

Why is the Indian government harassing me? The struggle for justice for the victims of the 2002 Gujarat riots

Thursday 23 July 2015, by [SETALVAD Teesta](#) (Date first published: 23 July 2015).

The human rights activist talks about the current regime's concerted campaign against her - and her belief in miracles.

Despite being agnostic, we do sometimes believe in miracles. Through the work we have committed our lives to; through the work that has made us the object of arrest warrants, death threats and CBI raids; through the work that has made my husband, sister and children get dragged into unseemly allegations and controversy, I have believed in the purity of motive and the sincerity of faith. *Neeyat agar saaf hai to mushkilon kitni bhi hon, jeet hamaari hai.*

The struggle for justice for the victims of the Gujarat riots has validated this belief. It has been awe-inspiring to watch the raw courage of witness survivors - firm in the belief that truth is on their side - testifying before the courts. It is their audacity that has led to the life imprisonment of 120 people. The fact that they stood with us, and we with them, has made them unflinchingly loyal to us. Even in these hours when state vendetta has been unleashed upon us, they are praying for us.

We believe the reason for the redoubled attempts to humiliate me, to constrain my movement lie in the slow advance of the Zakia Jafri case. The criminal miscellaneous appeal in the this case, appealing the rejection of the Special Investigation Team closure report and seeking the charge-sheeting of 60 powerful accused is set to begin on July 27, 2015. My harassment is essentially an effort to affect the quality of arguments in this case. Besides the Zakia Jafri case, there are other events afoot.

Moments of miracle

The bail applications of Maya Kodnani, once a minister in Narendra Modi's Gujarat government, have taken curious turns ever since she filed the first plea in February 2014. She was first refused bail by the Gujarat High Court and then granted it by the same court in July 2014.

Witness survivors, backed by our group Citizens for Justice and Peace, filed a special leave petition challenging her bail. An elected representative in 2002, Kodnani was found guilty by a special court (set up by the Supreme Court) of not only being the kingpin of a conspiracy to launch a physical attack on sections of the populace in her constituency, but also of physical presence during the attack and distribution of swords to further it. Officially, the charge-sheet said 96 persons were killed in Naroda Patiya, the single biggest massacre of 2002. Our count is closer to 124.

Not long after, another round of drama began: attempts to speed up her appeal in the Gujarat High Court. One such bid in April this year was objected to by survivors in the Supreme Court, as there were reservations about the manner in which the appeal was being rushed through. The Supreme Court listened and the hearing of the appeal was stayed for two months. Then on July 13, one of the

two judges of the division bench assigned to begin hearing the case from that day recused himself, saying 'not before me'.

Four months later, on July 15, a miracle happened, the sort that makes you believe in the purity of motive. A two-member bench of the Gujarat High Court, for the second time, recused itself from hearing appeals in the Naroda Patiya case. This time it was not a simple 'not before me'. Justices MR Shah and KS Jhaveri stated in open court that while, under normal circumstances, reasons are not given by judges recusing themselves, this time they were constrained to state that some of the accused had approached them. It shows how far these perpetrators are ready to go to subvert justice. This is why, in this auspicious month, we agnostics too begin to believe in miracles.

Campaign of harassment

On August 29, 2012, a day that should be commemorated in India's human rights movement, 32 persons were sentenced to life imprisonment in the Naroda Patiya case. Judge Jyotsna Yagnik, who delivered that verdict, has been threatened over the past one year and the security given to her withdrawn. Twenty-nine accused people have filed appeals, and our team and I were set to represent the survivors. And then, this dramatic turn of July 15 took place.

The Zakia Jafri criminal revision application (against the magistrate's order of December 26, 2013, rejecting her protest petition) will now be argued rigorously by us from July 27, 2015. Our team will make out the case of criminal and administrative culpability despite the brazen bid to intimidate us.

In the past, the intimidation came from the Gujarat police. They arrived at our home on February 12, 2015, to arrest us within minutes of the Gujarat High Court rejecting bail on charges that we have rebutted. Now the new central regime has unleashed the Central Bureau of Investigation on us, even as it remains mute on raging murderous scams.

I include portions of a statement I made while the CBI searches were being conducted at our residence on July 14-15, 2015:

"As I write this, the search is still not concluded. It is shocking that while over a dozen members of the CBI are still in our premises conducting the search, a Delhi spokesperson of the same agency is misleading the public and our supporters by deliberately misinforming the public.

In our view, and we repeat no laws have been broken by us. No 'incriminating documents have been seized'. The documents 'seized' by the team we were prepared to voluntarily give, and we have both to the Gujarat police and the MHA's FCRA department [Ministry of Home Affairs' Foreign Contribution Regulation Act] (April and June 2015). We had written to the CBI twice, first on June 30, 2015, and again on June 10, 2015, offering full cooperation and seeking information. All the investigation can be carried out through documentary evidence. Why then this cloak and dagger method to portray us as common criminals ? Until now the witch hunt was solely by the Gujarat police. Now, under the new dispensation Central agencies have been unleashed on us!!

It is shameful political vendetta. To stop us in our tracks, and prevent the systematic legal aid to Survivors, be it the Zakia Jafri case, the Naroda Patiya appeals (Kodnani and Bajrangi) and the Sardarpura and Odh appeals.

India should be ashamed that when scams like Vyapam are happening, over 50 persons dying, witnesses in Asaram Bapu case are dying; CBI is not appealing in critical cases related to crimes by politicians; the agency is being unleashed on human rights defenders standing up for the rights of Survivors of Mass Violence. It is worse than the British Raj. Pathetic.

I repeat Sabrang Communications has broken no law(s). Section 3 of the FCRA, 2010 bars political parties and its office-bearers, government servants, including Judges and persons associated with the newspapers and television news channels, from accepting foreign contribution. However Section 4 of the same law says that if persons named under Section 3 accept money from a foreign source by way of wages, salaries or other remuneration for themselves or a group of people working under them in the ordinary course of business in India, such payment will not be a violation of the FCRA. The amount received by Sabrang Communications and Publishing Pvt. Ltd. Co. from the Ford Foundation was not a grant but a payment as per a consultancy agreement which had nothing to do with the publishing of Communalism Combat. Therefore, the question of prior permission or registration does not arise."

In fact when Communalism Combat was awarded the prestigious Prince Klaus Award for Excellence in Journalism and Development in December 2000 (during the time of the previous National Democratic Alliance regime) we sought permission from the Ministry of Home Affairs before depositing the award amount into our account. Are these the actions of common criminals?

Will the vindictive designs of this regime succeed? Not if we can help it. *Eid Mubarak.*

Teesta Setalvad

* OPINION. Scroll.in Jul 17, 2015 · 09:15 am:

<http://scroll.in/article/741815/government-is-intimidating-me-to-obstruct-the-fight-for-justice-in-gujarat>
[at](#)

On the timing of the Multi Pronged Attack (CBI and Gujarat Police) AND the significance of the Zakia Jafri petition

The Zakia Jafri criminal revision petition in HC should not be confused with the Gulberg case which deals with the 69 people killed there along with Ehsaan saab. This petition attempts to look at criminal or administrative culpability for all the incidents during the Gujarat riots of 2002. So in that sense it is a very historical legal endeavour. It began with the criminal complaint Zakia Jafri filed with our assistance on June 8, 2006. When an FIR was not registered, we went to the high court seeking directions for an FIR to be registered. The HC rejected our petition as we went to the Supreme Court.

On April 27, 2009, the SC handed over the investigation in this case to the same SIT that had been appointed in the other cases in which we were involved, with the condition and caveat that non-Gujarat officers should look into it. That investigation took place in 2009. I recorded my statement in July 2009. The only documentary evidence we had then were the affidavits of IPS officer Rahul Sharma (who studied cellphone call records of BJP and VHP members as well as police officers during the 2002 riots) and of many other police officers filed before the Nanavati-Shah Commission. We also had annexures to IPS officer RB Sreekumar's affidavits, more important than the affidavit itself because he actually made public the State Intelligence reports. In criminal law terms, these are not the opinions of a person but actual documentary evidence.

By May 2010, SIT members AK Malhotra and RK Raghavan had submitted their reports to the SC but these were kept under wraps.

As the case progressed, Prashant Bhushan was replaced as amicus in October 2010. The new amicus, Raju Ramachandran, looked at that evidence that the SIT had put before the SC (we didn't have a copy) and concludes that there is material evidence to prosecute. The SIT had listed out things that were problematic according to them about that period but said it does not necessarily merit criminal prosecution.

The SC, after hearing these contrarian views, told the SIT to look at Ramachandran's report, along with their conclusions, and come to final conclusions. It told Zakia that if she is aggrieved by the final report, she has a right to file a protest petition, with the rider that she has the right to access full investigation papers.

On February 8, 2012, the SIT filed a closure in the magistrate's court stating that despite Ramachandran's report, it was a closure. The very next morning, we filed an application seeking all documents. For one year, the SIT refused to give us the documents. We fought in the magistrate's court for months. In a fresh petition in November 2012, we approached the SC and said this was a contempt of its order. After the SC's order on February 7, 2013, we finally got 23,000 pages of evidence in 64 box files.

As our team processed the documents to prepare the protest petition within the three months we had, that's when we found all this documentary evidence. The SIT report does not deny that post mortems (of the kar sevaks killed in Godhra) happened in public, that photographs of 59 burnt corpses went viral on the internet, that a meeting was held at the Collector's office where Jaideep Patel was allowed to be present, a VHP man at an official meeting, that a decision was taken to take the bodies to Ahmedabad. Now this is not testimonial evidence. This is bad or culpable administrative decision. Once an incident happens, the bodies are the property of that administration., How can a political leader say take them to Ahmedabad in a motor cavalcade, which is handed over to Jaideep Patel, not to officials? It is all part of Malhotra's report.

Meanwhile Sanjeev Bhatt had filed an affidavit in SC too stating that he was at that meeting.

Three thousand men gathering (at Sola Civil Hospital) is not my saying it, it is in the Police Control Room records. That the hospital was attacked, that the mob was trying to get hold of the bodies, that funeral processions were allowed even in that atmosphere, that Acharya Giriraj Kishore came there and addressed the mob, how does this chain add up?

That is the kind of evidence we have. We had the genesis in the petition, but it's all coming into place now with the documents collected from the PCR records, the SIB records, statements by police officers. And that is what makes up the Zakia Jafri petition now.

When we first filed the complaint in 2006, Zakia Jafri was a woman who had witnessed things, was traumatised, she had spent the night after the Gulberg massacre at the police station and I remember she kept saying policemen were on leave when Ahmedabad was burning. It was a thing in her head that this was deliberate, this was conscious. But that's not enough to file a criminal case.

I would say anywhere in our country if Godhra had happened, there would be three or four reprisal attacks undoubtedly. But what was the role that the administration should have played? Was there a clear cut appeal for calm, for peace, for no revenge, for no buying for blood? That's all we are saying and we have built up a case around that.

I believe that it is these arguments coming back out into the public domain that this regime really does not want.

Defending the Survivor Witnesses in Appeal

Thanks to the Consistent Aid provided by CJP with me at the help, over 500 Survivor witnesses have been able to bravely record their testimonies as Eye Witnesses, (They were given 24 hour protection along with my lawyers and me) and 120 Convictions to Life Imprisonment have resulted. (Please see attachment of CJP's achievements since 2002). This attachment has a detailed Conviction Table also. That is why we are such a target for this Government who would rather that the Perpetrators are Free. The Naroda Patiya appeals will start being heard from July 29 2015. There were attempts to get them heard hastily (see [above]-Why I believe in Miracles; article I wrote for scroll.in). The Sardarpura appeal (and Bail applications of Powerful accused) will also be heard soon. As also the appeals in the ODH case. Apart from the Zakia Jafri Case what is at stake is retaining the successes of the 120 Convictions to Life Imprisonment that we have collectively achieved –a never never when it comes to Communal Violence and Mass Crimes.

Teesta Setalvad

Note on Ordeal

The reason why Teesta Setalvad and the organisations she is associated with (Citizens for Justice and Peace), Sabrang Trust, Sabrang Communications and Publishing Pvt. Ltd.) are being hounded is simple. Because of the numerous CJP's legal interventions, led by Teesta, in the courts in Gujarat and the Supreme Court, that ensured Supreme Court monitoring of crucial trials related to the 2002 massacres, witness protection to the Survivors and as a result, 120 perpetrators of the 2002 communal carnage in Gujarat serving life sentence today. What's more, CJP continues to provide legal aid to Mrs. Zakia Jafri whose complaint that the 2002 mass killings were the result of a criminal conspiracy involving then Gujarat CM, Narendra Modi and 59 other top politicians, civil servants and police officers is currently being heard in the Gujarat High Court. And CJP continues to ensure legal support and presence of the Witness Survivor appeals pending presently in the Gujarat High Court. At risk are these historic 120 convictions being overturned in appeal if the Survivors legal interventions are not ensured.

In January 2014, the Gujarat police filed an FIR accusing Teesta Setalvad and her colleague and husband Javed Anand of having embezzled funds worth crores from CJP and Sabrang Trust. The FIR is under sections 406, 420 of the IPC and one section of the IT Act. In response, Teesta and Javed have submitted over 24,000 documents to the Investigating Officer, Ahmedabad city Crime branch rebutting each and every one of the bogus allegations with facts and figures. A public vilification campaign (led by the ruling dispensation) but shamelessly reproduced by sections of the electronic media (television channels) accused both of misusing trust funds collected for riot victims for purchasing personal items. These spurious claims were made repeatedly by senior lawyers associated with the current political dispensation including Mahesh Jethmalani and Meenakshi Lekhi.

Having thus failed in uncovering any evidence to support their embezzlement claim, in March 2015, the Home Secretary, Gujarat Govt. wrote to the Union Home Ministry asking for an FCRA inquiry into the foreign funds received by CJP and Sabrang Trust both of which have FCRA registration.

Accordingly, a 4-member FCRA inspection team visited Mumbai to inspect the accounts of CJP (April 6-8) and Sabrang Trust (April 9-11). Both trusts extended full cooperation to the inspection team, produced all original documents and submitted hundreds of pages of photocopies as asked for by the inspection team.

In mid-June, both CJP and Sabrang Trust received communications from the FCRA dept. alleging a number of FCRA violations both by CJP and Sabrang Trust. The main allegation against both trusts is that Teesta and Javed who are editors of Communalism Combat magazine published by Sabrang

Communications and Publishing Pvt Ltd (SCPPL) of which both Teesta and Javed are directors are also trustees/office bearers of CJP and Sabrang Trust. This, it is alleged, is a violation of FCRA Act 2010. The allegation is totally incorrect. The FCRA Act clearly recognises that an association is an independent legal entity and its board members/office bearers are independent legal entities. Nowhere does the Act bar any FCRA registered association from having any editor, publisher etc. of a newspaper/news magazine from being on its board of governors or an office bearer. The registration certificate issued by FCRA dept to CJP and Sabrang Trust only prohibits the trusts themselves from publishing any newspaper/news magazine or the trusts acting as editor, correspondent etc. of any newspaper/news magazine. But there is no restriction mentioned in the registration certificate on one or more of its board members/office bearers from being associated with any newspaper or news magazine. Thus, there is no violation of FCRA Act.

The second major allegation against Sabrang Trust (especially) is that it has transferred lakhs of rupees to SCPPL, a private, non-FCRA company and this is a serious violation of FCRA 2010. This allegation too is baseless. Neither CJP nor Sabrang Trust has transferred any money to SCPPL. It is a well-recognised and common practice among organisations big and small to share office space, office equipment, establishment/office expenses, staff on a shared expenses basis with a view to costs-saving. Since CJP and Sabrang Trust did not have sufficient funds, both of them independently requested SCPPL and the latter agreed to a shared expenses arrangement. As per the resolutions passed by the trustees of CJP and Sabrang Trust from time to time, both trusts paid a mutually agreed amount each month to SCPPL towards reimbursement of shared expenses. SCPPL did not make any profit out of this expenses sharing arrangement with the two trusts. Thus, deliberately or otherwise, FCRA dept is confusing payments towards shared expenses with transfer of funds. In fact there is no violation of FCRA by either trust.

Acting further on the letter from the Gujarat govt., the FCRA dept followed up its April 2015 inspection of accounts of CJP and Sabrang Trust with an inspection of accounts of SCPPL on June 8-9, 2015. Following the inspection, the FCRA department has alleged serious FCRA violation by SCPPL and ordered a CBI investigation against SCPPL.

The FCRA dept. Claims that being a private limited company which is neither registered with FCRA nor has prior permission has committed a serious violation of FCRA Act by accepting foreign donation/grant. Sabrang Communications has denied the same. It has pointed out that it received payment from Ford Foundation as per a consultancy agreement after receiving written legal opinion that while a private company is barred from receiving donations/grants from foreign sources under section 3 of FCRA Act, 2010, section 4 of the same Act makes it very clear that payments received for a consultancy do not violate FCRA Act. This is an issue that can only be settled in a court of law.

When FCRA inspection team visited office of Sabrang Communications, the company's directors extended full co-operation to the inspection team and made available whatever documents were asked for. As soon as newspapers reported that FCRA has ordered a CBI investigation, Sabrang Communications pro-actively wrote to all the relevant offices of the Economic Offences wing of CBI both in Delhi and in Mumbai assuring the investigating agency of full co-operation in any bonafide investigation. Despite such written assurance, instead of asking for information as is normally the case, on the morning of July 14, a team of around 16 CBI officers landed at the office of Sabrang Communications with a search warrant for searching the office premises as also the residence of Teesta/Javed. The search and seizure of documents lasted for 22 hours. A separate CBI team also searched the residence of Mr. Gulam Peshimam, the third director of Sabrang Communications.

The Search warrant had been obtained by the CBI from this Learned Court in RC 06/5/2015/EOW Mumbai u/section 120-B IPC r/w 35, 37 r/w Section 3, 11 & 19 of the FCRA 2010 corresponding to Section 23, 25 r/w Section 4,6 and 13 of the FCRA 1976. The Search Warrant had been obtained

from the Court of AGMM, 3rd Court of Esplanade, Esplanade issued a Search Warrant vide O.W. Nos 470/2015 dated 13.07.2015 in the name of Shri Satchit Raut, PS, for conducting a Search on the premises of Sabrang Communications and Publishing private limited and the residential premises of Teesta Setalvad and Javed Anand. The Search Warrant was obtained in connection with RC 06/5/2015/EOW Mumbai u/section 120-B IPC r/w 35, 37 r/w Section 3, 11 & 19 of the FCRA 2010 corresponding to Section 23, 25 r/w Section 4,6 and 13 of the FCRA 1976.

That the Ld Court of AGMM, 3rd Court of Esplanade, Esplanade issued a Search Warrant vide O.W. Nos 470/2015 dated 13.07.2015 in the name of Shri Satchit Raut, PS, for conducting a Search on the premises of Sabrang Communications and Publishing private limited and the residential premises of Teesta Setalvad and Javed Anand, the Applicants herein;

Even while the search and seizure was in progress, the CBI spokesperson told the media that 'incriminating' evidence had been seized. The fact is that the so-called incriminating documents are the very same documents that Sabrang Communications had already provided to FCRA department as evidence of its own contention that the company did not violate FCRA Act in receiving payments towards a consultancy project. It may be noted that each time Ford Foundation paid an instalment as per consultancy agreements, it deducted TDS. No TDS deductions are ever made by any organisation from a donation or grant.

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<http://hillele.org/2015/07/23/on-the-timing-of-the-multi-pronged-attack-cbi-and-gujarat-police-and-the-significance-of-the-zakia-jafri-petition/>
