

BACKGROUNDER ON COMPENSATION

In 2002 then NDA government had given Rs 200 crores rehab package to Gujarat. In March 2003, one year later, the cynical and callous state of Gujarat returned about Rs 116 crores claiming that no more relief needed to be done. **CJP filed this PIL in March April 2003.**

Status of Compensation to for Victims of the Gujarat Genocide 2002 (Details from the PIL)

I. The state of Gujarat has paid compensation of only Rs. 1.5 lakhs (Rs. 90,000 in cash & Rs. 60,000 in Narmada Bonds) as compensation to the next of kin of those killed in the rioting. This amount is totally inadequate and arbitrary and amounts to a failure on the part of the State to fulfil its constitutional obligation of compensation. Significantly the Hon'ble Delhi High Court has in 1996 (six years earlier) directed the payment of compensation of Rs. 2 lakhs & interest from 1984 (aggregating to Rs. 3.5 lakhs) to those killed in the 1984 anti Sikh riots. On that basis and allowing even for a 7% annual rate of inflation from 1996 to 2002, the amount of compensation would be required to be approximately 3.00 lakhs (40% increase on 2 lakhs) and interest on this amount from 2002 to 2007 at 8% per annum: an additional Rs. 1 lakh = 4.00 lakhs !. **The present Central package is exactly what had argued in CJP's petition.** Compensation for injuries/disabilities sustained should be pro rata to this amount.

II. Compensation for rape cases and cases of attacks on women & children: Despite the State Home Department acknowledging 185 cases of attacks on women, 11 rape cases and 57 attacks on children, no compensation has been paid to the victims of such heinous and dastardly attacks on helpless women & children. In fact the number of rape cases is far more. At the Shah Alam camp a much larger number of rapes had been listed/ provided. It is submitted that the Constitution obligations require the Respondent No 2 to make full and appropriate compensation of not less than that made available in the case of death (i.e. 4.00 lakhs) to such women & children.

III. Regarding Destruction of houses/homes: The position re compensation of houses is even worse. The **state of Gujarat** had fixed an arbitrary and irrational ceiling of

Rs. 50,000 as compensation for destruction of houses and in most cases has paid only a pittance:

- the Womens Parliamentary Committee in its Aug 2002 Report had noted that the state Respondent No 2 had informed the Committee that 4954 houses had been " completely destroyed" (2023 urban and 2931 rural) and that the amount of compensation disbursed for the same was Rs. 7.62 crores. This would mean that an average of Rs. 15,000 has been paid for each completely destroyed house: while a house in the urban area costs approximately Rs. 2 to 3 lakhs & that in the rural area approximately 1 lakh. The consequence has been the inability of almost 5000 families to re construct their houses or make alternative provision for their shelter/ accommodation.
- The Committee recorded that it had been informed that 18924 houses had been partially damaged (11,199 urban & 7095 rural) and for which Rs. 15.55 crores had been paid as compensation. This works out to an average of only Rs. 870 per house !! In fact the Committee noted that a number of persons / recipients had shown them cheques of as little as Rs. 40 to Rs. 200!!
- The State Government has refused to accept even the estimates of loss contained in panchnamas prepared by its own officers pursuant to site visits/ inspections.

The Petitioners submitted that the ceiling of RS. 50,000 is totally irrational, illegal, arbitrary & unconstitutional and the amount should in consonance with the State's obligations under Arts 14 & 21 of the Constitution be fixed at a minimum of Rs. 1.5 lakhs in Rural areas and 3 lakhs in the urban areas and compensation as per losses indicated in the official panchnamas (subject to the above ceilings) should be directed to be paid.

The question still remains—what is the compensation for those victims of sexual violence, injuries not amounting to disability, those who lost homes (completely) and businesses entirely.

III. **Of the amount of** Rs. 205 crores, Rs. 150 crores was given by the Central Government- i.e. the Respondent No 2 has only paid Rs. 55 crores from its own funds. As stated above the total inadequacy of this amount of Rs. 205 crores (which includes 17.90 crores paid to relatives of those killed and Rs. 119 crores spent on rations to inmates of relief camps) is evident from the fact that less than 60 crores appear to have been paid towards houses/ property destroyed although the Respondent No 2's (Additional DG Report dated 24th Feb 2002) estimate of loss was in excess of Rs. 600 crores! **The callousness of the state of Gujarat is evident in the manner in which it has played with facts and figures.**

[[Note : amounts paid so far (i) to relatives of those killed (ii) to those whose houses were destroyed and damaged - is totally inadequate , and at times even illusory. Moreover no compensation has been provided to women who were raped / molested/ attacked although the Respondents Home Dept had informed the Women's Parliamentary Committee in Aug 2002 that there had been 185 attacks on women & at least 11 cases of rape. In fact rape / molestation was far more pervasive - but a number of the victims were killed / burnt and others have been unwilling to file complaints with the police having regard to their partisan and callous responses. I reiterate that constitutional obligations require that atleast a compensation of Rs 3 lakhs & interest from 2002 (Rs. 1.5 lakhs) be paid to the relatives of those killed. That amounts pro rata be paid for disabilities & serious injuries. Women who were raped & molested should be given compensation equal to that awarded for persons who were killed. The ceiling amount for house compensation should be raised to 1.5 lakhs in the rural area and 3 lakhs in the urban areas and compensation based on fair assessment of data and records, including the Panchnamas contemporaneously recorded be paid alongwith interest from 2002.]]

IV. **Compensation for Destroyed Homes Inadequate:** The fixation of a ceiling of Rs. 50,000 for those victims whose houses were destroyed is either reasonable or

proper. Moreover the record establishes that paltry sums much less than even this amount have been paid. In fact the figures given by the Government to the Womens Parliamentary Committee indicate that on an average a paltry sum of Rs. 15,000 per house was paid for 4954 houses which had been completely destroyed and only an average sum of Rs. 870 had been paid for 18,924 houses which had been damaged.

Examples of Gross Discrepancies in the State Claim: (i) At Shaikh Vas, Sardarpur village of Mehsana district 19 homes were destroyed. Petitioners submitted photographic evidence before the court that showed the extent of the damage to be far greater. (ii) Similarly at three locales in Ode village of Anand district—Malu Bhagol, Surivali Bhagol and Piraveli Bhagol 275 homes were destroyed. The total damage can be seen. A total of Rs. 23,22,750/- including the miscellaneous expenses of compensation has been paid to the victims of Ode. Victim survivors photographed these homes on June 22, 2006. These photographs as well as photos of 2002 plus the chart showing the extent of damage and actual compensation paid are annexed hereto as photographs are annexed. It is clear from these annexures that that the amounts paid are woefully inadequate and a deliberate attempt by the state of Gujarat to deny their Constitutional Obligations to its citizenry is afoot. The outer limit of Rs.50,000/- as compensation for complete loss/destruction of a house shows the callous attitude of the State Government towards the sufferers. The petitioners have similarly annexed photos of homes in Kheda and Sabarkantha that show that the damage was far in excess of what was given.

Background on Compensation Issue Filed by the Citizens for Justice and Peace in March 2003

The Citizens For Justice & Peace through its president Vijay Tendulkar and its secretary Teesta Setalvad had filed that argued that Article 21 of the Constitution of India is not restricted to violation of life and liberty of citizens committed by the State alone. The Citizens Fundamental Right is also required to be protected & safeguarded by the State from being violated & interfered with by private individuals. The State is duty bound to protect the threatened group/ class of citizens from assaults and if it fails to do so it fails to perform its Constitutional as well as its statutory obligations. The State is bound to take every precautionary measure & act swiftly to curb riots &

mass terror, as inaction or passivity on its part can result in loss of life, liberty, livelihood & property and negation of Art 21. If it does not do so & especially if its Police officers & ministers are complicit in such unconstitutional acts, it cannot escape liability to pay compensation for loss of life, limbs, livelihood, shelter & property.

Background:

From the May-July 2002 report of the National Human Rights Commission [NHRC) annexed in the petition, the August 2002 Report of the Parliamentary Committee on the Empowerment of Women (also annexed) the Affidavits dated 15.7.02 & 6.10.04 filed by Mr. R.B.Sreekumar Additional Director General of Police on behalf of the SIB (CID-IB) before the Nanavaty - Shah Commission, (annexed) & the figures furnished by the State Government to the NHRC, (annexed) and the **State Government's Response to the NHRC dated 31-1-2005 2005 on Relief and Rehabilitation of Riot Affected Persons in Gujarat (Part 1) and Note on Riots After Godhra Carnage (Part 2)**, it is established that the violence, killings, attacks & destruction of houses continued for months from and after 28th Feb 2002 (**see details in accompanying full text of rejoinder**) The final fatality figure (as per the **state of Gujarat's response to the** NHRC was 1037 deaths: 781 Muslims & 256 Hindus. Out of these 1037: 196 died in police firing: 116 Muslims & 80 Hindus.

Till August 2002 (as recorded in the Report of the Womens Parliamentary Committee) the 2nd Respondents Home Department had itself recorded:

- 185 cases of attacks on women of which 100 were in Ahmedabad city ;
- 57 attacks on children of which 33 were in Ahmedabad.
- 225 women and 65 children killed

- 11 cases of rape of women: 3 cases from Dahod, 1 from Anand, 4 in the Panchmahals & 3 in Ahmedabad.

- i. By August 2002 (as recorded in the Report of the Women's Parliamentary Committee - as many as 132,532 persons had been displaced / forced to leave their houses & were living in 121 riot relief camps of which 58 were in Ahmedabad city.

- ii. Till June 2002 (as recorded in the Report of the Womens Parliamentary Committee) **there had been 4954 cases (2023 urban and 2931 rural) of residential houses having been completely destroyed. There were a further 18,924 cases of partially damaged houses (11,199 urban & 7095 rural) - i.e. more than 23,000 houses had been destroyed or damaged by the rioters.**
 - iii. The **state of Gujarat** has in their Statements to the NHRC confirmed that the residential houses of 18,037 urban families (as against 13,222 till June 2002) & 11,204 families in rural areas (as against 10,025 till June 2002) had been destroyed or damaged.
 - iv. The widespread nature of these incidents is evident from the fact that they occurred in 993 villages and 151 towns covering 284 police stations (out of a total of 464 in the State) and were spread over 153 Assembly constituencies (out of a total of 182 constituencies). **This was reported by the State SIB to the Election Commission and recorded in its order**
 - v. By April 2002 the 2nd Respondents SIB (CID-IB) had estimated the loss / damage to property at **Rs. 600 crores to Muslims & 40 crores to Hindus**. By Aug 2002 the estimate of loss had risen to Rs. 687 crores.
- (A) As has been set out in detail hereinafter the record establishes that there was a complete & prolonged failure by the State Government & its officers/ District Magistrates / police officers to fulfil their constitutional & statutory duty to protect the lives, limbs, livelihood and property of its citizens.
- The Police either failed to respond to repeated & desperate calls for help by those who were facing imminent threats of death, rapine & mayhem, or stood by passively claiming that they were unable to do anything having regard to the large number of rioters involved. This

has been revealed through official, semi-official and press reports both in 2002 and thereafter.

- Calls for assistance made to the higher authorities (the Commissioner of Police, the Home Minister & the Chief Minister) by those who were facing death & destruction remained unanswered – resulting in a large number of gory incidents of death, butchery & rape/ molestation. In July 2002, former SP Bhavnagar, Mr. Rahul Sharma filed an affidavit before the Nanavaty - Shah Commission in July 2002. Annexed to the affidavit were CDs running into lakhs of printed pages of cellphone records of the top Gujarat police officials and the phone calls received between February 25 and March 4, 2002. Copies of these CDs (three) have been annexed hereto as Annexure F colly. The Indian Express newspapers' seven part articles on Mr. Rahul Sharma's CDs and what they contain dated November 21-24, 2004 and November 28, 2004. In fact in a number of cases police personnel in uniform were found marching behind or mingling with the mob. In fact in some cases policemen joined in the mayhem & ensured that no resistance could be offered to the rioters.
- Those associated with the Bajrang Dal, the Vishwa Hindu Parishad and the ruling Bharatiya Janata Party were in the forefront of the rioting.
- Moreover the record establishes that the Chief Minister first provoked the situation by directing that the bodies of the Godhra victims be paraded in Ahmedabad (notwithstanding the objections of the Commissioner of Police Mr. P.C.Pande and the Collector of Godhra, Smt. Jayanti Ravi) ; by supporting the Bandh declared by the VHP and by directing the Police not to come in the way of the Hindus venting their anger. Government Ministers remained present at the Police Control rooms.
- The resultant passivity / inactivity/ indifference of the police, generated a feeling that if Muslims were attacked and harassed and their houses and property destroyed, no action would be taken.

- The District Magistrates/ Collectors/ District Police in the districts of Mehsana, Sabarkantha, Banaskantha, Gandhinagar, Ahmedabad Rural, Kheda, Anand, Vadodara Rural, Godhra , Dahod etc, did not initiate appropriate action to contain/control riots in those areas where mass murder, rape and other heinous crimes were taking place
- The handful of Senior (IPS) Police Officers who took prompt and adequate steps & prevented the mob attacks & arrested those leading the mobs, were removed from their posts by transferring them to irrelevant positions.
- This directly lead to the aforesaid killings, attacks, rape/ molestation and destruction of houses and livelihood details of which (as per the Government record) have been set out in (B) above.
- The National Human Rights Commission after considering the responses of the Government of Gujarat to its preliminary Reports/findings, concluded in its Report/ Proceedings of 31st May 2002, " there was a comprehensive failure of the State to protect the Constitutional rights of the people of Gujarat".
- The record also establishes that the Respondent No 2/ its police officers have failed to duly register FIRs, have failed to reflect the names of VHP, Bajrang Dal & BJP members as the accused despite their names being mentioned by the victims, have failed to take steps to arrest such accused persons, have failed to duly investigate and prosecute such heinous crimes. In fact the Respondent No 2 has appointed members of the VHP/ BJP as Public Prosecutors for such offences. Such PPS have not opposed bail for the offenders, who have on being released been lionized and received a hero's welcome. The Respondent No 2 has also sought to conceal the true state of affairs from the Commission of Inquiry, by coaching its officers/ witnesses against stating/ disclosing facts which could detrimentally affect the Governments case and by threatening/pressurizing and victimizing the few officers who have had the courage to state the correct facts to the Commission.

The PIL argues (with further details and documents) that under these circumstances there arises a clear constitutional obligation on the part of the Respondent No 2 to adequately & appropriately compensate those who have lost their lives, limbs, houses, livelihood & property. The present Petition has been filed as the **because the state of Gujarat filed inadequate shameful and paltry amounts.**

The PIL also makes a strong case of complicity in the carnage at the highest level by the Chief Minister, his cabinet and IAS and IPS officials.