



## **Gujarat 2002**

### **Justice Delivery**

### **A Fractured Process**

Statement before the CEDAW Committee, New York, July 19, 2010

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We have submitted a detailed report to the Office of the High Commissioner for Human Rights (OHCHR), **Survivors Citizens for Justice and Peace Report 2010** on June 28 2010 apprising the CEDAW Committee of the Violation of Article 2 a) to d) of the CEDAW Principles.

#### **Denial of Legal Representation**

Despite recent amendments in Indian Criminal Law, Indian Women Eye Witnesses and Survivors of the Gujarat Carnage of 2002 are being forced to depose in Trial Courts in a patently hostile environment without formal legal representation. This is a denial of their basic human right. Victims of gender violence do not have women lawyers to protect further violation of their basic rights. CJP has repeatedly petitioned the Courts (Trial Courts and Supreme Court) that this is a fundamental violation of the basic rights of all witnesses, especially women, but so far, the matter lies in appeal. The Supreme Court, otherwise monitoring the trials has not intervened to set this denial right. 97 such women witnesses of the critical trials have been brutalised and forced into habitats of exclusion

because of their firm and gritty decision to pursue the path of justice. Those responsible for the state sponsored carnage remain in power, twice elected through the ballot box.<sup>1</sup>

### **Belittling the Violence**

A good number of these 97 women witnesses are themselves victims of gender violence and despite the absence of legal representation, unbidden, the narrative of gender violence that had vanished from the public discourse on Gujarat has resurfaced due to the tenacity of the survivors. We (CJP) have given them 24 hour Legal Aid to ensure that their depositions are not only unhampered by intimidatory tactics but stand the test of evidence in law. Every other day they are threatened by the perpetrators --- a majority of whom roam free on bail despite the fact that we have collectively appealed to the courts to cancel their bail for the period of the trials. Remember, some of the accused are men and women of power, wealth and influence and the very fact that, despite the monitoring by the Supreme Court, lower Trial Courts have not brought the perpetrators into custody is testimony to the influence they continue to enjoy within Gujarat.

An obvious design by both the perpetrators and the advocates hired by them is to undermine the bestiality of the attacks (the narrative of a nine month old pregnant Kauserbano's womb being slit open, the male foetus swirled on a sword and thereafter killed and burned alive is being made out to be false). Interestingly the target of the vilification are prominent human rights defenders who are made out to be the manufacturer of 'lies.' Four witnesses have testified to Kauserbano's vicious killings despite this malicious propaganda that carries on unabated.

### **Humiliation from the Judges**

Survivors and witnesses have also petitioned India's highest Court on the contemptible behaviour of some of the Judges hearing the Trials in Gujarat.<sup>2</sup> Even this petition has not been given expeditious hearing, being deliberately adjourned by the Gujarat high court seven times (It was finally heard on July 15 and judgement is to be pronounced on July

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<sup>1</sup> Report of the National Human Rights Commission 2002, Three Volume Report of the Concerned Citizens Tribunal, *Crimes Against Humanity—Gujarat 2002*, 2002: Human Rights Watch "We Have No Orders to Save You, 2002-2003

<sup>2</sup> 387/2010 Gulberg Case. There was a complete agreement between the State of Gujarat and the SC appointed Special Investigation Team (SIT) in *not supporting the witnesses' plea for transfer of the case before another Judge.*

29). Women witnesses also suffer regular threats from perpetrators and criminal goons hired by them.<sup>3</sup>

### **Failures of the Supreme Court's Special Investigation Team**

Despite the apex court ordering further investigations into the critical cases, even the Special Investigation Team (SIT) has been compromised. <sup>4</sup>It has failed to interrogate hard documentary evidence including the phone calls records of the chief minister and his cabinet, police and administrative functionaries. It has also refused to examine in depth the control room records and fire brigand registers all of which collectively point to masterminded inaction and criminal conspiracy.<sup>5</sup> Survivors have also demanded that the proceedings in the Courtrooms be video recorded after CCTVs are placed there. The Supreme Court is still to hear this urgent plea though it was made seven months back, in December 2009.<sup>6</sup>

In another case related to the illegal mass graves and dumping of dead bodies of victims, the Supreme Court of India has dismissed victims' pleas demanding a probe into the blatant illegality of undignified dumping of bodily remains. Survivors will now file a Curative Petition that needs the support of international mechanisms.<sup>7</sup>

### **Lack of Independence among Prosecutors**

Prosecutors with a clear ideological affinity to the party of perpetrators in power have been the bane of the struggle for justice in Gujarat even drawing comment from India's Supreme Court.<sup>8</sup> Despite this judicial indictment, in the current trials afoot, independent lawyers have not been appointed as prosecutors. There is not a single prosecutor belonging to the victim minority community appointed.

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<sup>3</sup> Regular complaints submitted by CJP to the Special Investigation Team appointed by the Supreme Court dated July 14 2010 and earlier.

<sup>4</sup> SC was forced to pass orders on February 15, 2010 and April 6 2010 removing Gujarat cadre officers from the Team. Serious documentary records were deliberately left uninvestigated by the SIT.

<sup>5</sup> CrMP 19816/2009 Devendrabhai Pathak & Cedric Prakash v/s State of Gujarat on which application Orders were passed by the Supreme Court on February 15, 2010, April 6, 2010 and May 6, 2010. In both the Naroda Patiya and Naroda Gaam cases, Victims and EyeWitnesses have been denied Legal Representation by the Trial Courts compelling them to appeal to the High Court where the matters are pending.  
<http://www.cjponline.org/gujaratTrials/nanavatisub/nanavatisubmission.htm>

<sup>6</sup> CrMP filed by CJP in 37-52/2002 in November 2009 that has been heard seven times yet the supreme court has not intervened to ensure the right to independent legal representation to the victim survivors and eyewitnesses

<sup>7</sup> Ameenabi Rasool & Anr v/s State of Gujarat dismissed in July 2009

<sup>8</sup> 2004 SOL Case No. 295, Zahira Habibullah Shaikh & Anr v/s State of Gujarat & Ors

In a case that has made judicial history<sup>9</sup>, it is a woman victim and survivor of the Gujarat genocidal carnage that has demanded investigation into Criminal Conspiracy into Mass Murder. A historic investigation into the chief minister of the state and 61 other co-accused was ordered by the Supreme Court of India on April 27, 2009. This case is now positioned at a critical stage to be heard in August 2010. All efforts are afoot by perpetrators to ensure that the Court dilutes its gaze and lets off the guilty. This case and its outcome are a test for the Indian system.

### **Failure to Book the Chain of Command responsibility**

In the well-known Bilkees Bano case that was transferred to Mumbai, Maharashtra ( judgement delivered on January 21, 2008 ), only a junior policeman was finally booked for minor offences though the charge-sheet in the case had named senior police officials as also government doctors for common intent in the destruction of evidence. To date the Central Investigating Agency has not appealed this truncated sentence. There is a universal tendency in India, especially related to mass crimes against the minorities, to book only local level; accused and allow the mighty and powerful to go free. Today Bilkees continues to live in threat of her life.

### **Reparation**

No reparation has been paid by the State to Women Victims of Gender Violence and this is a specific demand made by us before the High Court. The carnage in Gujarat 2002 was the worst ever targeted incident of mass crimes against India's religious minorities. Nineteen of the state's 25 districts were affected in a well organized and state sponsored frenzy of violence that took an estimated 2,500 lives. There was widespread displacement and Internally Displaced Persons (IDPS) caused due to the targeted violence of 2002 are now forced to live on un-regularised land and temporary/transit structures in Relief Camps across the State. There is a constant fear and threat of further eviction and displacement because of overnight demolitions by Corporations, Municipal Bodies and Rural local bodies. In early June 2010, such a demolition drive was prevented by the timely intervention of Survivors backed by Rights Groups. Latest Figures submitted to the Gujarat High Court reveal that 21,448 IDPs in 2,681

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<sup>9</sup> Zakia Ahsan Jafri & Anr v/s State of Gujarat & Ors (SLP 1099/2008)

dwellings in 45 Camps in 11 Districts across the State live in this temporal fashion, unsure of when the axe from the authorities may fall on their head. Civil Amenities are poor, there is virtually no sanitation and poor drainage. Equally noteworthy is that those IDPs who are engaged in a legal struggle against impunity and to punish the perpetrators in the nine worst carnage cases have been rendered particularly vulnerable by a vindictive state machinery.<sup>10</sup>

The process of punishing the perpetrators is still afoot and despite the bitter struggle, for the first time in the history of anti-minority violence in India, some judicial pronouncements have worked to ensure some accountability.

**But, Will the Indian democratic system turn a spotlight onto what surely must be its darkest hour?**

**Will the Perpetrators Among the Politically Powerful be Punished?**

#### **Suggested Interventions to the CEDAW Committee**

*(through Special Communications/Questions to the Government of India):*

- 1. That all Articles of the CEDAW Principles are adhered to [(Article 2 a) to d) are being violated]**
- 2. That fair and adequate Legal representation is granted to all witnesses, especially women witnesses as their inalienable and basic human right**
- 3. That the Principles of Independence and Integrity as also the Diversity Principle are followed in the Appointment of Prosecutors in Cases related to the Gujarat Carnage of 2002**
- 4. That all Investigative and Judicial processes related to the Carnage of 2002 are conducted with Probity, Transparency and Accountability**
- 5. That Women and Child Victims of Gender Violence are Given Reparation by the State**
- 6. That lasting Protection of Eyewitnesses, Victim Survivors and Human Rights Defenders is granted even beyond the duration of the Trial**

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<sup>10</sup> Special Civil Application No. 3217 of 2003 on 10.6.2010. Citizens for Justice and Peace v/s State of Gujarat & Ors