info-ngos/Gujarat_India40.pdf)). In 2010, an investigative journalist writing for India’s Frontline Magazine describes Ahmedabad’s relief colonies as “pathetic, miserable and sad,” quoting a local relief worker named ‘Rashida’ as saying that “there ha[d] been no improvement since 2002 when [the IDPs] were moved [t]here.” (Anupama Katakam, *Hell and After*, FRONTLINE, 27: 7 (2010), <http://www.frontline.in/navigation/?type=static&page=archive>). Also in 2010, the Internal Displacement Monitoring Centre wrote: “IDPs were constantly threatened by evictions, as their dwellings had been constructed on land that the government had declared agricultural land. The residents themselves had neither land nor property titles” (IDMC, INDIA: NATIONAL AND STATE AUTHORITIES FAILING TO PROTECT IDPS 15, Sep. 2, 2010, <http://www.internal-displacement.org/assets/library/Asia/India/pdf/India-September-2010.pdf>.) In 2012, a survey of the 83 known relief colonies concluded among other findings that “most of the IDPs are making significantly less than they were before 2002” and that “there has been virtually no effort by the government to reach out to the IDPs, return their property, or compensate them for their losses.” (Janvikas, GUJARAT’S INTERNALLY DISPLACED: TEN YEARS LATER, *supra* note 425, at 57). Finally, in 2013, according to another study conducted by the Centre for Social Justice, 55% of victim-survivors living in the relief colonies listed “fear of attack” as the reason why they have not tried to return to their homes, and 43% reported having lost their livelihood sources. (Hozefa Ujjaini and Nayan Patel, Centre for Social Justice, LACK OF STATE PROTECTION AND SOCIOECONOMIC VULNERABILITY CHARACTERIZE THE IDPS A DECADE AFTER GUJARAT RIOTS, May 25, 2013, <http://counterview.org/2013/05/25/lack-of-state-protection-and-socioeconomic-vulnerability-characterize-the-idps-a-decade-after-gujarat-riots/>).
- <sup>427</sup> See *15 Families Return to Naroda-Patiya After Staying in Relief Camps for 105 Days*, THE TIMES OF INDIA (Mumbai) 6, Jun. 15, 2002; Avinash Nair, *Naroda Patiya 2012: Fear Rules, but Hope Lives*, THE INDIAN EXPRESS (Ahmedabad) 4, Feb. 28, 2012 (quoting Zubeida Sheikh, a resident of Naroda Patia who lost her husband during the violence: “I do not have a place to flee to. I will continue to stick to this place as long as I live.”)
- <sup>428</sup> Gopal Kateshiya and Mandar Critre, *Relocated Survivors Living by the Garbage Dump*, THE INDIAN EXPRESS (Ahmedabad) 4, Feb. 27, 2012.
- <sup>429</sup> See Zahir Janmohamed, *What it Means to be a Muslim in India*, THE NEWS, Nov. 5, 2013 <http://www.thenews.com.pk/Todays-News-2-212276-What-it-means-to-be-a-Muslim-in-India>; Roxy Gagdekar, *Growing Muslim Ghettos are a Living Legacy of 2002*, DNA (Ahmedabad), Feb. 28, 2012.
- <sup>430</sup> From an interview witnessed with Haala (pseudonym), 2013 (this survivor, who considers herself to be extremely lucky, was able to relocate and rebuild due to donations she received from her friends and family in the community. While her supporters were able to muster enough money for her to buy a new home, they also exhausted the entirety of their collective savings in the process, thus seriously jeopardizing all of *their*

livelihoods in the process. And still, the survivor chose not to return to her previous community out of fear of what her former neighbors might do to her if she returned).

<sup>431</sup> See SIT Jafri Closure Report, *supra* note 43, at 182-197. See also Modi SIT Statement, *supra* note 130, at 8, (“The Govt contributed funds as per policy and the relief operations were supervised by the Same. The necessary food, drinking water, medicines, and cash doles, etc. arrangements were made in these cases.”); Palak Nandi, *6 Months Later, He Gets his Cheque*, THE INDIAN EXPRESS (Ahmedabad) Sep. 19, 2002; *Naroda Orphan Finally Gets Compensation*, THE TIMES OF INDIA (Ahmedabad) 3, Sep. 19, 2002. But see Joydeep Ray, *His Family’s Dead, and he Continues to Wait for Compensation*, THE INDIAN EXPRESS (Ahmedabad), Apr. 15, 2002.

<sup>432</sup> See SIT Jafri Closure Report, *supra* note 43, at 183 (citing government statistics that victim households were paid 1.5 *lakh* (approximately \$5612; inflation adjusted to 2013 USD) in compensation for a riot-related death. The government claimed it spent Rs.17.54 Crore (approx. \$6.5 million; inflation adjusted to 2013 USD) settling a total of 1169 such cases. Historical conversion rates found on Oanda.com, and Indian inflation rates calculated using the Consumer Price Index data found on the Government of India’s Labour Bureau website: <http://labourbureau.nic.in/indtab.html>)

<sup>433</sup> See *id.*, at 184-5 (citing government statistics that victim households were paid according to a sliding scale—based on the degree of disability—in cases of serious injury, ranging from a Rs. 5,000 payment (approx. \$187; inflation adjusted to 2013 USD) for “up to 10% injury” to a Rs. 50,000 payment (approx. \$1,871; inflation adjusted to 2013 USD) if victims could certify permanent disability of “more than 40%.” The government claimed it spent 2.21 Crore (approx. \$830,000 million; inflation adjusted to 2013 USD) settling a total of 2548 such cases).

<sup>434</sup> See *id.*, at 184 (citing government statistics that displaced households were paid Rs. 15 (approx. 56¢; inflation adjusted to 2013 USD) per day per person, for up to 5 persons per family and for no longer than 15 days. The government claimed it spent 0.63 Crore (approx. \$240,000; inflation adjusted to 2013 USD) settling a total of 7718 such cases).

<sup>435</sup> See *id.*, at 191 (citing government statistics that displaced households were paid up to Rs. 50,000 (approx. \$1,871; inflation adjusted to 2013 USD) in compensation for the destruction of their housing during the riots. The government claimed it spent Rs. 30.10 Crore (approx. \$11,260,000; inflation adjusted to 2013 USD) settling a total of 29,241 such cases).

<sup>436</sup> See *id.*, at 191-3 (citing government statistics that individuals and businesses were also entitled to compensation according to a sliding scale, with compensation capped at Rs. 50,000 (approx. \$1,871; inflation adjusted to 2013 USD) for large industrial enterprises, and capped at Rs. 10,000 (approx. \$374; inflation adjusted to 2013 USD) for most individuals).

<sup>437</sup> See *id.*, at 184-91.

<sup>438</sup> Citizens for Justice & Peace petitioned the Gujarat High Court seeking to declare the compensation cap of Rs. 50,000 for families who lost their houses unconstitutional, arguing that it was approximately one sixth of what previous court judgments had awarded to the victims of the 1984 anti-Sikh pogroms in New Delhi. (Citizens for Justice and Peace, Report for the Committee for the Elimination of Discrimination Against Women (CEDAW), *supra* note 123, at 16-19). The CJP petitions relied in part on a 2002 survey conducted by the Women’s Parliamentary Committee on Empowerment of Women (WPC), which had estimated the average payout for individuals whose homes had been *completely* destroyed to have been around Rs. 15,000 (approx. \$571; inflation adjusted to 2013 USD). Other IDPs apparently received as little as Rs. 40 (approx. \$1.50; inflation adjusted to 2013 USD) compensation for their *partially* destroyed homes. See Margaret Alva, Committee on Empowerment of Women, VIOLENCE AGAINST WOMEN DURING THE RIOTS ¶39, Aug. 2002,

<http://www.cjponline.org/gujaratTrials/statecomp/pdf%20files/pdfs/Report%20of%20Wom%20Par%20Com%20Aug%202002.pdf>.

- <sup>439</sup> The Gujarat state government claimed that it had adequately provided for the humanitarian needs of the IDPs. *See supra*, note 431. Human rights groups, on the other hand, claimed that while IDPs began fleeing to these relief camps on February 28, government aid did not begin to reach the camps until at least a week later (HRW 2002, *supra* note 14, at 55). Even then, some camps had to petition the Gujarat High Court to force the State government to fulfill its obligation to provide aid. (CONCERNED CITIZENS TRIBUNAL II, *supra* note 9, at 123). Contemporaneous reports documented that even when present, government aid was inadequate to meet the camp inhabitants' basic needs. *See* HRW 2002, *supra* note 14, at 55. *See also* Amnesty International, INDIA: THE STATE MUST ENSURE REDRESS FOR THE VICTIMS. A MEMORANDUM TO THE GOVERNMENT OF GUJARAT ON ITS DUTIES IN THE AFTERMATH OF THE VIOLENCE 7, Mar. 28, 2002. <http://www.amnesty.org/en/library/info/ASA20/005/2002/en>. [*Hereinafter* "Amnesty 2002"].
- <sup>440</sup> Citizens for Justice and Peace, Report for the Committee for the Elimination of Discrimination Against Women (CEDAW), *supra* note 123, at 17.
- <sup>441</sup> *Id.*, at 18.
- <sup>442</sup> Janvikas, GUJARAT'S INTERNALLY DISPLACED: TEN YEARS LATER, *supra* note 425, at 6.
- <sup>443</sup> *Id.*
- <sup>444</sup> *See e.g.*, 2002 Gujarat Riots: Nanavati Commission Credibility Hit Again, MAIL TODAY (New Delhi), Dec. 23, 2011, <http://indiatoday.intoday.in/story/nanavati-commission-2002-gujarat-riots-narendra-modi/1/165557.html>, ("Expecting an unbiased report from such a panel seems like a long shot."); Nilanjan Mukophadhyay, *That Stubborn Stain on Modi's Record*, REDIFF.COM, Jul. 21, 2013, <http://www.rediff.com/news/column/that-stubborn-stain-on-modis-record/20130721.htm>, ("It is five years since the first report on the Godhra carnage was given and the silence thereafter has contributed to fear of a judicial cover-up.")
- <sup>445</sup> CJA and the Jamia Millia Islamia university in Delhi organized a series of events entitled Memorial to a Genocide: Gulberg Gujarat 2002-2012. (*Memorial to a Genocide: Gulberg Gujarat 2002-2012*, INDIA TODAY ONLINE, Oct. 11, 2012, <http://indiatoday.intoday.in/education/story/jamia-millia-islamia-programme-memorial-to-a-genocide/1/224246.html>). At that event, Mukul Mangalik spoke of the importance of memorializing events such as the Gulberg Society massacre. *See Mukul Mangalik, Gujarat 2002 must be remembered and understood so it never happens again*, (transcript of a speech given on Oct. 12, 2012), available at South Asia Citizens' Web <http://www.sacw.net/article2921.html>.
- <sup>446</sup> *See P. Chidambaram: Disappointing that Narendra Modi has not Apologized for 2002 Gujarat Riots*, THE FINANCIAL EXPRESS (New Delhi) Feb. 18, 2014, <http://www.financialexpress.com/news/p.-chidambaram-disappointing-that-narendra-modi-has-not-apologised-for-2002-gujarat-riots/1227098>; *see also Interview with Narendra Modi and Karan Thapar on IBN-CNN*, available at [https://www.youtube.com/watch?v=QHS\\_eSoOBzg](https://www.youtube.com/watch?v=QHS_eSoOBzg) (where Mr. Modi walks out in response to Karan Thapar's questioning about his refusal to repeat an apology for what happened:

K.Thapar: "Can I suggest one thing to you: why can't you say that you regret the killings that happened, that maybe the government should have done more to protect the Muslims?"

Mr. Modi: "What I had to say I said it at that time, and you can find out my statements."

K. Thapar: "Just say it again."

Mr. Modi: "Not necessary [why do I have to say again in 2007 what I said then?]"

K. Thapar: “But by not saying it again, by not letting people hear the message repeatedly, you’re relying on an image that is contrary to the interests of Gujarat to continue. It’s in your hands to change it.”

<sup>447</sup> Draft Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill, 2011, <http://nac.nic.in/pdf/pctvb.pdf>, [hereinafter “Draft Prevention of Communal Violence Bill”]. The bill was proposed in 2011 by the National Advisory Council (NAC). The NAC, chaired by noted Congress personality Sonia Ghandi, has the mandate “to provide inputs in the formulation of policy by the Government and to provide support to the Government in its legislative business.” National Advisory Council, <http://nac.nic.in> (last accessed March 15, 2014).

<sup>448</sup> See *Communal Harmony Bill Put on Hold*, DNA (New Delhi), Feb. 6, 2014.

<sup>449</sup> National Advisory Council, EXPLANATORY NOTE: PREVENTION OF COMMUNAL AND TARGETED VIOLENCE (ACCESS TO JUSTICE AND REPARATIONS BILL, 2011, 1, Jul. 21, 2011, (hereinafter “Draft Prevention of Communal and Targeted Violence Bill—Explanatory Note”), available at [http://nac.nic.in/pdf/explanatory\\_note.pdf](http://nac.nic.in/pdf/explanatory_note.pdf).

<sup>450</sup> *Id.*, at 2.

<sup>451</sup> Draft Prevention of Communal Violence Bill, *supra* note 447, at 5, §13. See also Draft Prevention of Communal and Targeted Violence Bill Explanatory Note, *supra* note 449, at 2, (“Often the greatest cause for communal and targeted violence against non-dominant groups occurring, spreading, and persisting, is that public officials *do not act*. Public servants who act or omit to exercise authority vested in them under law and thereby fail to protect offences, breach of public order, or cause an offence, screen any offender, or fail to act as per law, or act with malafide and prejudice shall be guilty of dereliction of duty with penal consequences.”)

<sup>452</sup> See generally, KAI AMBOS, TREATISE ON INTERNATIONAL CRIMINAL LAW: VOL. 1, 190 (Oxford University Press, 2013) (see footnote 101). See also Michael Duttwiler, *Liability for Omission in International Criminal Law*, 6 INT’L CRIM. LAW REVIEW 1 (2006), at 55 (surveying legal systems that provide for criminal sanctions for commission by omission, finding that “there is in international law a general principle of law which states that for the purposes of criminal law, omission is normatively equivalent to action, if there was a special legal duty to act and prevent the harm in question. This finding has been confirmed [] by the practice of the United Nations ad-hoc tribunals and leading scholars in the field.”).

<sup>453</sup> Draft Prevention of Communal Violence Bill, *supra* note 447, §14-5, See also Draft Prevention of Communal and Targeted Violence Bill Explanatory Note, *supra* note 449, at 2 (“[The proposed Bill] seeks to ensure that the power of holding command over the actions of others is indeed upheld as a sacred duty, and that there is culpability for those who are ‘effectively in-charge.’”).

<sup>454</sup> Draft Prevention of Communal Violence Bill, *supra* note 447, §14.

<sup>455</sup> *Id.*, at §15, (defined “any non-state actor or superior or office-bearer of any association [any combination or boyd of individuals, whether or not registered or incorporated under any law for the time being in force] and other than those [in command, control or supervision of the armed forces or security forces], in command, control or supervision of any association or assuming command vested in him or her.”)

<sup>456</sup> *Id.*, at §15.

<sup>457</sup> See Judge Bakone Justice Moloti, *Command Responsibility in International Criminal Tribunals*, Berkeley J. Int’l L. Publicist 12, 15-21.

<sup>458</sup> Draft Prevention of Communal Violence Bill, *supra* note 447, §74, See also Draft Prevention of Communal and Targeted Violence Bill Explanatory Note, *supra* note 449, at 2-3, (“[the bill] proposes that if there is no response

to a request for sanction for prosecution within 30 days from the date of the application to the concerned government, sanction to prosecute will be deemed granted.”)

<sup>459</sup> CoCP 1973, *supra* note 120, at Ch.XIV, ¶197.

<sup>460</sup> Draft Prevention of Communal Violence Bill, *supra* note 447, §20-54, *See also* Draft Prevention of Communal and Targeted Violence Bill Explanatory Note, *supra* note 449, at 3 (“[the bill would have called for the creation of a] . . . National Authority for Communal Harmony, Justice and Reparation (NACHJR) and corresponding State Authorities for Communal Harmony, Justice and Reparations (SACHJR). Their [proposed] mandate [was] to ensure that public functionaries act to prevent and control communal & targeted violence and also that public servants ensure victims have access to justice and reparation when violence occurs. The functions of the NACHJR/SACHJR [were to have been] to watch, advise, remind, recommend and warn of consequences if public servants fail to act as per law.”)

<sup>461</sup> Draft Prevention of Communal Violence Bill, *supra* note 447, §55-86, *See also* Draft Prevention of Communal and Targeted Violence Bill Explanatory Note, *supra* note 449, at 4, (“[the proposed Bill would] seek[] to strengthen the rights of the victim in the criminal justice system, through certain provisions in their struggle for justice – from the simple right to information at all stages, the right to get copies of all their statements, to the right to be heard in a court of law, right to protection, right to appeal, and the right to file a complaint with the NACHJR/SACHJR if and when they are aggrieved by failure of the system to protect and secure for them justice and reparations.”)

<sup>462</sup> Draft Prevention of Communal Violence Bill, *supra* note 447, §87-110, *See also* Draft Prevention of Communal and Targeted Violence Bill Explanatory Note, *supra* note 449, at 4, (“[the proposed Bill would] cast[] legal duties on the State to provide rescue, relief, rehabilitation, compensation and restitution, to ensure that all affected persons are restored to a situation better than which prevailed before they were affected by violence. This is based on the experience that some state governments fail to provide even elementary humanitarian services, by refusing to establish relief camps or forcefully disbanding these prematurely. The Bill also recognizes and protects the rights of Internally Displaced Persons, who are temporarily or permanently dislocated because of targeted violence.”).

<sup>463</sup> Draft Prevention of Communal Violence Bill, *supra* note 447, §87-110, *See also* Draft Prevention of Communal and Targeted Violence Bill Explanatory Note, *supra* note 449, at 4-5, (“[the proposed Bill would] require[] that when there is violence, and citizens lose their lives, livelihoods, and homes, then each devastation must be recognized in the same manner. . . . This Bill provides that compensation shall be paid within 30 days from the date of the incident, and in accordance with a Schedule, which shall be revised every 3 years. No compensation for death shall be less than Rs. 15 lakhs. No compensation for rape shall be less than Rs. 5 lakhs.”).

<sup>464</sup> Survivors described how neighbors (either relatives and friends of the accused, or others whom they did not recognize) approached them asking them not to testify. *See e.g.*, interview witnessed with Haala (pseudonym), 2013. Witnesses who ignored such requests and testified anyway spoke of others who chose to accept bribes and withdraw themselves as witnesses. While the decisions by witnesses to “turn hostile” often proved disastrous to a case, many of the survivors expressed empathy for those who accepted the money. The desperate need to support their families, often forced victim-survivors to accept the payoff as a matter of self-preservation. This same trend has been reported by several news outlets as well. *See also* Vinod Kumar Menon and Pix Nirav Trivedi, ‘I Can Give up our Bungalow Plot for Free,’ *supra* note 250 (citing Burraiya Jafri, Ehsan Jafri’s daughter-in-law: “associates of Modi, through some community members had asked the family to withdraw for huge sums of money.”); Saeed Khan, ‘02 Riot Victim Wants to be Witness, THE TIMES OF INDIA (Ahmedabad) 3, Dec. 23, 2009 (Rustamkhan Baloch, witness to the burning of his parents on March 2, 2002 in Nava Station village in north Gujarat, claiming “that his uncle turned hostile after the accused persons offered

him a handsome amount.”), Parimal Dabhi *Naroda Eyewitness Claims he is Being Lured to Absolve Kodnani*, THE INDIAN EXPRESS (Ahmedabad/Vadodara) 1, Mar. 9, 2009 (recounting allegations of bribery and threats made by associates of accused in the Naroda Patia case against Dildar Umrao Saiyed: “Chaumal, Sindhi (both accused in the Naroda killings) and three to five other people were waiting for me near a *paan* shop. They promised to reward me well if I changed my statement that I had seen Maya Kodnani and others at the crime scene in Naroda Patiya, distributing weapons to rioters, Saiyed said,” and also that “Earlier on November 25, 2008, a bunch of unidentified men with iron rods had allegedly attacked Saiyed while he was going in a rickshaw on the Naroda Patiya Road.”).

<sup>465</sup> In this regard, see also a September 1, 2012 Editorial in the Economic Times, which stated that “the unique challenge in Gujarat has been how to deliver justice in a situation where virtually the entire state machinery is seen to be complicit in crimes,” and notes that “[i]n that context, the propose Prevention of Communal and Targeted Violence Bill assumes crucial importance. For, the aim should be to not only end the culture of immunity fostered by the political class in communal riot cases and come down with full force of the law on instigators and perpetrators of riots but also ensure the rehabilitation of victims.” (*Serving Justice*, THE ECONOMIC TIMES (Ahmedabad) 6, Sep. 1, 2012, on file with author).

<sup>466</sup> See e.g., Linda Pressly, *Bilal's Return to Gujarat*, BBC Radio 4: Crossing Continents, Dec. 18, 2003, [http://news.bbc.co.uk/2/hi/programmes/crossing\\_continents/3331767.stm](http://news.bbc.co.uk/2/hi/programmes/crossing_continents/3331767.stm) (“Although six men were charged with the British tourists' murder, they have been released on bail.”); *Kin of Killed Britons Seek Compensation*, THE MILLI GAZETTE, Jun. 1-15, 2004, <http://www.milligazette.com/Archives/2004/01-15Jun04-Print-Edition/011506200488.htm> (“The dependents of the two Britons have sought compensation of Rs. 22.18 crore for the murder of Saeed Dawood (30) and Shakeel Dawood (41). Shakeel and his cousins Saeed, Imran Dawood and Mohammed Aswat, were attacked by a mob near Wadwasa village when they were on their way by car to their ancestral home in Lajpur village, Navsari district. Shakeel and Saeed died on the spot, Imran escaped but sustained severe injuries and Aswat still remains missing. . . . The spokesperson for the Dawood's family from Batley in West Yorkshire, UK, where the victims were settled, said that a plaint of 60 pages was filed after consultation with international lawyers and legal experts.”)

<sup>467</sup> See e.g., Sruthi Gottipati, *A Conversation With: Zuber Jafri*, *supra* note 245.

<sup>468</sup> See e.g., *UK India Envoy to Visit Gujarat for First Time Since Riots*, BBC, Oct. 11, 2002, <http://www.bbc.com/news/world-asia-india-19907453> (British government sources say the visit has been arranged because it is in the “UK's national interest.” “Ten years later our national interests are better served by engaging, not continuing isolation,” an official said. “It's about Gujarat, not Modi.”); *UK Normalizes Ties with Narendra Modi*, ALJAZEERA, Oct. 22, 2012, <http://www.aljazeera.com/news/asia/2012/10/2012102282453689217.html> (“The decision by the UK to resume contact with Modi is seen as a cruel blow to the causes of justice for the massacre's victims.”); *Denmark Criticized for Dealings with Indian PM Candidate*, THE COPENHAGEN POST, Feb. 25, 2014, <http://cphpost.dk/news/denmark-criticised-for-dealings-with-indian-pm-candidate.8706.html>, (quoting Meenakshi Genguly (Human Rights Watch): “The conversations with Modi are predominantly about potential investment opportunities. Denmark should do more to convey their concern about those responsible for the massacre who weren't brought to justice.”); *European Union Ends 'Boycott' of Narendra Modi*, MAIL TODAY (India), Feb. 8, 2013, <http://www.dailymail.co.uk/indiahome/indianews/article-2275821/Narendra-Modi-European-Union-ends-boycott.html>; Archis Mohan, *Bangladesh Envoy Meets Modi*, STRATPOST, Jul. 28, 2013, <http://www.stratpost.com/bangladesh-envoy-meets-modi>; *German Envoy Meets Narendra Modi*, IBNLIVE, Nov. 16, 2013, <http://ibnlive.in.com/news/german-envoy-meets-narendra-modi/434571-3-238.html>, (quoting German ambassador to India Michael Steiner: “This has nothing to do with an endorsement. I am a representative of a foreign country, like my European colleagues, we have to respect that India is a democracy

with functioning institutions, and we have to stay neutral, that is what we are doing.”); *Nancy Powell Meets Narendra Modi, Nine-Year-Old US Boycott Ends*, THE TIMES OF INDIA, Feb. 13, 2014, <http://timesofindia.indiatimes.com/india/Nancy-Powell-meets-Narendra-Modi-nine-year-old-US-boycott-ends/articleshow/30329280.cms>.

- <sup>469</sup> *No Entry for Modi into US: Visa Denied*, THE TIMES OF INDIA, Mar. 18, 2005, <http://timesofindia.indiatimes.com/india/No-entry-for-Modi-into-US-visa-denied/articleshow/1055543.cms>, (“Taking a strong stand against the senior BJP leader and Hindutva icon, the US Consular division on Friday denied him a “diplomatic visa”, apparently holding him responsible for the communal riots in Gujarat in 2002 which claimed over 2000 lives.”)
- <sup>470</sup> *See e.g., We Have Not Forgotten Gujarat’s 2002 Riots: UK High Commissioner*, THE INDIAN EXPRESS, Jan. 10, 2013, <http://archive.indianexpress.com/news/we-have-not-forgotten-gujarats-2002-riots-uk-high-commissioner/1057539/>, (responding to a question on whether the UK’s re-engagement with Mr. Modi meant that the UK had “forgotten the 2002 communal riots, British High Commissioner to India Sir James David Bevan stated “we would like to work in association with the Gujarat government to give justice to [the victims of the 2002 riots].”
- <sup>471</sup> *See supra* note 468 (joining, *inter alia*, Denmark, Sweden, the EU, the UK, Germany, Bangladesh, USA, “20 Latin American and Caribbean countries,” Canada, Switzerland and Israel in already engaging diplomatically and economically with Mr. Modi and his government).
- <sup>472</sup> *See e.g., We Have Not Forgotten Gujarat’s 2002 Riots: UK High Commissioner*, *supra* note 470.
- <sup>473</sup> *See* Betwa Sharma, “After Muzaffarnagar Riots, a Standoff over Government Compensation,” The New York Times – India Ink, Dec. 12, 2013, available at <http://india.blogs.nytimes.com/2013/12/12/after-muzaffarnagar-riots-a-standoff-over-government-compensation/>.
- <sup>474</sup> Rahul Bedi, “Indira Gandhi’s death remembered,” November 1, 2009. [http://news.bbc.co.uk/2/hi/south\\_asia/8306420.stm](http://news.bbc.co.uk/2/hi/south_asia/8306420.stm).
- <sup>475</sup> Angana Chatterji, “Hindutva’s Violent History,” *Tehelka Magazine*, 5:36 (Sept. 12, 2008), available at [http://archive.tehelka.com/story\\_main40.asp?filename=Ne130908HindutvasViolentHistory.asp](http://archive.tehelka.com/story_main40.asp?filename=Ne130908HindutvasViolentHistory.asp).
- <sup>476</sup> *Id.*
- <sup>477</sup> Committee Against Torture, Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, General Comment No. 2 – Implementation of Article 2 by States Parties, 39<sup>th</sup> Session, 23 Nov. 2007 CAT/C/GC/2/CRP.1/Rev.4 (“Since the Adoption of the Convention against Torture, the absolute and non-derogable character of this prohibition has become accepted as a matter of customary international law.”).





