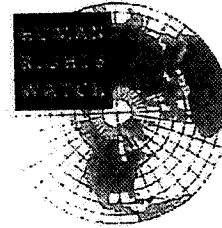


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DISCOURAGING DISSENT:

Intimidation and Harassment of Witnesses, Human Rights Activists, and Lawyers Pursuing Accountability for the 2002 Communal Violence in Gujarat

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I. Summary

The government of the Indian state of Gujarat continues to obstruct justice and prevent accountability for the perpetrators of violence committed during communal riots in 2002

that left as many as 2,000 Muslims dead.¹ The riots occurred after some Muslims allegedly attacked a train carrying Hindu pilgrims and activists. One carriage caught fire and fifty-nine Hindus were killed in the blaze.² In retaliation, Hindu extremist mobs, often with police participation and complicity, killed hundreds of Muslims and displaced thousands.³

The Gujarat state government, led by Chief Minister Narendra Modi of the Hindu nationalist Bharatiya Janata Party (BJP), not only failed to take appropriate action to prevent the violence, but has since failed to properly investigate the crimes committed. It has consistently sought to impede successful prosecutions of those allegedly involved in the massacres, leading the Supreme Court and National Human Rights Commission (NHRC) to intervene on several occasions.⁴

Activists and witnesses pursuing accountability continue to be targeted by influential extremists in Gujarat. The highest levels of government in Gujarat have created an extremely hostile environment.⁵ Chief Minister Modi has called human rights workers "five-star activists and pseudo-secularists" who are trying to tarnish the image of his state.⁶ This has encouraged a climate of impunity, where perpetrators of the riots and those that took part in the violence feel they can threaten activists and witnesses to discourage them from pursuing justice, without a response from state authorities.

¹ Unofficial, but widely accepted estimates, put the toll in the violence at over 2,000. The Gujarat government claims that there were 851 deaths during the riots, including those killed when police fired their guns in an attempt to contain the rioters. According to police testimony before the Nanavati-Shah commission enquiring into the Gujarat riots, nearly 100 rioters were killed by the police.

² Testimony by government officials presented to the Gujarat state-appointed Nanavati-Shah Commission looking into the 2002 riots. July 6, 2002.

³ Human Rights Watch, *We Have No Orders to Save You: State Participation and Complicity in Communal Violence in Gujarat*, (New York: Human Rights Watch, April 2002), pp. 21-25. Beginning on February 27, 2002, most of the killings took place in the first five days. Testimony by government officials presented to the Nanavati-Shah Commission looking into the riots says that 80.73 percent of the deaths took place in the first five days.

⁴ The National Human Rights Commission is an autonomous, statutory body created pursuant to the Protection of Human Rights Act, 1993. The NHRC has the same powers as a civil court trying a suit, including summoning and enforcing attendance of witnesses and examining them under oath; compelling discovery and production of any document; receiving evidence on affidavits; requisitioning any public record or copy thereof from any court or office; and issuing commissions for the examination of witnesses or documents. Unlike the rulings of a civil court, however, the commission's recommendations are not legally binding.

⁵ Based on meetings with witnesses, activists, and eminent personalities, the NHRC had recommended to the Gujarat government that critical cases be handed over to central government investigators to avoid 'extraneous' influences brought to bear on the police. According to NHRC, the Gujarat government refused, claiming that the state police was being discredited on the basis of "hostile propaganda."

⁶ Kalpana Sharma, "Remembering Gujarat," *The Hindu*, December 28, 2003, <http://www.countercurrents.org/qui-sharma281203.html> (retrieved Aug 20, 2004). As recently as August 2004, on the eve of India's Independence Day, Modi accused activists of "lending strength to anti-national elements" and "weakening the nation by undermining social values."

The Gujarat police have initiated very few criminal investigations and have been largely non-responsive in cases where activists have lodged complaints about threats or attacks. No credible witness protection program has been established by the state government, which seems more interested in protecting those responsible for the violence than witnesses and victims.⁷

In fact, given the active police participation in the 2002 riots, their failure to protect Muslims as they were attacked and killed in plain view, the lack of any admission of responsibility, or refusal to reform since, witnesses are reluctant to approach the Gujarat police for protection or trust them with information.⁸ Responding to a demand from witnesses for protection by national forces instead of state police, the Supreme Court on March 15, 2004, indicated its lack of trust of state authorities when it asked the national government to identify key witnesses in nine Gujarat riot cases and deploy central police or paramilitary forces to protect them.⁹

The climate of fear in Gujarat is so great that activists and witnesses are often reluctant to publicly discuss or even be privately interviewed about the threats they receive for fear of retribution from those who make the threats or their allies, including some in powerful positions in the state government or police.

In several recent incidents, Hindu nationalists have threatened activists and lawyers and even assaulted them. One activist-lawyer working on a case against individuals accused of gang rape and murder, was threatened when she was attending a hearing in court. Although she sent a complaint to the Gujarat Director General of Police, no action has been taken. In another incident, in broad daylight Hindu extremists stoned the vehicles of activists calling for communal harmony and beat up one of the activists.

⁷ Displaced witnesses and victims now live in clusters and are protected by just a few armed guards posted on the outskirts of squatter settlements. This does not ensure their safety if they go into the general community for errands or meetings, as they can be easily accosted with threats or offers of bribes. Witnesses are vulnerable, activists point out, because the Gujarat government has failed to adequately support several displaced Muslims, many of them key witnesses, who live in these resettlement colonies without electricity, water or medical facilities.

⁸ Human Rights Watch, "India: Protect Witnesses in Gujarat, Conduct Investigations," New York, April 14, 2004, <http://hrw.org/english/docs/2004/04/13/india8429.html>. Also Human Rights Watch, *We Have No Orders to Save You*, April 2002, pp. 21.

⁹ "Protect Key Witnesses In Gujarat Riots," *The Indian Express*, March 16 2004, http://www.indianexpress.com/full_story.php?content_id=43064 (retrieved August 21, 2004).

Documentary filmmaker Shubhradeep Chakravorty was verbally abused and threatened in Ahmedabad after the screening of his film that questions the official version of events in the attack on the train in Godhra and criticizes the violence that followed. An earlier screening had to be canceled because the venue owners pulled out following threats.¹⁰ Several websites, claiming to support the cause of Hindus in India, list human rights campaigners as “traitors.” For instance, the website of the *Patriotic Sons of Mother India* has listed several Gujarat activists, including many whose testimonies are listed in this report, as enemies of India. The website openly supports the BJP by including a list of twenty reasons one should not support Sonia Gandhi, leader of the Congress party. The lead entry says, “Shame Shame Indian Leftists! You want human rights for terrorists?” This kind of rhetoric could endanger the security of activists and spreads fear by providing the home address, phone numbers and/or email address of some of those it lists, calling them “anti-India, anti-Hindu activists.”¹¹

So many witnesses have complained of threats that in May 2003, the NHRC asked the Director General of Police in Gujarat for a report on measures taken “to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses.”¹² The Director General offered a disingenuous response, saying that in the absence of any specific complaint, it would not be possible for the state police to accord protection to each and every witness or victim.¹³ However, when the police have known the identity of activists who have been threatened, they have a poor record of protecting them.¹⁴

Aside from prominent activists with connections to senior government or police officials, few activists, witnesses, or victims can rely on protection from state authorities. Even witnesses who have received 24-hour police protection have complained that guards turn up sporadically.¹⁵ Many Muslim witnesses initially refused to give testimony to the “Nanavati-Shah Commission”¹⁶ appointed by Chief Minister Modi because they

¹⁰ “Docu-maker Faces VHP Wrath,” *The Times of India*, Oct.25, 2003, <http://timesofindia.indiatimes.com/articleshow/msid-251072.htm> (retrieved June 14, 2004).

¹¹ See <http://www.geocities.com/enemiesofbharat/>

¹² NHRC Proceedings, Case No. 1150/6/2001-2002, June 16, 2002. http://nhrc.nic.in/gujarat_order_2001-2002.html (retrieved August 13, 2004).

¹³ Ibid.

¹⁴ See Section III below, “Threats against Teesta Setalvad and Father Cedric Prakash.”

¹⁵ Praveena Sharma, “Cowering Muslim Witnesses In Gujarat Wait In Vain For Police Protection,” *Agence France-Presse*, September 14, 2003, http://quickstart.clari.net/qs_se/webnews/wed/dp/India-gujarat-muslims.Rqcl_DSf.html (retrieved June 21, 2004).

¹⁶ A Commission of Enquiry was set up by Gujarat's Narendra Modi government to examine the Godhra incident and the violence against Muslims that followed. The Commission is led by two retired judges, Justice G.T. Nanavati and Justice K.G.Shah. Activists have been concerned about the impartiality of this commission because of a statement by Justice Nanavati exonerating the state government and the local police, although he later retracted the statement. While many activists have questioned the credentials of the judicial commission,

feared reprisal from local police and Hindu extremists.¹⁷ The People's Union for Civil Liberties (PUCL) said that witnesses had no faith in the proceedings because it was "carried out in an atmosphere hostile to victims."¹⁸ Protection offered by the Gujarat government has been refused by some witnesses because the local police were perceived as complicit and more likely to harm than protect the witness. Witnesses have repeatedly expressed fear of the Gujarat police, fear so great that in one case, witnesses, offered protection by local police, submitted their refusal in writing to the Police Inspector.¹⁹

Statements from leaders of the Vishwa Hindu Parishad (VHP),²⁰ alleged by many of planning and executing the attacks on Gujarati Muslims in 2002, have added to the distrust. On July 3, 2004, two years after the riots, despite severe criticism from human rights organizations and constitutional authorities like the NHRC, VHP Working President Ashok Singhal declared that, "What happened in Gujarat after the Godhra carnage had the blessing of Lord Rama."²¹

Realities on the ground in Gujarat have fueled the fears of activists, particularly Muslims.²² Muslims are often treated as suspected terrorists and were arrested under the recently-repealed draconian Prevention of Terrorism Act (POTA). Of the 287 cases

lawyers working on behalf of human rights organizations and victims have also used the commission to cross-examine senior government officials, often forcing them to admit that there were serious lapses by the state administration in containing the violence. In an effort to prevent another commission from being set up by New Delhi after a Congress-led government replaced the earlier BJP-led coalition, on July 21, 2004, Chief Minister Modi extended the terms of reference of the Nanavati-Shah Commission to also examine the role and conduct of the chief minister, ministers, government officers, other individuals and organizations. See Anosh Malekar, "Another Twist in the Plot," *The Week*, August 8, 2004, http://www.the-week.com/24aug08/statescan_article3.html and Asghar Ali Engineer, "No Justice Nanavati, What You Say Is Not Correct," June 6, 2003, <http://www.countercurrents.org/gui-engineer060603.htm> (retrieved June 21, 2004).

¹⁷ Digant Oza and Nachiketa Desai, "Nanavati Commission Boycott," *Sahara Time*, August 3, 2003, <http://www.countercurrents.org/gui-desai030803.html> (retrieved June 21, 2004).

¹⁸ "PUCL-Vadodara Shanti Abhiyan Withdraw from the Nanvati-Shah Commission Hearings," June 18, 2003, <http://www.countercurrents.org/gujarat-pucl180603.htm> (retrieved August 24, 2004).

¹⁹ See Section III, "Threat and Harassment of Bilkis Yakub Rasool."

²⁰ The VHP was formed in 1964 to address the social aspects of Rashtriya Swayamsevak Sangh (RSS) activities and to communicate the RSS message to Hindus living outside India. Its most publicized activity is the campaign to build a temple for the Hindu god Ram at the site of the Babri mosque in Ayodhya, Uttar Pradesh, which they claim was built on the site of an earlier Hindu temple that marked the birthplace of Lord Ram. On Dec. 6, 1992, the mosque was demolished by Hindu extremists during a meeting organized by the VHP. The Hindus killed in Godhra on Feb 27, 2002, were returning to Gujarat after participating in temple building rituals organized by the VHP in Ayodhya.

²¹ "Singhal Justifies Gujarat Riots," Press Trust of India, July 3, 2004. Lord Ram (also spelt Rama) is the warrior-king from the Hindu epic *Ramayana*.

²² "Harassment Of People Engaged In Social and Human Rights Work In Gujarat," PUCL Bulletin, March 2003 <http://www.pucl.org/Topics/Religion-communalism/2003/harrasment-gujarat.htm> (retrieved June 21, 2004).

registered under POTA in Gujarat as of December 2003, 286 were against Muslims.²³ Muslim leaders and activists fear that they too will be investigated under POTA.²⁴ That fear was heightened, activists say, after police arrested Haris Ansari under POTA. He is the son of Shakeel Ahmed Ansari, a member of the Islamic Relief Committee working with Gujarat victims. Shakeel Ahmed described the situation:

“Police pick up youths, whoever they want, from streets, keep them on remand for weeks and months. All this has filled Muslim psyche with fear in Gujarat.”²⁵

Activists say that even now, almost three years after the riots, junior police officials in charge of local police stations are reluctant to record complaints by witnesses about threats and intimidation. According to activist Teesta Setalvad, who has received numerous threats for her work on the Gujarat violence, “In some cases when absconders have threatened witnesses, when the witnesses went to lodge an FIR (First Information Report), the police refused to register it. It needs an external push—we have to intervene personally and call senior officers in Gujarat or we have to send a lawyer along.”²⁶

More subtle means have also been used to obstruct justice. Instead of pursuing the perpetrators of the violence, who often committed their crimes in full view of large numbers of witnesses, state police authorities have summoned human rights activists for questioning. In many cases the questioning has been based on unsubstantiated protest letters sent to the BJP government by its own party workers.²⁷

Tax authorities and the Gujarat charity commissioner have allegedly singled out human rights activists working on the riots for investigation. Local activists say that income tax investigations have been threatened against many organizations run by Muslims in an effort to put pressure on Muslim leaders to encourage witnesses to drop charges and withdraw from cases.

²³ Zakia Jowher, “POTA and the Terrorized Minority in Gujarat.” (unpublished report by Aman Samudaya in HRW’s possession).

²⁴ See Section III, “Police Inquiries and Interrogation of Mukhtar Muhammad.”

²⁵ Quamar Ashraf, “Gujarat’s Structural Violence Continues Unabated,” *The Milli Gazette*, May 16-31, 2004, <http://www.milligazette.com/Archives/2004/16-31May04-Print-Edition/1605200458.htm> (retrieved June 21, 2004).

²⁶ Human Rights Watch interview with Teesta Setalvad, activist, Citizens for Justice and Peace. Mumbai, August 21, 2004.

²⁷ See Section III. “Testimony from Mukhtar Muhammad and Father Cedric Prakash.”

The Gujarat government appears to be abusing its law enforcement powers to deter local activists by tying them up in lengthy legal proceedings. If spurious charges are filed, it could take years for activists or witnesses to prove their innocence, meanwhile limiting their ability to participate in efforts at justice for the 2002 riots. While the government has every right to examine or audit voluntary agencies, the alacrity with which the Gujarat government has been pursuing such investigations is in stark contrast to its attempts to arrest and prosecute those accused of taking part in the riots and committing crimes as serious as rape and murder.

India's Supreme Court and the NHRC have taken the lead in addressing the failure of justice in Gujarat and the continuing threats and intimidation of witnesses and activists. Each has pointedly criticized Gujarat's failure to protect the rights of its residents.²⁸ Mallika Sarabhai,²⁹ who has suffered tremendous harassment by the Gujarat government, said recently:

"The Supreme Court has been my beacon of light. It is the only institution that has stood by people fighting intolerance and hatred and taken on the government."³⁰

Recent crucial interventions by the Supreme Court, particularly in the *Best Bakery* case, have offered victims and their supporters new confidence to continue pressing for justice. In the *Best Bakery* case, the Supreme Court condemned Gujarat's failure to investigate and prosecute those responsible for the 2002 violence.³¹ It ordered fresh investigations and specifically ordered the retrial outside Gujarat of individuals who had

²⁸Supreme Court order on April 12, 2004, in *Zahira Habibulla H. Sheikh and Another. Appellant v. State of Gujarat and Other Respondents*. In different orders, the Supreme Court also instructed the central government to protect key witnesses and activists, directed the Gujarat government to set up a panel to assess the reopening of all riot cases that were closed and asked the Gujarat advocate general to consider challenging the acquittal of accused in about 200 riot cases. The NHRC took suo moto action on March 1, 2002, and issued notices to the Gujarat government to reply indicating the measures taken to prevent further escalation of the situation. (Case No: 11150/6/2001-2002) It has continued to issue notices and recommendations in this case. (See <http://www.nhrc.nic.in/Gujarat.htm>). The Commission also filed a Special Leave Petition seeking the transfer to key cases out of Gujarat on July 31, 2003. Ref. Special Leave Petition (Criminal) of 2003 in the matter of National Human Rights Commission (petitioner) v.State of Gujarat (respondents) in the Supreme Court of India Criminal Appellate Jurisdiction.

²⁹ See testimony in Section III, "Harassment of Mallika Sarabhai."

³⁰ Hindol Sengupta, "Mallika Sarabhai Celebrates Gujarat Judgement," Indo-Asian News Service, August 18, 2004.

³¹ Supreme Court order on April 12, 2004, in *Zahira Habibulla H. Sheikh and Another v. State of Gujarat and Others*. See text of judgment, "Best Bakery Case- the Supreme Court Order," *The Indian Express*, April 17, 2004, http://www.indianexpress.com/full_story.php?content_id=45181 (retrieved June 21, 2004).

been acquitted after a widely criticized trial in Gujarat of twenty-one persons for setting on fire and killing fourteen people at a bakery in Vadodara, Gujarat.

Amicus curiae Harish Salve, former solicitor general for the Indian government and a senior lawyer, had filed an application to the Supreme Court stating that of the 4,252 cases registered by the police, nearly 2,100 had been closed.³² On August 17, 2004, the Supreme Court directed the Gujarat state government to set up a panel of senior police officials to review cases where the local police had filed closure reports instead of charge-sheets and asked the Director General of Police to report the progress of the committee's review every three months.³³ The court has also asked for a re-examination of all acquittals in riot trials to determine possibilities for filing appeals.³⁴

In the case of Bilkis Yakub Rasool Patel, the Supreme Court ordered a change of venue after accepting evidence of police bias in favor of the accused and the threatening of witnesses.³⁵ The court was responding to Bilkis' prayer for transfer of the trial outside Gujarat because justice was not possible in Gujarat in the prevailing political environment.

The Supreme Court's orders have rewarded a persistent campaign on behalf of the victims of the Gujarat riots by activists, lawyers, and victims. However, apparently fearful of the consequences of this tough action, Gujarat officials and Hindu nationalists—many connected to the BJP—have stepped up their harassment and intimidation of witnesses, human rights activists, and lawyers in order to discourage them from continuing with their efforts at demanding accountability for the 2002 violence.

Victims have started fighting back. Zahira Sheikh, a witness in the *Best Bakery* case who had retracted previous testimony against the accused at trial, announced that she had recanted her statement after being intimidated by a local BJP leader, and called for a fresh trial. This has encouraged other witnesses to come forward, bolstered by the legal protection which activists and lawyers are providing, sometimes at great personal risk, under the umbrella of Supreme Court and National Human Rights Commission rulings. As one victim said:

³² "All Closed Riot Cases to be Reassessed by Police Panel," *The Asian Age*, August 18, 2004, p 1.

³³ "2000 Buried Riot Cases get a New Life," *The Indian Express*, August 17, 2004
http://www.indianexpress.com/full_story.php?content_id=53325 (retrieved August 18, 2004).

³⁴ "Challenge Riot Case Acquittals: SC," *The Times of India*, August 14, 2004, pp. 9.

³⁵ See Section III, "Threat and Harassment of Bilkis Yakub Rasool."

This is not my struggle alone. It is our struggle, of those countless Muslim women raped and humiliated during the riots whose names and faces I do not even know but whose pain I can feel. I will carry on my fight to till the end and I am confident that other Muslim women faced with similar trauma will come forward and fight their cases.³⁶

But individual courage alone will not allow fair trials to proceed. The cases set out below are illustrative of the problem of threats and intimidation faced by many victims, witnesses and activists, but most remain too afraid to tell their stories in public.

The new Congress Party-led coalition government in New Delhi has raised hopes among activists and victims because of its promise of secular governance and its commitment to “preserve, protect and promote social harmony and enforce the law without fear or favor to deal with all obscurantist and fundamentalist elements who seek to disturb social amity and peace.”³⁷ Now it needs to take strong action to ensure the investigation and prosecution of those guilty of committing crimes during the riots—and to identify and prosecute their sponsors.

To address the nature and scale of intimidation against victims, witnesses, activists, and lawyers, Human Rights Watch calls upon the new government in Delhi and the state government in Gujarat to:

1. Immediately take all necessary steps to ensure the safety of activists, lawyers, victims and witnesses who are fighting for justice in Gujarat and prevent retaliation by state agencies against witnesses, human rights activists and lawyers working on riot related cases
2. Ensure that a credible and effective witness protection program is created at the national level to protect victims, witnesses, and activists. Support and encourage the work of the Indian Law Commission on this subject. It is critical to note that physical protection alone is not enough to constitute witness security. In situations of mass violence, like in Gujarat, effective witness protection

³⁶ Shramana Ganguly, “Bilkis: It’s Not My Struggle Alone, It’s Ours,” *The Asian Age*, August 9, 2004. pp. 2.

³⁷ United Progressive Alliance’s Common Minimum Program. The Congress-led coalition government has also begun work to draft a comprehensive law against communal violence. The Prevention of Genocide and Crimes Against Humanity Act, 2004 is being drafted by jurists and human rights activists and may include provisions for investigations by a central agency, prosecution by special courts and uniform compensations to victims.

programs have to include long-term sustained rehabilitation of survivors/witnesses to the violence

3. Order the Central Bureau of Investigation to investigate all allegations of violence, intimidation, or witness tampering by officials of the Gujarat administration, local police, local nationalist organizations, and others. When such acts are found to have occurred, initiate prosecutions and take disciplinary action against offenders.
4. Initiate vigorous prosecutions in all cases related to the 2002 violence where there is sufficient evidence. Prosecute any civil servant, including police officers and prosecutors, who failed to fulfill their obligations towards Muslims or their representatives.
5. Ensure that tax investigations are not used as a political tool against witnesses and activists.
6. Take appropriate criminal or civil action against all individuals and organizations that incite violence.
7. Launch public awareness campaign in Gujarat and other states aimed at preventing future communal violence, including public service announcements condemning religious violence and extremism. Enact a comprehensive law against communal violence, as promised in the Common Minimum Program of the United Progressive Alliance and encourage each state to adopt that law.
8. Offer full support to the work of the NHRC and its Special Representative, including acting expeditiously on their recommendations.

II. Background

Large-scale communal violence in Gujarat began on February 27, 2002, when a train carrying Hindu activists was attacked in the town of Godhra. Local Muslim residents were blamed for the attack and nearly a hundred have been arrested.³⁸ While the reasons for the onset of the violence are disputed-- a government inquiry has been instituted to investigate the incident-- a widely reported explanation is that an altercation broke out between some Hindu activists and a Muslim vendor at the Godhra station.³⁹ It is

³⁸ "Godhra Carnage Accused Arrested," Press Trust of India, September 2, 2004, <http://in.rediff.com/news/2004/sep/02godhra.htm> (retrieved September 4, 2004).

³⁹ There are significantly divergent accounts about the events in Godhra. Hindu groups say it was a terrorist attack and charges filed against the accused say it was pre-planned conspiracy. Defense lawyers, however, claim that forensic reports show that a mob outside could not have set the carriage alight and want an

unclear how it happened, but one carriage of the train caught fire and fifty-nine people were killed in the blaze.

In the days following the Godhra fire, the full fury of the state government and Hindu nationalism was turned on Muslims in Gujarat. Muslims were branded as terrorists by government officials and the local media creating the environment for armed gangs to seek vengeance in a five-day killing and looting spree. The government has charged many of the Muslims accused in the attack on the train under the Prevention of Terrorism Act (POTA), but filed ordinary criminal charges against those accused in the violence against Muslims. POTA limits the procedural rights of those arrested and makes them subject to substantially longer prison terms if convicted. (Accepting that the law is being misused, the new Congress-led coalition in New Delhi decided to repeal it.) Muslim homes, businesses, and places of worship were destroyed. Scores of women and girls were gang-raped and sexually mutilated; many were then burned to death. In the weeks that followed, spasms of retaliatory violence continued.

An April 2002 Human Rights Watch report, *We Have No Orders to Save You: State Participation and Complicity in Communal Violence in Gujarat*, set out allegations that violence against Muslims was planned well in advance of Godhra and with extensive state and police participation and complicity.⁴⁰ Groups involved in the anti-Muslim violence included the *Vishwa Hindu Parishad* (World Hindu Council, or VHP), the *Bajrang Dal* (the militant youth wing of the VHP),⁴¹ and the *Rashtriya Swayamsevak Sangh* (National Volunteer Corps, or RSS).⁴² These groups are all part of the *sangh parivar*, or “family” of Hindu nationalist groups. The BJP is the political wing of the *sangh parivar*. A follow-up report by Human Rights Watch, *Compounding Injustice: The Government's Failure to Redress Massacres in Gujarat*, published in July 2003, concluded that the ringleaders of the riots were still at large.

independent investigation into what exactly happened to the Sabarmati Express. The Minister of Railways in the newly appointed Congress-led cabinet in New Delhi has ordered a fresh inquiry, which has been protested by the BJP.

⁴⁰ Human Rights Watch, *We have No Orders to Save You*, April 2002, pp. 21.

⁴¹ The Bajrang Dal was formed in 1984 to mobilize youth for the Ayodhya temple campaign. Its activists are believed to be involved in many acts of violence, including a spate of attacks against the Christian community in India that began in 1998. See Human Rights Watch, *Politics by Other Means: Attacks Against Christians in India*, (New York: Human Rights Watch, September 1999).

⁴² The RSS was founded in 1925 with a mission to create a Hindu state. It promotes a militant form of Hindu nationalism and has inspired the creation of political, social, and educational wings, a family of organizations referred to collectively as the “sangh parivar.” See Human Rights Watch *We Have No Orders to Save You*, April 2002, pp. 39.

State police have reportedly continued to face pressure from Gujarat officials to avoid making arrests or to reduce the severity of the charges filed. In many instances, the police refused in their initial police reports to name perpetrators identified by victims. For instance, even after Bilkis Yakub Rasool had identified her rapists and named the men who killed members of her family, including her three-year-old daughter, those names were not recorded in the "first information report."⁴³ The Supreme Court is presently hearing a petition from the National Human Rights Commission seeking the transfer of several cases to courts outside Gujarat because of the politically charged atmosphere in the state.⁴⁴

Although, the Gujarat government, responding to international outrage, initially boasted of thousands of arrests following the attacks, most of those arrested were acquitted, released on bail with no further action taken, or simply let go. Special Representative P.J.G Nampoothiri reported to NHRC on May 28, 2002, that of the 16,245 persons (most of them Hindu) arrested for substantive offences during the riots, all but 2,100 had been bailed out by May 10, 2002.⁴⁵ Even when cases reached trial in local Gujarat courts, Muslim victims faced biased prosecutors and judges, harassment, and intimidation.

The *Best Bakery* case became perhaps the most significant example of the failure of justice.⁴⁶ Despite a wealth of evidence and the deaths of fourteen people in horrendous circumstances, a Gujarat state court acquitted twenty-one people accused of the killings after witnesses withdrew statements they had given to the police identifying the attackers. The case gained newfound significance when one of the witnesses, Zahira Sheikh, publicly disclosed that she was forced to change her testimony as a result of threats against her during the trial. Zahira stepped forward due to the support and protection of a small but dedicated community of lawyers and activists. Their work, and Zahira's example, inspired several other witnesses to come forward and offer testimonies

⁴³ "Bilkis Trial Has Modi Govt On Edge," *The Times of India*, August 11, 2002, pp. 6.

⁴⁴ Special Leave Petition (Criminal) of 2003 in the matter of National Human Rights Commission (petitioner) v. State of Gujarat and Others (respondents). Dionne Bunsha, in "Justice, Against All Odds," an article in *Frontline* (Vol: 20, Iss: 25), December 19, 2003 reported that, "After *amicus curiae* Salve described several incidents of "gross miscarriage of justice," the Supreme Court declared, "If this is the state of affairs, then we will transfer all cases outside the State." <http://www.flonnet.com/fl2025/stories/20031219004003900.htm> (retrieved August 21, 2004).

⁴⁵ Special Leave Petition (Criminal) of 2003 in the matter of National Human Rights Commission (petitioner) v. State of Gujarat and Others (respondents).

⁴⁶ The *Best Bakery* case was initially heard by a lower court (State v. Rajubhai Damirbhai Baria and others, Sessions Case No. 248 of 2002) that acquitted all the accused on June 27, 2003. An appeal filed by the Gujarat government in the High Court was rejected with the judge criticizing human rights activists and the NHRC. The Supreme Court disagreed and in a verdict on April 12, 2004, in *Zahira Habibulla H. Sheikh and Another v. State of Gujarat and Others*, it transferred the case out of Gujarat and ordered a retrial.

in other riot cases. This led to a strong national response to the serious shortcomings of accountability in Gujarat. India's National Human Rights Commission has strongly condemned the Gujarat government for its failure to deliver justice.⁴⁷

The most important response came from the Indian Supreme Court in the *Best Bakery* case. Noting that at trial the prosecution acted more like the defense, the Court referred to members of the state administration as "modern day Neros,"⁴⁸ saying that they "were looking elsewhere when Best Bakery and innocent women and children were burning, and were probably deliberating how the perpetrators of the crime can be saved and protected."⁴⁹ In a landmark ruling, the Supreme Court overturned the acquittals in the *Best Bakery* case and ordered the case transferred to a more neutral venue in neighboring Maharashtra state. The Supreme Court rebuked both the Gujarat High Court and the local justice system, stating that the "Judicial criminal administration system must be kept clean and beyond the reach of whimsical political wills or agendas."⁵⁰ The Supreme Court also directed the state governments of Gujarat and Maharashtra to give adequate protection to witnesses and victims, ordered the appointment of a new public prosecutor, and ordered fresh police investigations into the case. On August 17, 2004, while ordering a reassessment of all closed riot cases and asking the Gujarat state government for details of acquittals and appeals, the judges declared, "What had happened in the state was unprecedented and abnormal."⁵¹

III. Cases of Threats, Intimidation and Harassment of Victims, Witnesses, and Activists

Official Harassment

The state of Gujarat appears to have employed police investigations and enquiries by tax officials to intimidate activists working on behalf of those injured in the Gujarat riots. While the state government has the right to enforce criminal and tax laws, human rights activists claim that these kinds of investigations, on this scale, did not take place before the Supreme Court verdicts. They claim that the state has been selectively targeting

⁴⁷ NHRC orders on Gujarat, Case No. 1150/6/2001-2002 on March 1, 2002 and again on April 1, 2002, after a visit to Gujarat by Chairperson, Justice J.S. Verma. The NHRC also filed a Special Leave Petition in the Supreme Court to set aside the judgment in the *Best Bakery* case and sought further investigations by an independent agency and a retrial in a competent court outside the state of Gujarat. <http://nhrc.nic.in/dispatch.asp?fno.html> (retrieved August 13, 2004).

⁴⁸ The judges were referring to the Roman Emperor Nero reputed to have fiddled while Rome burned.

⁴⁹ Zahira Habibulla H. Sheikh and Another. V. State of Gujarat and Others

⁵⁰ Ibid.

⁵¹ "All Closed Riot Cases To Be Reassessed by Police Panel," *The Asian Age*, August 18, 2004, pp. 2.

individuals and groups prominently working to ensure that the violence against Muslims in 2002 is addressed by the legal and judicial systems.

VHP and Bajrang Dal leaders have boasted in private to journalists that tying up activists in lengthy legal proceedings is an effective way to teach a lesson to the “pseudo-secularists,” the term Hindu nationalists use for those that oppose their militant agenda. They offer the example of Tehelka, a private web-based investigative journal that had used hidden cameras to film senior politicians and officials accepting bribes in a fake defense deal. Instead of punishing those caught taking bribes, the then BJP-led government in New Delhi set up a commission of inquiry where Tehelka became the de facto defendant—forced to prove the authenticity of its reportage. The VHP leaders say, with some satisfaction, that Tehelka was forced to close down because its editors were busy with court hearings and investors were too wary to put in more funds. (Although the investigation is still going on, Tehelka was later revived with the help of supporters and allies.)⁵²

1. Threats and harassment of Bilkis Yakub Rasool Patel

During the 2002 riots, Bilkis Yakub Rasool Patel and her family fled from their village when it was attacked by a Hindu mob. They were later tracked down. The women were raped and killed. Bilkis, who was pregnant at the time, was gang-raped. Her three and a half year old daughter was snatched from her arms, and killed by being smashed to the ground. Bilkis survived only because the attackers presumed her to be dead. The Gujarat police made little attempt to prosecute the known perpetrators and closed the case. When Bilkis first went to the local police station on the following day, after she had come out of hiding, to lodge a complaint naming men prominently associated with the local BJP unit as members of the mob, her evidence was not recorded by the police. The case was later closed by the Gujarat police as “true but undetected.”⁵³

However, when Bilkis appealed to the Supreme Court for an independent investigation by the Central Bureau of Investigation (CBI)⁵⁴, the Gujarat government immediately ordered the local police to investigate the case again. But instead of trying to arrest those responsible, members of the Gujarat (CID) Crime Branch began harassing Bilkis and her family. Bilkis and other witnesses in the case repeatedly expressed fear of the

⁵² Private communications with journalist working for international media.

⁵³ “Crime and Complicity,” *Frontline*, June 4, 2004
<http://www.flonnet.com/fl2111/stories/20040606003029700.htm> (retrieved August 12, 2004).

⁵⁴ CBI is a federal investigative agency that handles cases of corruption and cases of interstate and other crimes of national importance. CBI inquiries are often demanded in cases where local or state investigations are perceived to be biased.

Gujarat police. Their fear was so great that when the Gujarat government attempted to force witnesses to accept protection from the local police, they submitted their refusal in writing to the Police Inspector. Bilkis also complained to the Indian Supreme Court about harassment by Gujarat CID. On September 25, 2003, the Supreme Court took the highly unusual step of ordering the state police to stop all investigations in the case—thereby accepting the validity of Bilkis' complaint—until its final ruling.

The CBI discovered a deliberate attempt by some Gujarat policemen and officials to cover up evidence in this case.⁵⁵ The CBI filed charges against twenty people, including six policemen and two government doctors accused of tampering with evidence to shield the offenders. The CBI charge-sheet filed in April 2004 says that the local police, when lodging the initial complaint, "suppressed material facts and wrote a distorted and truncated version," then claimed that the accused were unknown even though Bilkis had named them. It also alleged that they had caused the disappearance of evidence to protect the offenders.⁵⁶

In an affidavit supporting Bilkis' plea to shift the trial out of Gujarat, the CBI wrote that, "It is apprehended that the witnesses might be threatened and harm could be caused to them after filing of the charge sheet and during the trial."⁵⁷ In fact, even the CBI has faced threats. In April, CBI investigating officer K.N. Sinha submitted an affidavit saying that he had been threatened by some of the accused when, on the court's directives, he had gone to photograph them in jail.⁵⁸

On August 6, 2004, based on the report from the CBI which made it clear that the state administration could not be trusted to handle this case fairly, the Supreme Court ordered a change of venue from Gujarat to neighboring Maharashtra state.⁵⁹

2. Police Inquiries and Interrogation of Mukhtar Muhammed, Kasimabad Education and Development Society

A Muslim businessman who had not been engaged in political activity prior to the 2002 riots, Mukhtar Muhammed and his family barely survived by running away from a mob around his home and going into hiding. Several other Muslims in his neighborhood

⁵⁵ "CBI backs Bilkis plea for trial outside Gujarat," Press Trust of India, July 23, 2004.

⁵⁶ "Crime and Complicity," *Frontline*, June 4, 2004

<http://www.flonnet.com/fl2111/stories/20040606003029700.htm> (retrieved August 12, 2004).

⁵⁷ "CBI Backs Bilkis Plea for Trial Outside Gujarat," Press Trust of India, July 23, 2004

⁵⁸ "CBI Official Says Bilkis Accused Threatened Him," Press Trust of India, April 27, 2004.

⁵⁹ See further discussion in Section B, "Intimidation of Bilkis Yakub Rasool and other witnesses."

were not as fortunate and were injured or killed. After the violence, Muhamed began a program to rescue Muslims isolated in villages still under threat of attacks. With the permission of local officials, he helped organize a relief camp for 3,500 people displaced by the violence.

In 2003, Muhammed began working with human rights activists, officials and lawyers to reopen cases that had been closed due to negligent or intentionally inadequate police investigations and reports. Muhammed helped produce affidavits from witnesses that led to a reinvestigation of many cases. As a result, lawyers believe there are now at least eleven cases in which they have statements strong enough to win convictions. Muhammed himself is a witness in some of these cases.

According to Muhammed, the success of his work with Muslim victims resulted in a series of threats from local BJP leaders and those accused in the cases that he has worked on. Through friends, he was also told that the families of the accused were willing to reward him if he stopped working with witnesses. Muhammed filed a complaint with the NHRC's Special Representative in Gujarat, alleging that he was being threatened by "influential, dominant and powerful people including politicians and ministers."⁶⁰ He continues to work in villages where he has been directly threatened or received offers of a bribe. Muhammed suspects that some of the accused against whom he is gathering evidence have influential connections in the state administration. He fears they might deliberately be trying to discredit him by charging him with terrorism.

Muhammed told Human Rights Watch:

They even started sending threats through Muslim leaders. When that did not work, they decided to tie me down in some legal or criminal case.⁶¹

Muhammed says that when it became apparent that he was ignoring suggestions from Muslim leaders—who often choose to collaborate with state authorities to secure their own safety—to give up his work on riot cases, he was named as a terrorist by BJP supporters, as well as a local newspaper called *Sandesh*, which often attacks Muslims on its pages. In January and February 2004, investigators from the Criminal Investigations Department (CID) visited Muhammed's home and office. He was also summoned to

⁶⁰ Ritu Sarin, "Witnesses, Probe Teams Under Threat: NHRC Pointman," *The Indian Express*, February 26, 2004, http://www.indianexpress.com/full_story.php?content_id=41866 (retrieved August 12, 2004).

⁶¹ Human Rights Watch interview with Mukhtar Muhammed, activist, Kalol, June 30, 2004.

the CID office for interrogation. The investigating officials told him that he was a suspect in a bombing attack that occurred after the riots. They eventually dropped the investigation because Muhammed was able to prove that he was at a rehabilitation camp office on the day of the explosion.

In May 2004, another investigation was started against him. According to Muhammed:

The police said they had received orders from the Home Ministry based on a three-page complaint signed by fifteen or sixteen Bharatiya Janata Party leaders who said I was the mastermind in all the incidents after the Gujarat riots including bomb blasts and the attack in Akshardham.⁶² The police told me that they had already done their inquiry and asked me to reply to their questions. They covered minute details of my life.⁶³

Muhammed told the police that he had already been investigated and cleared. But he was told that since there had been complaints about him, he had to be questioned again. Muhammed says the questioning was aggressive and that the police were trying to trap him over inconsistencies about trivial facts, such as details of his whereabouts many months prior to the questioning. Muhammed believes that the police persisted in their investigations only because the complaints came from leaders of the political party in power in Gujarat. He also believes that the same people who lodged the complaints also act as protectors of those accused in riot cases. According to Muhammed, they are local level BJP or VHP leaders. As a Muslim in Gujarat, Muhammad told Human Rights Watch that he fears that he may some day be arrested under POTA as punishment for trying to bring the guilty to justice.

Even without a successful prosecution, these complaints may have served their purpose. For more than a year they have embroiled Muhammed in legal proceedings and disrupted his personal and professional life, leaving him with less time and energy to work on behalf of riot victims. According to Muhammed, as of August 2004, the police investigations were still continuing.

⁶² On September 24, 2004, two men attacked unarmed worshipers at the Akshardham Temple in Gandhinagar, the capital of Gujarat. At least twenty-eight people were killed and scores injured as attackers tossed grenades and opened fire with assault rifles. Indian security agencies claimed that the attack on the temple was planned by Pakistan-based militant groups with the support of some Gujarati Muslims to avenge the killings of Muslims during riots earlier in the year. Several Muslim groups joined other secular organizations in condemning the attack.

⁶³ Human Rights Watch interview with Mukhtar Muhammed, activist, Kalol, June 30, 2004

The NHRC's Special Representative, P.G.J. Nampoothiri, has cited Muhammed in his reports on Gujarat. Muhammed, he noted, had received threats because he had supplied information to a Gujarat government official, Neerja Gortu, who was investigating police failure to register riot cases. Nampoothiri told the NHRC that individuals who provided information to Gortu, including Mukhtar Muhammed, had already received threats and that he feared the activists might face "legal action and/or physical assault."

In his complaint to the NHRC, Special Representative Nampoothiri, stated that:

Influential leaders apprehending arrests and prosecution of their henchmen, have made representations to the government seeking action against those who helped Ms. Neerja's team in identifying victims/witnesses.

3. Police Enquiries and Interrogation of Father Cedric Prakash, Director, Prashant, A Center for Human Rights, Justice and Peace

Father Cedric Prakash was a leader in providing relief and rehabilitation to riot victims in 2002 through Prashant, a nongovernmental organization. He has frequently spoken at national and international gatherings about the riots, talking about the involvement of BJP supporters in instigating the violence and the failure of the criminal justice system and the state judiciary in riot related cases.

On April 26, 2004, an inspector from the Criminal Investigations Department (CID) Crime Branch came to interrogate Prakash in his office in Ahmedabad. The officer arrived at 9:30 p.m. and informed Prakash that he was acting on the directives of Hashmukh Adhia, the principal secretary at Chief Minister Modi's office. According to the inspector, the inquiry was based on an e-mail sent by Vishal Sharma, a well-known supporter of Chief Minister Modi, to the government of Gujarat, demanding that Prakash's passport be impounded for his alleged anti-national activities. Although no formal charges were brought against him, according to Prakash, he was told that he was being investigated based on the e-mail, which referred to Prakash's claims at international meetings that Hindu extremists were responsible for the riots, and for an interview he had supposedly given to a magazine, *Milli Gazette*, about his visits to prisoners detained under POTA at Sabarmati Jail and his opinion that these detainees were innocent.

Prakash responded in writing to these charges that same evening, saying that he visited the Sabarmati Jail as a social worker and did not specifically meet prisoners held under

POTA. He also denied speaking to *Milli Gazette*, the magazine that Sharma had cited. "I serve people without any discrimination of religion," Fr. Prakash wrote in his statement. "The sender of the e-mail wants to stop me working with people and is trying to malign my image."⁶⁴

On June 8, 2004, Prakash was visited again by the same detective, who asked for another statement because the government needed further clarification regarding his work. He was served a summons and asked to appear before the Crime Branch on June 10, 2004. He complied and was interrogated for about one-and-half hours in the presence of his lawyer. He was asked again about the prisoners he had met in the Sabarmati Jail, what they discussed and how many times he had visited them. As Prakash told Human Rights Watch:

It was clear intimidation to see if I would crack down and admit something so that they could link me to some kind of terrorist activity.⁶⁵

According to Prakash, the investigation continues. His nongovernmental organization, Prashant, has also been questioned by the Charity Commissioner's office. Prakash has filed a complaint with the National Human Rights Commission.

Human Rights Watch is concerned that the investigation into Prakash's statements may interfere with his right to freedom of expression under international law and may be intended, as in the cases below, to have a chilling effect not only on Prakash but other activists in Gujarat.

4. Inquiries by the Charity Commissioner of Ahmedabad against human rights activists

On June 1, 2004, several human rights and civic society organizations working on behalf of the victims of the Gujarat riots framed a charter of demands to the newly elected government in New Delhi. Among other things, the charter called for an independent re-examination of all closed cases, cases of acquittal, and cases in which bail had been granted, and for monitoring of ongoing investigations and trials. It also called for a special judicial commission to inquire into the Godhra incident. The activists called for the prosecution of all government and police officers that failed in their duty to prevent

⁶⁴ Written statement by Father Cedric Prakash to the Police Inspector, Crime Cell, Gandhinagar, Gujarat, April 26, 2004.

⁶⁵ Human Rights Watch interview with Father Cedric Prakash, activist, Ahmedabad, August 19, 2004.

and control the violence and asked for legal measures to enable the prosecution of the Chief Minister and his cabinet for planning, instigating, and abetting the violence and failing to perform their duties to provide relief and rehabilitation to the victims.

Soon after the charter was released, the Charity Commissioner of Ahmedabad, an arm of the state government of Gujarat, began sending inspectors to the Gujarat-based NGOs that had signed the petition. Staff members were questioned about their work, the object of their trust, and the names and addresses of their trustees.

According to Digant Oza, whose Satyajeet Trust is one of the NGOs investigated by the Charity Commissioner:

They asked for basic information like the names of the members of the trust and our objectives. They demanded all the information in writing—immediately. I don't understand how these things can go on. Their purpose is clear. They are trying to find something on us, some activity that they can object to or some member who is not registered. They are looking for a technical fault to catch us. These investigations are still going on.⁶⁶

Activist Teesta Setalvad asks some simple questions:

If they are investigating charity organizations, why are they also not investigating the RSS groups? Why are they only selectively looking at groups that working for the victims of Godhra and the riots that followed?⁶⁷

While the government has the responsibility to ensure that NGOs comply with Indian law, the timing and the fact that these groups were working on riot-related cases suggests a deliberate attempt at harassment and intimidation.⁶⁸ Many NGO officials told Human Rights Watch that they had never faced this kind of investigation before they started their work on riot cases. The offices of an NGO called Aman Samudaya, for instance,

⁶⁶ Human Rights Watch interview with Digant Oza, journalist and activist, Ahmedabad, June 20, 2004.

⁶⁷ Human Rights Watch interview with Teesta Setalvad, Mumbai, August 13, 2004.

⁶⁸ See Hotline Asia Urgent Appeals, "Stop Harassment of Activists in Gujarat," <http://www.acpp.org/uappeals/2004/040621s2.html>.

have not only had visits by the Charity Commissioner's inspectors, but also from the intelligence bureau.⁶⁹

On June 10, 2004, Father Cedric Prakash wrote to the National Human Rights Commission on behalf of all the NGOs and activists that had signed the charter of demands and were since questioned by the Charity Commissioner's office: "Whilst we definitely agree that some this might be within the purview of law and within the mandate of the Police or the Charity Commissioner, the nature of the questions and obviously the attitude, clearly amounts to intimidation, harassment and brow-beating," and petitioned the NHRC to intervene immediately and "direct the state government and its institutions to stop intimidating and harassing innocent citizens and to insist that the state ensures the human rights of every single individual."⁷⁰

5. Harrassment of Mallika Sarabhai, Darpana Academy of Performing Arts

Mallika Sarabhai runs one of India's best-known performing arts institutions, the Darpana Academy of Performing Arts, in Ahmedabad. Mallika Sarabhai and her academy have been targeted by state authorities ever since she filed a public-interest petition in the Indian Supreme Court calling for the protection of the rights of those injured in the Gujarat riots and a thorough investigation into and punishment of those responsible.⁷¹ Manushi Shah, a former member of Darpana filed a complaint alleging that Sarabhai had reneged on a promise to get the student a visa to the U.S. despite making a promise to do so when she enrolled in the dance program. Although Shah said that Darpana had refunded her fees and returned her passport once her visa application for the tour was rejected, she accused Sarabhai of denying her a "brilliant career in the US." "In effect," says Sarabhai, "she has accused me of not letting her immigrate illegally."⁷²

A criminal case of fraud and intention to cheat was, however, filed by state prosecutors in Ahmedabad. A court then ordered her travel outside Gujarat restricted, saying that she would have to seek court permission before leaving Ahmedabad. The hearings for permission are constantly delayed, Sarabhai complained, leaving organizers on tenterhooks, and several corporate sponsors pulled out rather than risk a last-minute cancellation. In February 20, 2004, the Supreme Court asked the Gujarat government to

⁶⁹ Human Rights Watch interview with Zakia Jowher of Aman Samudaya, Ahmedabad, June 19, 2004.

⁷⁰ Letter from Father Cedric Prakash, Director, Prashant, A Center for Human Rights, Justice and Peace to Justice A.S. Anand, Chairperson, National Human Rights Commission, June 10, 2004.

⁷¹ Public interest litigations can be filed by individuals or civil rights groups before the Supreme Court to take up matters of national interest.

⁷² Hindol Sengupta, "Mallika Sarabhai Celebrates Gujarat Judgement," Indo-Asian News Service, August 18, 2004.

lift all restrictions imposed on Sarabhai, observing: "She is not a criminal. There has to be some fairness in the prosecution of persons."⁷³

Sarabhai claims that the charges were made with malicious intent in a clear case of harassment and intimidation. She points out that her mother and then she have been running the school for fifty-six years, they have toured over ninety countries with hundreds of dancers and such charges have never been made before.⁷⁴ Sarabhai see this as a conspiracy to get her to withdraw her public interest petition against the Gujarat government for its role in the riots, particularly because she later discovered that Shah's parents were members of the RSS. Sarabhai has also been listed on the website of the Patriotic Sons of Mother India as a "human trafficker."

Sarabhai told Human Rights Watch:

My appeal for a dismissal of the criminal case against me will come up for its final hearing in the Supreme Court next month, where I have filed for it to be thrown out. It is significant though, that the same government that chose to close over 2,000 riot cases and delayed many others including many of brutal rape and murder for want of trained public prosecutors, has been so diligent in appointing their two senior-most prosecutors in my case where my only so-called crime is that I did not help a woman to illegally immigrate to the United States."⁷⁵

The National Human Rights Commission asked the state government to look into these charges, citing a number of organizations and individuals who spoke in Sarabhai's favor. Mallika Sarabhai also told Human Rights Watch that since November 2003, she and her family have faced inquiries from the Income Tax department and the Charity Commissioner. Sarabhai suspects that these inquiries have been instigated the state government, particularly because the investigations started just as her public interest litigation on the Gujarat riots was due to be taken up by the Supreme Court. Earlier, she had received anonymous calls asking her to retract her petition. Sarabhai says she has heard from friends within the administration that there was a lot of pressure to "fix" her.⁷⁶ Sarabhai is still out on bail which has to be extended every three months. According to Sarabhai:

⁷³ "Court Removes curbs on Mallika Sarabhai," *The Times of India*, February 20, 2004, <http://timesofindia.indiatimes.com/articleshow/507336.cms> (retrieved August 25, 2004).

⁷⁴ Human Rights Interview with Mallika Sarabhai, Ahmedabad, August 25, 2004.

⁷⁵ Ibid.

⁷⁶ Mallika Sarabhai, private letter to friends and supporters, January 4, 2004.

Darpana and I have been harassed and threatened continuously, amongst other things to try and cow me down into withdrawing my public interest litigation in the Supreme Court and to stop me talking at a variety of fora about the continuing boycott of the Muslims, the continuing lack of justice and other issues.⁷⁷

Anonymous and Individual Threats and Intimidation

Witnesses, human rights workers, and lawyers fighting for justice in Gujarat have been subjected to threats and intimidation by extremist groups or anonymously, through phone calls or word of mouth. For example, Haroon Rashid Abdul Sattar Mansoori, a key witness in a riot case, said that he was stopped near a gas station on July 15, 2004, and threatened by some of the accused, including one man who was arrested and later released on bail.⁷⁸ Another witness, Ali Hasan, a laborer, claimed that he was arrested and framed in a murder trial after being summoned to the police station ostensibly to record a statement about the murder of three persons during the riots on February 28, 2002.⁷⁹

In an atmosphere of official hostility towards those supporting Muslim victims of the riots, the many acts of private intimidation and threats take on a more ominous character. They raise questions about the political will in Gujarat to provide adequate protection for those seeking justice.

Some police officers, particularly at the junior levels, are open about their support for extremist Hindu nationalist ideology. In fact, urging that critical cases be entrusted to the Central Bureau of Investigation, the NHRC has noted that, "It is the central principle in the administration of criminal justice that those against whom allegations are made should not themselves be entrusted with the investigation of those allegations."⁸⁰ In some cases when witnesses have approached local police stations to lodge complaints about intimidation, policemen have refused to register their report until activists asked senior officials to intervene.⁸¹ In other cases, complaints were lodged, but the police took no action to investigate or prosecute those responsible.

⁷⁷ HRW interview with Mallika Sarabhai, Ahmedabad, July 8, 2004.

⁷⁸ Abhishek Kapoor, "Riots: Kalol Witness Faces Threats," *The Indian Express*, August 10, 2004, pp. 4.

⁷⁹ Anand Biria, "Witness To Riot Framed For Silence," *The Asian Age*, August 21, 2004, pp. 1.

⁸⁰ Special leave Petition, 2003, NHRC v. State of Gujarat and Others.

⁸¹ See Section I, Teesta Setalvad's testimony.

In June 2003, People's Union for Civil Liberties, in a statement to the Nanavati-Shah Commission, complained that witnesses had no faith in an investigation that was being carried out "by a police force accused of grave lapses and misdemeanor during the violence," and said that "human rights defenders, social workers and lawyers of the minority community fighting cases for justice have all been threatened and face a serious threat to their lives."⁸²

Many working for justice in Gujarat believe they live in an atmosphere in which members of extremist groups can threaten and attack activists with impunity. Activists live in constant fear because if there is a planned assault by these groups, there is little evidence that the police would act forcefully to prevent an attack. They cite the example of Ehsan Jafri, who did not get aid from the local police during the riots, though he called senior officers several times. He, and several others who had sought shelter with him, were killed. "There is fear because we have seen during the riots that the police can show up too late," says Father Prakash.⁸³

1. Threats against activists and lawyers working on riot-related cases.

Rais Khan Azeezkhan Pathan is a local Muslim activist who has been encouraging witnesses to testify. He works closely with Suhel Tirmizi, a lawyer who has opposed bail applications of the accused. They have both collaborated on several riot cases with activist Teesta Setalvad. Each has received many threats. Each has ultimately received protection from the state government. Each has concluded that the protection offered was insufficient and then turned to central authorities for protection.

In June 2003, Rais Khan was threatened by a group of Hindu extremists as he escorted witnesses to an official inquiry into the riots. In November 2003, although he was with his police escort, Rais Khan received threats on his mobile phone. The male voice threatened to "finish him off," saying, "We are keeping track of you every minute."⁸⁴ In April 2004, he again received a call on his mobile phone asking him to stop working on

⁸² "PUCL-Vadodara Shanti Abhiyan Withdraw from the Nanavati-Shah Commission Hearings" June 18, 2003, <http://www.countercurrents.org/gujarat-pucl180603.htm> (retrieved August 24, 2004).

⁸³ Human Rights Watch interview with Father Cedric Prakash, Ahmedabad, August 19, 2004.

⁸⁴ "Activist gets Threat Call in Viramgram," *The Times of India*, November 11, 2003, <http://timesofindia.indiatimes.com/article/show/msid-276726.htm> (retrieved August 21, 2004).

riot-related cases. The anonymous caller also made sexually abusive remarks about Teesta Setalvad.⁸⁵

In April 2004 and again in June 2004, unidentified men claiming to be from Gujarat turned at Teesta Setalvad's office-cum-home in Mumbai, demanding to see her. The guard at the gate refused to let them enter because they were aggressive and abusive.⁸⁶ Setalvad has been among the most identifiable voices in the campaign for justice in Gujarat. Extremist supporters of the BJP and VHP have regularly called her 'anti-national,' as they did when they came to the Prashant office.⁸⁷ Her name appears regularly as a 'traitor' on websites and chat rooms hosted by Hindu groups. She has also been viciously attacked in public speeches by VHP leaders, including by general secretary Praveen Togadia who said Setalvad should be prevented from entering Gujarat.⁸⁸

Suhel Tirmizi says he faces opposition from some of his colleagues in the legal fraternity who support the extremist Hindu ideology. He has also received abusive anonymous phone calls asking him to stop his work, telling him that the caller knew where he and his family could be found. Other lawyers have received direct or indirect threats and warnings because they appeared on behalf of riot victims and told to withdraw from these cases. Lawyer-activist Huma Khan was threatened by the accused in court in Gujarat. Some other lawyers, who do not wish to be identified, have told Human Rights Watch that they have received warnings, in court, through anonymous phone calls, by email, or through others who are in touch with BJP/VHP supporters.

Tirmizi told Human Rights Watch:

Most lawyers in Gujarat are too scared to take up riot related cases. They feel isolated and do not want to face threats. I used to oppose bail applications of the accused, which is when I was identified and later threatened.⁸⁹

In June 2004, after being told that the security provided by the local police was not effective, the Supreme Court directed the central government to provide security to

⁸⁵ Human Rights Watch interview with Rais Khan Azeekhan Pathan, activist, Ahmedabad, June 11, 2004.

⁸⁶ Human Rights Watch interview with Teesta Setalvad, Mumbai, August 13, 2004.

⁸⁷ See testimony below. "Threats Against Teesta Setalvad and Father Cedric Prakash.

⁸⁸ Digant Oza, "Who Cares For Supreme Court in Gandhi's Gujarat?" Indiathinkersnet, April 17, 2004 <http://www.countercurrents.org/gujarat-ozal70404.htm> (retrieved August 21, 2004).

⁸⁹ HRW interview with Suhel Tirmizi, lawyer, Ahmedabad, on June 21, 2004.

these three and the witnesses in their cases. Each believes that the local police were acting more as informers to help the government keep track of his or her movements and meetings than as a protector. Even with protection from New Delhi, they continue to receive threats via anonymous phone calls, threatening them for their work on the riot cases.

2. Threats against Trupti Shah and Rohit Prajapati, activists with People's Union for Civil Liberties-Shanti Abhiyan

In 2002 Trupti Shah, a women's rights activist, and her husband, Rohit Prajapati, who works with an environmental rights organization against industrial pollution, joined together with other volunteers to help riot victims. Together these groups formed a peace effort led by the People's Union for Civil Liberties (PUCL) in Vadodara city.

Both have since received constant threats from right wing extremist groups like the Vishwa Hindu Parishad and the Bajrang Dal, often in the guise of sympathetic warnings. Shah and Prajapati have lived in Vadodara for over twenty years and have friends who sympathize with the arguments of the Hindu groups. Shah and Prajapati have been told repeatedly by these friends that others, more closely connected with the Bajrang Dal, the state government or the VHP, have asked them to pass on warnings to the activists to stop their work. Shah told Human Rights Watch:

They are told things like, "Tell your Muslim-loving friends that many people are angry with them. They should be careful."⁹⁰

They have also received threatening phone calls. According to Shah:

When we were working with riot victims, we were called anti-national, anti-social, anti-development and anti-Hindu by local members of the VHP and Bajrang Dal when they talked about us to the media or with our local Hindu friends. Attempts are made to threaten us by giving warnings to stop all our human rights and environmental activities. We are receiving phone calls where the caller remains unidentified. Recently a caller gave details of Rohit's movements on a particular day and said that he is being followed closely. Other callers abused us and referred to our work with great hatred. Such phone calls have restricted our movements. We have stopped traveling alone at night and are forced to

⁹⁰ Human Rights interview with Trupti Shah, activist, Vadodara, August 20, 2004.

spend more money for safe travel. Many times we cannot use our own two-wheeler as we used to, and are forced to hire a car. We have been trying to judge the purpose and location of these callers but it is not easy for lone activists without proper resources.⁹¹

On October 5, 2003, the caller ID on their phone recorded a cell phone number. The caller had initially claimed to be from the crime branch, but his number was later traced to a private detective agency. A formal complaint was lodged with the police commissioner of Vadodara, but as of August 30, 2004, there had been no progress reported by the police in apprehending the caller.

3. Threats against Teesta Setalvad, Citizens for Justice and Peace, and Father Cedric Prakash, Director, Prashant, A Center for Human Rights, Justice and Peace

On April 12, 2004, the same day that the Supreme Court ordered the retrial and change of venue of the *Best Bakery* case, two men forced their way into the offices of Prashant in Ahmedabad. They demanded to meet Teesta Setalvad, Convenor of the Citizens for Justice and Peace, a co-petitioner in the *Best Bakery* case, who happened to be on the premises for a meeting. One of the two men identified himself as "Dr. Atul."

Setalvad and some others present at Prashant for the meeting recognized the two men as Dr. Atul Vaidya and Bharat Teli, both of whom were among those accused in the so-called Gulbarg Society massacre during the 2002 riots, where at least sixty-five people, including Ehsan Jafri, a former member of India's parliament, had been killed. Although named by witnesses as perpetrators, no charges have been filed against these two men. But an appeal for re-investigation of the Gulbarg Society massacre is pending with the Supreme Court and many of those indicted fear that they will be arrested.⁹²

Father Cedric Prakash, director of Prashant, immediately alerted some senior police friends about the visitors. When the two men realized that Prakash had summoned the police, they left the office, but not before hurling abuse at Prakash and Setalvad and threatening "their end." About an hour later these two men were still standing outside shouting threats, now joined by a group of about ten young men demanding to meet

⁹¹ Human Rights Watch interview with Trupti Shah, activist, Vadodara, August 15, 2004.

⁹² See Human Rights Watch report *We Have No Orders to Save You*, April 2002, pp. 18. Over 250 people had taken shelter on Feb 28, 2002 in the home of Ehsan Jafri, a former member of parliament. For seven hours, even as Jafri made countless phone calls to the police, the Chief Minister and the central home minister among others, a mob first stoned his housing complex where he lived and eventually attacked the Muslims sheltering there, killing people with swords or burning them alive. At least sixty-five people including Jafri were killed.

Prakash and Setalvad and asking why the two of them were defaming Hindus. Police officers then arrived and so the group left after shouting more slogans.

According to Prakash, the police responded promptly because Prakash is an eminent citizen of Ahmedabad who has connections with senior police officers, and was able to contact the police commissioner directly. But, as many activists pointed out to Human Rights Watch, others are not so fortunate, and uncertain about what will happen if someday they need to rely on the police—the same, un-reformed force that for the most part simply stood by and watched as the 2002 riots unfolded and innocent, defenseless Muslims were slaughtered.

Prakash was later assured orally by friends in the police department that Dr. Vaidya and Bharat Teli had been warned, and would not attack him again. But no charges had been filed against these men as of August 30, 2004, even though Prakash had photographed them shouting outside the Prashant office and submitted the pictures to the police.

Setalvad, a prominent local activist and lawyer, has received many threats, but cannot rely on the local police to protect her. For that reason, she is now protected by security forces under the central government instead of the Gujarat police.

4. Attack on volunteers of Act Now for Harmony and Democracy (ANHAD)

On April 11, 2004, about a dozen BJP and Vishwa Hindu Parishad activists attacked the volunteers of *Youth Aman Karwan*, a caravan for peace. They were in Vadodara as part of a countrywide tour organized by ANHAD to promote communal harmony. The thirty-member delegation, all between the ages of fourteen and twenty, was led by Shabnam Hashmi, head of ANHAD, who has been involved in lobbying for the rights of those injured in the Gujarat violence. The students were addressing press conferences and meeting youth groups all over India, covering forty cities, towns and villages in one month. According to Hashmi:

In Vadodara, during the press conferences, two journalists started heckling the students and calling them anti-national for maligning Gujarat. Then they raised slogans and left. When we came out of the hotel room, where the press conference was being held, approximately forty VHP goons immediately surrounded us, using extremely vulgar language and gestures, physically manhandling me, misbehaving with the girls, breaking our vehicles and looting material, beating up one

participant called Manan and humiliating him. Two vehicles with students were taken to the police station for safety. Many of the children had spent agonizing hours in the police station and were unable to contact me as I was still surrounded by the goons and later struggling with the police to file a report at the spot of the incident⁹³

This program was a well-publicized event and activists point out that the police should have been aware that extremists might choose to attack the group in the present circumstances where there is such a strong feeling of communal hatred in Gujarat. They say that the police failed to provide adequate security in this case. If the police were sufficiently interested in protecting Gujarat activists, an organized mob would not have been allowed to gather outside a hotel for a planned attack on peace activists. No charges had been filed in this case as of August 30, 2004, although there were several eyewitnesses to the attack.

5. Intimidation of Bilkis Yakub Rasool Patel and other witnesses

Because she pursued the prosecutions of the men who gang raped her and killed fourteen members of her family, Bilkis Yakub Rasool Patel has received numerous threats and had to constantly relocate her residence.

On August 6, 2004, the trial of the accused became the second to be transferred out of Gujarat. It is the only case of sexual violence where charges have been filed. Despite the transfer of the case, activists fear that attempts to bribe or intimidate witnesses will continue unless they are given adequate protection. Just physical protection, they say, is not enough. Witnesses are vulnerable, activists point out, because the Gujarat government has failed to adequately support several displaced Muslims, many of them key witnesses, who live in resettlement colonies without electricity, water or medical facilities.⁹⁴

Farah Naqvi was a member of several fact-finding missions to Gujarat that investigated gender-based crimes during the Gujarat riots. One team produced *The Survivors Speak*, the first report to document the scale and brutality of mass sexual violence against Muslim women during the riots.⁹⁵ For the last two years, Naqvi, along with activist-

⁹³ Human Rights Watch interview with Shabnam Hasmhi, activist, New Delhi, July 5, 2004.

⁹⁴ Human Rights Watch interview with Farah Naqvi, activist, New Delhi, August 18, 2004. Also see Harsh Mander, "Gujarat's Victims Completely Isolated," *Times of India*, November 23, 2003, <http://www.countercurrents.org/gujarat-mander231103.htm> (retrieved August 18, 2004).

⁹⁵ *The Survivors Speak* was released on April 16, 2002. Two later reports, *Survivors Speak Part II*, and a report by the *International Initiative for Justice*, also focused on gender-based crimes during the riots.

lawyer Huma Khan and Delhi-based women's rights activist Malini Ghose, has been helping riot victims with rehabilitation and in their pursuit of justice. In particular, they have been working with Bilkis Yakub Rasool. According to Naqvi:

We have been forced to relocate Bilkis at least twenty times over the last two and a half years because of threats to her life and family. Threats have been received in various forms. One of these threats was made directly to Huma Khan when she was in Dahod court during one of the hearings. A man walked up to her and said: "You can take Bilkis wherever you want. How long will she hide? Eventually she will have to come here. Let our men be out on bail, then we will see where she hides from us." Khan complained to the Gujarat Director General of Police and copied her notice to the NHRC special rapporteur in Gujarat. There has been no action by the Gujarat police in this matter.⁹⁶

Many of the witnesses in Bilkis' case have also been threatened repeatedly, including during the re-investigation phase by the CBI. One witness made a representation directly to the CBI about threats and offers of money that he had received. His complaint has been included in the CBI investigations. Despite the fact that the trial has been shifted to Mumbai, the witnesses continue to reside in Gujarat in extremely vulnerable circumstances, in a resettlement colony, and continue to be under threat.

⁹⁶ Human Rights Watch interview with Farah Naqvi, activist, New Delhi, August 18, 2004.