

# Interim report

*The interim report by amicus curiae Raju Ramachandran placed before the Supreme Court, January 20, 2011*



Gujarat 2002: An ongoing rampage

## *Note by the amicus curiae*

1. This hon'ble court vide order dated 27.04.2009 directed the SIT to "examine" the complaint submitted by the petitioner on 08.06.2006. The SIT was to "look into the matter" and give its report to this hon'ble court.

2. Pursuant to the aforesaid direction, Shri AK Malhotra, former DIG, CBI, and a member of the SIT, has examined more than 160 witnesses and gone through a number of documents as made available to him, He has given his findings qua the 32 allegations made by the complainant. The chairman, SIT, has concurred with the findings of Shri Malhotra.

3. The inquiry conducted by Shri AK Malhotra was in the nature of a preliminary inquiry in which he has recorded statements of witnesses (which are signed by the witnesses) and also collected a number of documents.

4. In his report dated 12.05.2010, Shri AK Malhotra has inter alia recommended further investigation under Section 173(8), CrPC, against (1) Shri MK Tandon, the then joint commissioner of police, Ahmedabad city; (2) Shri PB Gondia, the then deputy commissioner of police, Ahmedabad; and (3) Shri Gordhan Zadaphiya, the then minister of state for

home, government of Gujarat. The subsequent investigation has been conducted by another officer, namely Shri Himanshu Shukla, DCP, and supervised by Shri YC Modi, IGP, and member, SIT. A further report has been given to this hon'ble court on 26.11.2010, recommending departmental action against the police officials.

5. I had two meetings with Shri AK Malhotra and Shri YC Modi, in December 2010 and January 2011. I have had one meeting with Ms Teesta Setalvad and Ms Aparna Bhat. They have submitted a number of documents which have also been examined by me to the extent possible. Shri RB Sreekumar, former DGP, Gujarat, has also submitted some documents which have been considered.

6. The major allegation in the complaint made by the complainant relates to the alleged involvement of Shri Narendra Modi, the

chief minister of the state of Gujarat, in the communal riots which took place in the city of Ahmedabad (and elsewhere) immediately after the Godhra incident. This is the first head under which some of the allegations can be classified. The second head of allegations relate to the alleged role of the police officials at the time of the riots, the faulty investigation of the riot cases and the faulty prosecution of the accused. There are a number of other allegations which have been classified by me as falling in the third category.

7. Though the SIT has concluded that there is no material to indicate that Shri Narendra Modi, the chief minister, had issued any instructions to the officers on 27.02.2002 to permit the Hindus to give vent to the anger of the majority community, there are a number of circumstances which prima facie indicate that the matter requires a detailed investigation to examine the role of Shri Modi immediately after the Godhra incident to find out if there is any culpability to the extent that a message was conveyed that the state machinery would not step in to prevent the communal riots. Some of the circumstances which justify a more detailed investigation into this aspect have been separately enumerated in Chart A enclosed herewith (pertaining to the first head).

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8. It would be appropriate if this aspect of the matter is examined by way of further investigation under Section 173(8), CrPC, in the pending Gulberg Society and/or Naroda Patiya cases. The SIT may consider all evidence, including but not limited to the statement of Shri Sanjiv Bhatt, the then deputy commissioner (intelligence), and the records of the state government at the relevant time. Since a statutory investigation would confer powers under the CrPC to the investigating officer, the investigation would be effective. I am fully conscious that nearly nine years have passed since the incident but the inquiry report of the SIT in respect of the allegations throws up a number of unanswered questions. It would also appear that Ms Setalvad wanted to give further evidence which could not be looked into by the SIT, as the report was under preparation. These could also be looked into by the SIT.

9. In so far as the role of certain police officials and public prosecutors is concerned, the SIT has found the conduct of certain police officers and public prosecutors to be deficient. The recommendations of the SIT and my suggestions are contained in Chart B appended to this note (pertaining to the second head).

10. The other allegations which are found to be proved (or not proved) by the SIT, and my suggestions to this hon'ble court in relation to those findings, are enclosed in Chart C appended to this note (pertaining to the third head).

### **Chart A: Observations on findings of the SIT**

#### **Allegations (Complainants)**

**I. & IV.** A statement was made by Shri Narendra Modi on 27.02.2002 in a meeting in his residence instructing senior officers to allow the Hindus to give vent to their anger. This is also supported by late Shri Haren Pandya.

#### **Findings (SIT)**

➤ 1. None of the officers that attended the meeting on 27.02.2002 have confirmed the alleged statement made by Shri Narendra Modi (p. 19); 2. The statement of Shri RB Sreekumar is hearsay (p. 19); 3. Sanjiv Bhatt, DC (intelligence), was not present at the meeting (p. 19); 4. None of the cabinet ministers, including Shri Haren Pandya, attended the meeting on 27.02.2002. Testimony of Shri Haren Pandya before the Citizen's Tribunal is unreliable (p. 19).

#### **Observations (Amicus Curiae)**

➤ It would be impossible to get anyone present in the meeting on 27.02.2002 to speak against Shri Modi, especially the bureaucracy and police officials.

➤ The other circumstances would also have to be taken into account. There is nothing to show that the chief minister intervened on 28.02.2002 when the riots were taking

place to prevent the riots. The movement of Shri Modi and the instructions given by him on 28.02.2002 would have been decisive to prove that he had taken all steps for the protection of the minorities but this evidence is not there. Neither the chief minister nor his personal officials have stated what he did on 28.02.2002. Neither the top police nor bureaucrats have spoken about any decisive action by the chief minister.

➤ It may not be correct to rule out the presence of Sanjiv Bhatt, IPS, DC (intelligence), since ADGP (intelligence) Shri GC Raiger was not available. There is no reason for him to make a wrong statement. He was willing to make a statement if he was protected from legal repercussions of disclosing what transpired in the meeting.

➤ It is difficult to believe that when the chief minister came back after the Godhra trip, no minister was present at his residence. Hence it may not be totally unbelievable that Shri Haren Pandya was present. Shri Haren Pandya is unfortunately dead but the statements made by late Shri Haren Pandya to Justice PB Sawant (ret'd) and Justice H. Suresh (ret'd) can be used even if his statement has not been formally reproduced in writing by the Citizen's Tribunal.

➤ It has also been brought out that an inquiry was made from the chief minister's office as to the identity of the minister who had deposed before the Citizen's Tribunal and that the State Intelligence Bureau had verified the identity as that of Shri Haren Pandya. This also gives some corroboration to the fact that the chief minister's office was uncomfortable with the disclosure made by an unidentified minister to the Citizen's Tribunal.

➤ The statement of Shri RB Sreekumar cannot be discarded as hearsay, in the light of Section 6 of the Evidence Act.

➤ Another aspect is the fact that Vishwa Hindu Parishad (VHP) general secretary, Jaideep Patel, and Shri Modi were at Godhra on 27.02.2002. The statement of Jaideep Patel that he did not meet Shri Narendra Modi at Godhra does not inspire confidence. This has to be examined, as the *mamlatdar* [executive magistrate] would not have handed over the dead bodies to a non-government person i.e. Jaideep Patel until and unless somebody very high told him to do so.

#### **Allegations**

**V.** That cabinet ministers Shri IK Jadeja and Shri Ashok Bhatt were positioned in the DGP's office and Ahmedabad city control room on 28.02.2002.

#### **Findings**

➤ The SIT concludes that this was a "controversial decision" taken by the government to place two ministers in the DGP's office and Ahmedabad city control room. How-

**It would be impossible to get anyone present in the meeting on February 27, 2002 to speak against Modi, especially the bureaucracy and police officials... Neither the top police nor bureaucrats have spoken about any decisive action by the chief minister**

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ever, the SIT concludes that there is no evidence that the two ministers passed on any instructions to the police to deal with riots in a particular manner. Therefore the allegation is only partially proved as per the SIT (p. 32).

### Observations

➤ The positioning of two cabinet ministers having nothing to do with the home portfolio in the office of the DGP and the state police control room respectively is another circumstance which reflects that there was a direct instruction from the chief minister. Though Shri Jadeja says that he had gone to the DGP's office on instructions of Shri Gordhan Zadaphiya, MoS (home), this is highly unbelievable. It is obvious that the chief minister had positioned these two ministers in highly sensitive places, which should not have been done. In fact, these two ministers could have taken active steps to defuse the riots but they did nothing, which speaks volumes about the decision to let the riots happen. It does not appear that these two ministers immediately called the chief minister and told him about the situation at Gulberg and other places.

➤ The SIT merely relied upon the statements of the police officers to conclude that these two ministers did not give any instructions to the police department but it appears highly unlikely that two cabinet ministers of the government of Gujarat would have not given some kind of directions when the chief minister had directed them to remain present.

➤ It is obvious that the two ministers were fully aware of the developing situation in Gulberg Society, Naroda Patiya, etc in Ahmedabad city. They were duty-bound to convey the situation to the chief minister and were required to do everything possible to save loss of lives. If the stand of the chief minister, that these two ministers were positioned so as to effectively control the law and order situation, is correct then there would have been a far quicker action to control the riots in Gulberg Society and Naroda Patiya at least.

➤ No tangible action seems to have been taken by the police high-ups in the police department, namely the commissioner of police, to control the riots at Gulberg Society. Gulberg Society is not very far away from the office of the commissioner of police, Ahmedabad.

### Allegations

**XI.** The allegation is that Shri Narendra Modi did not visit the riot-affected areas of Ahmedabad immediately though he visited Godhra on the day of the incident.

### Findings

➤ The SIT has come to the conclusion that the action of the chief minister appeared to be discriminatory (p. 67).

### Observations

➤ This is one of the circumstances which indicate that the hon'ble chief minister had not taken enough steps to ensure that riots in Ahmedabad city were immediately controlled by his direct intervention.

### Allegations

**XII.** It is alleged that on 01.03.2002 Shri Narendra Modi said in a television interview that the reaction of the Hindus was due to the action by the Muslims, which seems to justify the riot.

### Findings

➤ The SIT has come to the conclusion that the reaction of the chief minister to violence at Gulberg Society and Naroda Patiya was not serious. However, the SIT has concluded this would not be sufficient enough to make out a case against Shri Modi (p. 69).

### Observations

➤ The observation of Shri Modi in a television interview on 01.03.2002 clearly indicates that there was an attempt to justify the violence against the minority community. This indicates a certain approach. The statement made by Shri Modi cannot be seen in isolation. It has to be seen in conjunction with other facts mentioned hereinabove which provides sufficient justification for a detailed investigation in the matter.

### Chart B: Observations on findings of the SIT

### Allegations

**VII.** The allegation is that 13 IAS/IPS officers were rewarded for their support during the post-Godhra riots.

### Findings

➤ The finding of the SIT is that there was nothing to indicate that the 13 officers had been rewarded with postings for their support to the chief minister. However, at page 44 to 49, the SIT had concluded that the conduct of Shri MK Tandon, the joint commissioner of police, Sector II, Ahmedabad, was not satisfactory. It is also mentioned that he received calls from Jaideep Patel and Mayaben Kodnani, who are accused in the Naroda case. Similarly, the SIT had concluded that the role played by Shri PB Gondia, DCP, Zone IV, was suspicious and he also received calls from Mayaben Kodnani and Jaideep Patel. In the subsequent report dated 26.11.2010, it has been advised that departmental action be taken against them.

### Observations

➤ The major massacres in Ahmedabad city took place in Gulberg Housing Society, in Naroda Patiya and Naroda Gaon.

**It is obvious that the chief minister had positioned these two ministers (IK Jadeja and Ashok Bhatt) in highly sensitive places, which should not have been done... these ministers could have taken active steps to defuse the riots but they did nothing, which speaks volumes about the decision to let the riots happen**

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Hence the actions of Shri MK Tandon, the joint commissioner of police, Sector II, and that of PB Gondia, the DCP, Zone IV, cannot be termed as mere failure to discharge their duties, as both the officers were not present at any of these places despite the fact that they were fully aware of the possibility of loss of lives. It appears that if these officers had been present at the spot or had taken effective steps in time, the massacres could have been avoided and lives could have been saved. A case of criminal negligence is made out against these two officers. Further, they have received calls from accused who are facing trial in the Naroda massacre i.e. Mayaben Kodnani and Jaideep Patel. Therefore it does not appear to be a simple case of mere dereliction of duty. Section 304A, IPC, would be squarely attracted in such a case.

➤ In so far as promotion of other IAS and IPS officers is concerned, the view taken by the SIT seems to be acceptable.

### *Allegations*

**IX.** The allegation is that the government of Gujarat has been seriously indicted by this hon'ble court due to fresh investigation in the Bilkees Bano case by the CBI and retrial of the Best Bakery case outside the state of Gujarat.

### *Findings*

➤ The SIT has concluded that the trials in both the cases are over. Some accused have been convicted and some accused have been acquitted and the appeals are pending before the high court.

➤ The SIT has recommended that the matter requires to be handled by the state of Gujarat to take departmental action for major penalty against K. Kumaraswamy, Jt CP, Baroda city, and Ramjibhai Pargi, former ACP [assistant commissioner of police], in light of observations of the learned sessions judge, Greater Bombay. It also recommends setting up of a committee by the government of Gujarat to fix responsibility on the officials (p. 238).

### *Observations*

➤ The investigative agencies let off the accused in the Bilkees Bano case. If the CBI had not stepped in, the accused would have gone unpunished. Similarly, in the Best Bakery case, it appears that the prosecution was done in a shoddy manner to protect the accused.

➤ The recommendations of the SIT that the government of Gujarat should set up a committee perhaps needs to be reconsidered. It would be appropriate if these two cases are examined by the SIT so as to fix responsibility on the investigating/prosecuting officials and suitable directions can thereafter be issued by this hon'ble court to take action either under the Indian Penal Code (depending on whether it reveals offences under the IPC) or departmental action for misconduct. The acts of the investigating/prosecuting agencies may attract Section 201 of the IPC.

### *Allegations*

**X.** The allegation is that the investigations were partial in nature and there was prejudice against the riot victims.

### *Findings*

➤ The finding of the SIT is that supplementary charge sheets have been filed in the Gulberg Society case and Naroda Patiya case but that by itself cannot be a reason to hold that investigations were conducted in a partial manner (p. 67).

### *Observations*

➤ The grievance of the petitioner may not survive after the SIT has conducted fresh investigations but it would be unjust to spare those people who conducted partisan or negligent investigation. Hence this issue needs to be addressed. The role of the officials in the Crime Branch, especially DCP Vanzara and ACP Chudasama needs to be inquired into, especially in light of the statement of Rahul Sharma, DCP,

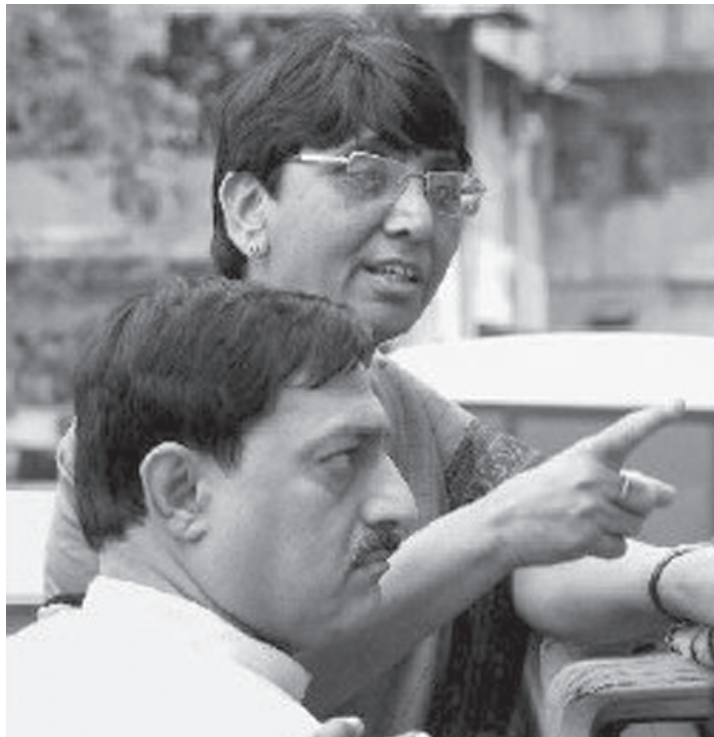
control room, Ahmedabad. To that extent, the finding of the SIT is not acceptable.

### *Allegations*

**XV.** The allegation is that pro-VHP lawyers were appointed as public prosecutors which had an adverse effect on the trial of the riot accused.

### *Findings*

➤ The finding of the SIT is that though the political affiliation of the advocates weighed with the government in their appointment as public prosecutors, there is no specific allegation in showing favour by them to any of the accused persons involved in the riots either at the time of grant of bail or during the trial.



Jaideep Patel and Maya Kodnani: Spearheads of the Naroda massacres

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### Observations

➤ The issue may not survive because of the intervention by this hon'ble court whereby public prosecutors have been appointed in an independent manner. However, this may be required to be looked into further in light of the subsequent letter of Ms Teesta Setalvad (p. 244).

### Allegations

**XXI & XXII.** These allegations relate to inaction against senior police officers, as they did not carry out proper investigation of riot-related cases, especially the Bilkees Bano rape case.

### Findings

➤ The SIT has stated that the allegations were vague and general and there was nothing against any specific officer. It is further stated that the CBI had not recommended any action against Shri Jadeja, SP, Dahod, in the Bilkees Bano case (p. 101).

### Observations

➤ In so far as Shri Jadeja is concerned, the documents relating to the Bilkees Bano case need to be scrutinised by the SIT. The basis on which the CBI has concluded that no departmental action is required to be taken against Mr Jadeja has to be examined before any conclusion is drawn.

### Allegations

**XXIII.** The allegation is that the CD relating to telephonic calls of BJP leaders and police officers were not looked into by the investigating officers of Gulberg Society and Naroda Patiya.

### Findings

➤ The SIT has found that Shri Tarun Barot, the investigating officer of the case and Shri GS Singhal, ACP, Crime Branch, intentionally did not examine the cellphone records though it was available to them and therefore major penalty departmental proceedings should be initiated against them (105).

### Observations

➤ The government of Gujarat may be directed to take departmental actions against these two officers immediately within a time-bound manner.

### Allegations

**XXV.** The allegation is that the police at Gulberg Society and Naroda Patiya did not take action and acted as mute spectators to the acts of lawlessness. Real culprits were not arrested and no preventive action was taken.

### Findings

➤ The SIT has found this allegation to be incorrect.

### Observations

➤ Shri MK Tandon, Jt CP, said that he reached Gulberg Society at 4:00 p.m. and ordered CISF [Central Industrial Security Force] firing.

It is not clear why the CISF could not reach earlier though it had been sent at 1:45 p.m. It is not clear why the other officers, namely GD Solanki, DySP [deputy superintendent of police], etc, could not reach Gulberg Society on time. It appears that nothing was done by the police personnel present at Gulberg Society and Naroda Patiya to dispel the gathering mob. It would appear that the mob was being permitted to gather at these two places. Hence there is substance in the allegation of police inaction.

➤ It is not clear what action was taken by Shri MT Rana, then ACP, G Division, who was present at Naroda Patiya, to prevent the mishap from happening. This aspect also needs to be looked into.

### Specific recommendations for the SIT

1. Shri MK Tandon and Shri PB Gondia be prosecuted under Section 304A, IPC.

2. The SIT may examine the role of the investigating agency in the Bilkees Bano rape case and make recommendations to this hon'ble court, whether it reveals commission of any criminal offence or misconduct.

3. The SIT may be directed to look into the role of the Crime Branch officers, namely DCP Vanzara and ACP Chudasama as to their role in the investigation of the Gulberg Society and Naroda Patiya cases.

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

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

### Specific recommendations in relation to the government of Gujarat

1. Departmental action, as suggested by the SIT, be taken against K. Kumaraswamy, the then Jt CP, Baroda city, and Ramjibhai Pargi, former ACP.

2. As recommended by the SIT, departmental action be taken against Shri Tarun Barot, inspector, and Shri GS Singhal, ACP, Crime Branch, for faulty investigation of the riots cases.

### Chart C: Observations on findings of the SIT

#### Allegations

**II.** Alleged decision of the chief minister to transport dead bodies from Godhra to Ahmedabad with a view to parade them.

**The major massacres in Ahmedabad city took place in Gulberg Housing Society, in Naroda Patiya and Naroda Gaon. The actions of the then joint commissioner of police, MK Tandon, and then DCP, PB Gondia, cannot be termed as mere failure to discharge their duties**

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### Findings

➤ The SIT has concluded that the decision was taken with a view that the train was heading towards Ahmedabad. Therefore the relatives of the deceased would be residents of Ahmedabad and nearby areas and it would be easy for them to collect the bodies. The dead bodies were not paraded as alleged. Therefore the allegation is not established (p. 23).

### Observations

➤ The findings of the SIT appear to be justified.

### Allegations

**III.** It is alleged by Shri RB Sreekumar that there were a number of verbal instructions given by the chief minister which were illegal.

### Findings

➤ It is concluded by the SIT that the allegation of Shri RB Sreekumar is based upon the entries made by Shri Sreekumar in his register which was a personal register maintained by him in which he allegedly recorded the illegal instructions received by him. The SIT had stated that there is doubt about the genuineness of the entries made by Shri Sreekumar in the register, in view of the fact that this register was revealed for the first time in 2005 (after the supersession of Shri Sreekumar by the government) and there is further no corroboration of the statements made by Shri RB Sreekumar from any other source (p. 28).

### Observations

➤ It may not be possible to prove the so-called illegal instructions in absence of any other material except the statements of Shri RB Sreekumar himself. Hence though the finding of the SIT be accepted, it may not be appropriate to say that the register is motivated.

### Allegations

**VI.** The allegation is regarding the transfer of six police officers by the hon'ble chief minister during the thick of the riots to facilitate placement of pliable officers.

### Findings

➤ The finding of the SIT is that this allegation could not be proved (p. 33-36).

### Observations

➤ It does not appear that any of the six officers were deliberately posted out with a view to facilitate placement of pliable officers so as to encourage the riots. Hence we may accept the SIT's recommendations. There are three instances which are far too remote to lead to any conclusion.

### Allegations

**VIII.** The allegation is that no follow-up action was taken up by the Gujarat government on the reports sent by Shri RB Sreekumar.

### Findings

➤ The finding of the SIT is that the file of the state government relating to the concerned subject had not been produced and therefore it was not clear how the

government dealt with the letters of Shri RB Sreekumar. The SIT further observes that from the evidence of witnesses, it is incorrect to say that the letters of Shri RB Sreekumar were not acted upon by the government (p. 60).

### Observations

➤ The findings of the SIT may be correct. The letters of Shri RB Sreekumar were written after the riots had got over. Secondly, the contents of these letters appear to be of general nature. The subsequent developments have supported the findings of the SIT that some action was taken by the government. Hence we may accept the SIT's recommendation.



"Service, Protection, Peace": Belying the badge

### Allegations

**XIII.** The allegation is that Shri Narendra Modi did not give a direction declaring the bandh called by the VHP on 28.02.2002 illegal.

### Findings

➤ The SIT has found that the bandh was not declared illegal by the government of Gujarat and hence the allegation is proved.

### Observations

➤ This issue does not have a very material bearing. Nothing would turn upon the fact whether the bandh was declared illegal or not.

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### *Allegations*

**XIV.** The allegation is that there was undue delay in deployment of the army.

### *Findings*

➤ The SIT has come to a conclusion that there was no undue delay in deployment of the army.

### *Observations*

➤ The factual records are the matter of investigation and if the records are correct then the SIT finding may also be correct.

### *Allegations*

**XVI.** The allegation is that police officials were not transferred until the arrival of Shri KPS Gill.

### *Findings*

➤ The SIT has found this allegation is not correct.

### *Observations*

➤ The finding of the SIT may be accepted.

### *Allegations*

**XVII.** The allegation is that no action was taken against the media for publishing communally inciting reports.

### *Findings*

➤ The SIT has found the allegation to be true.

### *Observations*

➤ Action should have been taken against the media but due to lapse of more than eight years, it is not advisable to pursue this matter any further.

### *Allegations*

**XVIII.** This allegation relates to misleading reports submitted by the state home department regarding normalcy in the state so as to persuade the Election Commission to hold early elections.

### *Findings*

➤ The SIT has concluded that the allegation is not conclusively established in view of the fact that the elections were subsequently held within three-four months, in December 2002, and passed off peacefully.

### *Observations*

➤ This issue may not survive any further and it would not serve any purpose to examine this issue in detail. Hence it is recommended that this issue be dropped.

### *Allegations*

**XIX & XX.** That Shri GC Murmu, home secretary, was de-

puted to tutor the witnesses who were to depose before the Nanavati Commission.

### *Findings*

➤ The SIT has found this allegation is not established, as the version given by Shri RB Sreekumar is motivated and cannot be relied upon (p. 97).

### *Observations*

➤ The allegation is found not proved by the SIT, which recommendation may be accepted. It may not be justified to say that the version of Shri Sreekumar is motivated.

### *Allegations*

**XXIV.** The allegation is that the Gujarat government did not provide conducive atmosphere for rehabilitation of riot victims.

### *Findings*

➤ The SIT has found this allegation is not correct, as it believes that the government did everything for rehabilitation (p. 117).

### *Observations*

➤ This conclusion may be accepted.

### *Allegations*

**XXVI.** This allegation relates to non-preparation of minutes of meetings.

### *Findings*

➤ The SIT has found that in the Gujarat government, no minutes of meetings are prepared in case of law and order review meets.

### *Observations*

➤ Since the minutes of the meetings have not been prepared, nothing would come out in further investigation. In any event, the minutes of the meetings would never be prepared to implicate any minister/official directly or indirectly. Therefore this issue can be closed.

### *Allegations*

**XXVII.** This allegation relates to not taking action against officers for filing incorrect affidavits before the Nanavati Commission.

### *Findings*

➤ The SIT has concluded that this matter has to be dealt with by the Nanavati Commission which has still to submit its report.

### *Observations*

➤ The view taken by the SIT appears to be correct.

### *Allegations*

**XXVIII.** It is alleged that the review of post-trial cases

**The SIT may examine the role of the investigating agency in the Bilkees Bano rape case and the role of the Crime Branch officers, namely DCP Vanzara and ACP Chudasama as to their role in the investigation of the Gulberg Society and Naroda Patiya cases**