

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRL. M.P. NO. _____ OF 2012

IN

SPECIAL LEAVE PETITION (CRL) NO. 6754-6756 OF 2011

IN THE MATTER OF: -

Citizens for Justice & Peace & Anr. ... Petitioners

Versus

State of Gujarat & Ors. ... Respondents

AND IN THE MATTER OF: -

Rais Khan Aziz Khan Pathan,
A/28, Ajit Residency,
Ajit Mill Compound,
Ahmedabad 380023 ...Applicant

APPLICATION FOR DIRECTION

To,

The Hon'ble Chief Justice of India and
His Hon'ble Companion Judges of the
Hon'ble Supreme Court of India.

The humble application on behalf of the applicant above named;

MOST RESPECTFULLY SHEWETH

1. That the present application for direction is being preferred in the above-mentioned special leave petitions by the applicant herein who is also respondent No. 3 in aforesaid Special leave

petition, which is pending before this Hon'ble court for its kind consideration.

2. That the fact of the present case is not being repeated herein for the sake of brevity, however the same may be read as part and parcel of this application also.
3. That the above mentioned special leave petitions have been filled before this Hon'ble Court, praying for the following reliefs:

“In the facts and circumstances stated hereinabove, it is most respectfully prayed that this Hon'ble may be pleased to:

A. Grant special relief to appeal against the final judgment and order dated 11.7.2011 passed by the Hon'ble High Court of Gujarat at Ahmedabad in Criminal Misc. Application No. 1692/2011; final judgment and order dated 3.12.2010 passed by the Additional Sessions Judge, Court No. 5, Ahmedabad and final judgment and order dated 10.1.2011 in Inquiry No. 2 of 2011 passed by the Metropolitan Magistrate at Ahmedabad.

B. Pass such other order/s as this Hon'ble Court may deem fit and proper in the facts and circumstances and in the interest of justice.”

4. That in the said special leave petition the petitioner also has prayed for stay and permission to urge additional grounds and facts.

5. That this Hon'ble Court, vide order dated 2.9.2011, was pleased to pass the following order in the aforesaid Special leave petition:

“Permission to file Special Leave Petition is granted. Delay condoned. Issue Notice. The operation of the High Court order under challenge, is stayed.”

6. That pursuant to the issuance of the notice, the applicant herein has already filed an affidavit in reply dated 19.11.2011. However, in the interest of justice, it is necessary to place on record certain facts, which may affect the complete adjudication of the present matter. It is respectfully submitted that the Justice Delivery System, as envisaged under the Constitution, places this Hon'ble Court at the helm of the Indian Judiciary, reposing the highest faith in this institution. The edifice of the Judiciary rests heavily on public confidence and respect. It is the last bastion of hope for the common man. The Apex Court sets precedents, binding on all courts over the country. The Justice dispensed by the Apex court is beyond individual ideologies and beliefs. Whilst administering justice, the Hon'ble Judges are bound by the oath and required to do justice in accordance with the Constitution and the law. The test is not whether in fact a bias has affected the Judgment; the test always is and must be whether a litigant could reasonably apprehend a bias.

7. That this Hon'ble Court, in the case of A.K Kraipak & ors, Vs. Union of India & Ors, [1970 1 SCR 457, has held as under:

“...The real question is not whether he was biased. It is difficult to prove the state of mind of a person. Therefore what we have to see is whether there is reasonable ground for believing that he was likely to have been biased. We agree with the learned Attorney General that a mere suspicion of bias is not sufficient. There must be a reasonable likelihood of bias. In deciding the question of bias we have to take into consideration human probabilities and ordinary course of human conduct...”

Further in the case of *Manak Lal Vs. Dr. Prem Chand* [1957 AIR 425; 1957 SCR 575] the Hon’ble Apex Court observed

“...it is of the essence of judicial decisions and judicial administration that judges should be able to act impartially, objectively and without any bias. In such cases the test is not Whether in fact a bias has affected the judgment; the test always is and must be whether a, litigant could reasonably apprehend that a bias attributable to a member of the tribunal might have operated against him in the final decision of the tribunal. It is in this sense that it, is often said that justice must not only be done but must also appear to be done...”

8. It is respectfully submitted that it is not only difficult but rather impossible to segregate one’s personal beliefs and thought while arriving at the decisions. The views of a Judge, be it judicial or social, are reflected not just in judgments delivered but also in observations made in open court, whilst conducting matters. Equally, articles authored or published by the Judges reflect their personal views on issues, which may often come in conflict, whilst deciding matters on hand.

9. That the Promoting Pluralism Knowledge Program is an international cooperative structure, comprising of

(a) The Humanist Institute for Co-operation with Developing countries (HIVOS), Netherlands.

(b) Kosmopolis Institute (Universities for humanistic), Netherlands.

(c) Centre for the Study of Culture and Society (C.S.C.S.), Bangalore, India.

(d) Centre for Religious and Cross-Cultural Studies (C.R.C.S), Indonesia.

(e) Cross-Cultural Foundation of Uganda (CCFU), Uganda.

The Pluralism working paper series are intended to stimulate discussion and critical comment issues addressed in the knowledge program and contains publications in 3 categories:

Academic research papers (in progress).

Practice Based reflections.

Interviews and conversations.

10. It is respectfully submitted that an article titled, "The Idea of Secularism and the Supreme Court of India" authored by His Lordships, Hon'ble Mr. Justice Aftab Alam and presented by His Lordships as an annual lecture on 14th October, 2009 at London, was first published in July, 2010, as Paper No. 5, as a part of the Promoting Pluralism Knowledge Program (PPKP), an international joint venture in collaboration with (a) The Humanist Institute for Co-operation with Developing Countries, Netherlands (b) Kosmopolis Institute (University for Humanistics), Netherland (c) Center for Religious & Cross-

Cultural Studies, Indonesia (d)Center for Study of Culture and Society, Bangalore, India etc. A copy of the Article titled as “The Idea of Secularism and the Supreme Court of India” authored and presented by by His Lordships, Hon’ble Mr. Justice Aftab Alam, published in July, 2010 is annexed herewith and marked as **ANNEXURE-A-1** (At page ____ to ____).

11. That it is respectfully submit that the said article advertently or inadvertently spells out the intrinsic views and beliefs of His Lordships as regards the minority community. The article in one way reflects a firm conviction that injustice is meted out to the minority community (Muslims only) at the hands of the Government and also at the hands of the Hon’ble Court. The tone and tenor of the article depicts the strong belief of His Lordships, as regards the victimization of the minority community. Some of the abstracts of the lecture addressed on the subject, delivered on 14th October, 2009 at the Pluralism Knowledge Program(PPKP), London is being reproduce as under:

“The vast body of law dealing with property rights treats two Indians differently, again depending upon their religion. On my death the devolution of my estate upon my heirs will take place in a way completely different than in case of my Hindu friends. In several states, the land Reforms Act that imposed ceiling on individual land holdings impacted a Muslim land holder far more adversely than a Hindu landholder in similar circumstances”. (Page 12-13).

“For every Muslim going for Hajj, the Government of India spends, from the tax-payers money, a substantial amount as air fair subsidy. In the Government of India budget for the year 2009-10 a sum of rupees 632 crores (approximately 100 million Euro) is allocated as Hajj subsidy. Kumbh Mela or the Fair of Nectar Pot takes place four times every twelve years when millions of Hindu Pilgrims congregate to take the holy dip in the river on a single day. The next fair is to take place in 2010 in Haridwar where the Ganges comes down into the plains. The State of Uttrakhand would spend an estimated amount of Rs. 500 crores (approximately 80 million Euros) for organizing the Mela. Besides the Kumbh there would be atleast dozen purely religious festivals where direct Government spending run into billions of rupees. Amidst all this a majority of Indians honestly believe that they live in a secular country. And they feel quite comfortable in that thought.” (page-13)

With great respect, it is most respectfully submits that the text of the aforesaid Article compels one to infer, that his Lordship Hon’ble Mr. Justice Alam firmly believes that the money spent on Hajj subsidies is nothing as compared to millions spent on Hindu fairs etc. It has perhaps slipped notice, that in big Hindu religious fairs and festivals, money is spent by Govt. on law and order only. Even in minority big fairs like Ajmer Urs, etc the Govt. has similarly spent money for law and order and sometimes to promote culture and tourism that has slipped being mentioned in his lecture. The demeanor of the article speaks volumes.

It is further submitted that another relevant abstract of his Lordship's Lecture is that:

“Around the same time as the court was engaged in Salvaging secularism from the debris of the demolished medieval mosque, it also started to see the interplay between the community based rights and individual rights in a new light.”(page 18)

“Finally a trilogy of decisions rendered between 2003 and 2005 brought about a complete change in the way the Supreme Court looked at the right of the religious minority to establish an educational institution guaranteed under Article 30 of The Constitution”(page 18)

“A minority organization, called The Islamic Academy of Education brought the issue to the Supreme Court and its case was referred to the larger bench. Here a number of non-minority private colleges also joined issue. They were mainly interested in getting the Unni Krishnan Scheme of admission undone. Ultimately Islamic Academy was relegated to the back and Pai, a non-minority private college, came to the fore. Pai was heard by a bench of eleven judges so that the court may not be bound by any of its earlier judgments. In Pai it was for the first time the question of minority rights was not considered independently and it got mixed up with cases of non minority private colleges. The decision in Pai is very heavy on secular rhetoric but at the end of the judgment the minority rights appears to be considerably restricted in comparison to their earlier position.”(Page-19)

“To sum up, for about forty to forty five years the Supreme Court held that though the Constitution did not permit community specific political rights, it recognized community specific social rights. But in the last fifteen years the court seems to have come to the view that under the constitution

there cannot be any community specific rights, either political or social.”(Page-20)

“The four decisions, commonly referred to collectively as the ‘Hindutva Decisions’ are highly significant and among them the most important one is in the case of Manohar Joshi.

In his election speeches Manohar Joshi, the winning candidate had said that “The First Hindu State will be established in Maharashtra,” one of the states of India. The court, studiously avoiding any reference to the seven-judge decision in Bommai, set-aside the decision of the High Court and resorted to the appellant’s election observing that “a mere statement that the first Hindu State will be established in Maharashtra is by itself not an appeal for votes on the ground of his religion but the expression, at best, of such a hope.”

“The court went much further and using the words ‘Hindu’, ‘Hinduism’ and ‘Hindutva’ interchangeably observed that those terms were not amenable to any precise definition and no meaning in the abstract would confine the term ‘Hindutva’ to the narrow limits of religion alone. The court further observed “the term ‘Hindutva’ is related more to the way of life of the people in the sub-continent. It is difficult to appreciate how in the face of [prior rulings] the term ‘Hindutva’ or ‘Hinduism’ per se, in the abstract can be assumed to mean and be equated with narrow fundamentalist Hindu religious bigotry...”

“The Hindutva decisions seem to have inspired the Court to take the mono-culturist view of secularism in a series of later decisions some of which are presented here.” (page 20)

“The court also arrogated to itself the right to decide whether or not a certain practice was essential to a religion, of course with reference to authoritative sources and texts relating to that religion. Later on, in the Durgah committee case the court held that Articles 25 and 26 were intended to protect

existing rights and they did not confer any new rights. In the Durgah committee case the court took a step further and held that religious practices might have sprung superstitious beliefs that are “extraneous and unessential assertions” to the religion. Such practices would naturally have no immunity against state intervention” (page-21)

“In Shah Banu the question before the court was whether the statutory provisions of maintenance of divorced wives were applicable to Muslims, in view of the Muslim Personal Law (Shariat) Application Act, 1937. The court held that there was nothing in Muslim Personal Law that conflicted with the Statutory provisions of maintenance. But the Court arrived at its conclusions by beginning the judgment with a hadith of doubtful veracity and proceeding with the observation “there can be no greater authority on this question than the Holy Quran.” (Page-22)

“The decision came under a lot of criticism and there was great resentment against the court arrogating to itself the right and the authority to interpret the Quran, forgetting that the Court had consistently resorted to the scriptural interpretation while applying the essential practices test to the Hindu Religion.” (Page 22)

“In India Minority groups are as hierarchical as the larger Indian society. It is pointed out that social surveys show that an over protection of community specific rights was of very little, if hardly any, use to the weaker sections within the minority groups. But on the other hand a complete denial of community based rights evokes within the minority groups the fear of being subsumed by the majority and that is a source of social tension on a greater scale. Therefore, issues of minority rights perhaps need to be addressed afresh having regard to these concerns and in light of the experience of the past sixty years.” (Page-23)

It is respectfully submitted that the abstracts of the above mentioned article, reveal obvious implications and insinuations. Read as a whole, the article in one way creates a strong prejudicial impact on the mind of the reader about the lack of impartiality on the part of the government and the Apex Court vis-à-vis the minority community, the marginalization of the Muslims and the perception of the author that the Muslims have been grossly misunderstood, neglected, and often discriminated against in the Country not only by the Govt. but by the Hon'ble Court also. It is very humbly submitted that the assertion by his Lordship that the Islamic Academy case was referred to the eleven judges bench so that the Court may not be bound by its earlier judgments and at the end minority rights appears to be considerably restricted and ultimately Islamic Academy was relegated to back, reflects the feeling of his Lordships as if the eleven judges bench was intentionally formed to restrict Islamic Institutions meaning thereby, even the Apex Court is doing injustice to the minorities i.e. Muslims.

12. That a) Pluralism Working Paper/2010/ No 5 on the subject "The Idea OF Secularism and Supreme Court Of India" was authored by His Lordship Hon'ble Mr. Justice Aftab Alam,

(b) Pluralism Working Paper/2010/No 6 on the subject "HUMAN RIGHTS, PLURALISM AND CIVIL SOCIETY"

Reflecting on contemporary challenges in India was authored by SITHARAMAM KAKARALA of CSCS.

(c) The Pluralism Working Paper/2010/No 7 was published, on the subject “EXPLORING NEW SITES OF SOCIAL TRANSFORMATION”; in conversation with Shahrukh Alam, (daughter of His Lordship Hon’ble Mr. Justice Aftab Alam) and Khalid Anis Ansari the founder members of the Patna Collective, Patna/Delhi authored by ELISE VAN ALPHEN, HILDE VAN ‘T KLOOSTER.

A copy of the Paper No. 7, titled “Exploring new sites of social transformation; in conversation with Shahrukh Alam, the founder members of the Patna Collective in India, about sectarian violence and new spaces for pluralism in India” is annexed hereto and marked as **ANNEXURE-A-2**. (At page ____ to ____)

13. That in the *EDITORS PREFACE*, Ms. Caroline Suransky, Chief Editor of the Pluralism Working Paper No. 7 for the Pluralism Knowledge program reports that “The Patna Collective is an NGO committed to ethnographic research to analyze conflicts between Muslims factions and the State and to identify alternative political spaces”. Ms. Shahrukh Alam and Khalid Anis Ansari are the founding members of the Patna collective. Their organization is a research – activist

collective, which is based in India, where they form part of the India Pluralism Program network.

14. That in the interview, published as paper No. 7, Ms. Shahrukh Alam argues that, “Our interventions focus on the recognition and acknowledgement of spaces for dialogue between the Muslim community and the State, but also for dialogue between men and women, as well as between higher and lower castes within the Islamic community.” One of the interesting claims of the Patna Collective is that these spaces for dialogue and reform cannot always be found within the classical political arena, the law, or in public debate, but are often entangled in the everyday life of people who live under marginalized circumstances and for whom it may be difficult to fight for their rights on a parliamentary, legal or civic levels. The Patna Collective studies and analyses how people in such positions exercise power and instigate reform in their own ways.

15. It is submitted that Shahrukh Alam and Khalid Anis Ansari founded the Patna Collective, a research activist group in North India in 2007. Describing the origin of the Patna Collective, Ms Alam states, ‘We simply took the name of the city where we began’, explains Alam. Initially, the Patna Collective was impelled by Islamic liberation theology, which focuses on social justice and the viewpoint of marginalized

groups. Motivated by this vision, Alam's research activist group supported the initiation of a small workers' collective.

16. It is further submitted that HIVOS' website also refers to the pluralism working paper and reproduces extracts there from. The said website quotes from Ms Shahrukh Alam's interview as under:-

“The conversations captured in the Pluralism working paper touch upon the limits of the universal human rights discourse. As Shahrukh Alam describes: “...the focus on universal, secular discourse around human rights will not decrease {...} the tensions and conflicts between religious groups. How could it, when the concrete ‘neutrality’ of the secular state often results in the prevalence of norms of {the} Hindu {...} majority? According to Alam, the Muslim minority's struggle for ‘cultural rights’ needs to be understood within this context.....”

It is respectfully submitted that the views expressed by Ms. Alam at the Pluralism Working Paper No 7 somehow gives an impression of a strong indictment of Government policies and the approach of the Apex Court towards the problems of the Muslims minorities. Excerpts of Ms Shahrukh Alam's interview as published in paper No. 7 are being reproduced herein below:

“According to Ms. Alam, the focus on universal, secular discourse around human rights will not decrease sectarian violence, or the tensions and conflicts between religious groups. How could it, when the concrete “neutrality” of the secular state often results in the prevalence of the norms of

Hindu-Brahman majority (approximating eighty percent) over those of minorities? Throughout history, tensions between the Hindu majority and religious minorities have escalated to several conflicts. This regularly equates to the strife between the Hindu majority and the largest religious minority in India, the Islamic population (fourteen percent), which also happens to suffer from a relatively high degree of poverty. The last major outbreak of violence between Hindus and Muslims occurred in 2002 when a Muslim group hijacked a train and set fire to Hindu passengers. A bloody conflict ensued in the aftermath and claimed predominantly Muslim victims. Tens of thousands of Muslims fled the Indian state of Gujarat. Alam maintains that the Islamic minority's struggle for (the protection of) cultural rights also needs to be understood within this context. The Patna Collective carries out ethnographical studies to analyze conflicts between Muslim factions and the state. What rights are Muslim communities fighting for? What rights do the government grant to the Islamic community? What types of tension result between the state and the Muslim community, but also within the Muslim community itself? We research how these Muslims negotiate their identity with the state, but also within their own community. We pay special attention to the dynamics and differences in caste, class and gender within the Islamic community.

Further, Ms. Alam gives an example, which illuminates both the struggle for the preservation of cultural rights within the Muslim community, as well as the internal discussions about that struggle, which simultaneously take place. She describes the controversy that took place in the early eighties around the Muslim woman Shah Bano, who went to Supreme Court for her right to maintenance. There is no single category of Indian law that regulates family justice— issues related to custody, maintenance, inheritance, marriage and divorce —but five categories specified under “personal laws”. Hindu law applies to Hindus, Buddhists, Sikhs and Jains, Islamic law applies to Muslims; Christian law applies to Christian. A type of auxiliary legislation applies to smaller faith communities. The remaining category of “civil family law” provides a neutral option for citizens who do not fall under any of the religious categories or who refrain from the claim of any rights under religious legislation.

As a Muslim woman, Shah Bano was subject to Islamic family law, Sharia dictated that Bano had no right to maintenance from her ex-husband. She sought a better settlement through the courts. The Supreme Court ruled that Bano had a right to maintenance money guaranteed by Indian criminal law, which applied to all regardless of caste, gender, or religion. The judge even referred to stipulations in the Koran to justify his ruling, when Islamic legislation did not. The orthodox Muslim

community viewed this as an infringement of their right to autonomous, Islamic, family law.....

The debate was further complicated by the rise of the Hindu right wing movement, which caused Muslims to no longer see the state as a neutral authority. “Indian nationalism could be viewed as Brahman nationalism”, according to Ms. Alam. The situation became so escalated that the Indian government relented to the pressure set by the Muslim community. The court’s decision was declared null and void by the introduction of new Islamic legislation, which established maintenance for Muslim women; this is limited, however, to the length of the mourning period (three months). This legislation also dictates that Islamic women may not appeal to Indian criminal law for cases related to maintenance.

17. That several other articles have also been authored by Ms. Shahrukh Alam, one amongst those, has been published in the Tehelka, India’s independent weekly news magazine. A copy of the Article titled “Being Muslim”:- *The various strands of violence inherent in “encounter” of the Jamia Nagar kind* is annexed hereto and marked as **ANNEXURE-A-3 (At page ____ to ____)**.

18. That the article on “Being Muslim” deals with the media coverage of the Batla House and the gruesome violence which ensued in the recent bombing carnage. “Batla House (as all of

Jamia) is a Muslim ghetto is the primary logic. It houses radical Muslim youth who think nothing of bombing cities. Batla House is violent. So it is, many would agree. Many would also argue that the violence is implicit in its present form of existence; in the fact that young Muslim professionals have found it impossible to rent houses on the market in New Friends Colony, Maharani Bagh and elsewhere for years already. Sometimes they do want to live outside of ghettos.....

Many see violence in the branding of Jamia as a Muslim ghetto. It has created a real-estate mafia in the area as Muslims migrate there for reasons of security, familiarity and also because they are unable to find housing elsewhere.....

There is violence too in the power blocs. The real-estate holders, or those leaders of the Muslims, who are expected to – and do treat the community as a monolith that requires no internal debate, activism or independent access to the state and the laws. They take upon themselves the role of mediators between the state and community. There are also those local gangsters, on convivial terms with the police, and keeping a friendly eye on the affairs of the community, until the time that they are gunned down to account for some crime somewhere. There is violence in the indifference of the University towards the local community of Jamia, in the

absence of any intervention at the local level. In the meanwhile, piles of garbage lie undisturbed in the Batla House market area. Stony-faced men and burqa-clad women sit along the road asking for help.

19. It is respectfully submitted that the series of papers published as pluralism working papers were essentially engaging in the journey of Muslims in India, their identity, social justice and change. Their feelings after the demolition of the Babri Masjid (Mosque) in 1992 followed by the large scale violence and Gujarat 2002 riots. The tenor of all the articles highlight the existing privileged structure of power which are dominated by the Hindus employed to suppress other religious communities mainly Muslims.

20. That the applicant humbly submits that herein below some are the links of various organisations working on Gujarat Riots which are connected with Ms. Shahrukh Alam:

- Pluralism.in is a dedicated web portal undertaken by HIVOS at the Netherlands, that presents the work and activities of PPKP. Ms Shahrukh Alam happens to be one of the members of the core team of the said portal. The PPKP claims to be a knowledge initiative undertaken by Humanist Institute for developing Co-operation (Hivos), The Netherland. Kosmopolis Institute and Centre for the Study of Culture and Society (CSCS) Bangalore are also jointly working with

pluralism.in. A copy of homepage of the said web portal Pluralism.in is annexed herewith and marked as **ANNEXURE-A-4 (At page ____)**. The other members of core team of the Pluralism.in are Sitharamam Kakarala, Serena Kasim, Khalid Ansari, Lakshmi Arya, Sruti Chaganti and Elizabeth Thomas who are working in various capacities at CSCS, Bangalore also.

- “Pluralism.in” has a dedicated window on ‘*Gujarat archives*’ in which more than 60 articles/Reports written by various people/organisations are uploaded which are related to Gujarat Riots. One of the articles “The Foreign Exchange of Hate IDRF and the American funding of Hindutva” is authored by Subrang Communications & Publishing Pvt Ltd, Mumbai and South Asia Citizens Web, France. A copy of Pluralism.in Gujarat Archives page is annexed herewith and marked as **ANNEXURE-A-5 (At page ____ to ____)**. The said Subrang Communications & Publishing Pvt Ltd, Mumbai is a company run by Ms. Teesta Setalvad and her husband Mr. Javed Anand. It is pertinent to mention that the Magazine “Communalism Combat” of which Ms Teesta Setalvad and Mr. Javed Anand, her husband, are Editors, is printed and published for “Sabrang Communications

& Publishing Pvt Ltd”. A copy of magazine Communalism Combat May, 2011 Issue is annexed herewith and marked as **ANNEXURE-A-6** (At page ____ to ____).

It is most respectfully submitted that the above-mentioned evidences establish a concern of Ms Shahrukh Alam with the issue of Gujarat riots and also some how with Ms Teesta Setalvad, the petitioner in various SLPs in the Supreme Court, pending before this Hon’ble court. It is further respectfully submitted that the said Pluralism.in, in which Ms Shahrukh Alam is working as a core team member is also related to another Ahmedabad based “Citizen’s Initiative”, an organisation, also working on Gujarat riots. The same further establishes the stand as from the facts the said web portal has uploaded survey report of “Citizens Initiative” related to 2797 families who have survived the Gujarat Riot Violence, with the caption “HARD FACTS”. A copy of the web page Pluralism.in is annexed herewith and marked as **ANNEXURE-7** (At page ____ to ____).

It is further submitted that Pluralism Working Paper/2010/No.5 on the subject “The Idea of Secularism and Supreme Court Of India” was authored by The Hon’ble Mr. Justice Aftab Alam on 14th October 2009 at London. The Pluralism Working Paper/2010/No.6 on the

subject “Human Rights, Pluralism And Civil Society” Reflecting on contemporary challenges in India was authored by SITHARAMAM KAKARALA of CSCS. The Pluralism Working Paper/2010/No.7 on the subject “EXPLORING NEW SITES OF SOCIAL TRANSFORMATION” was published on conversations with Shahrukh Alam and Khalid Anis Ansari the founder members of the Patna Collective in India authored by ELISE VAN ALPHEN, HILDE VAN T KLOOSTER.

It is submitted that all the above papers were published in 2010 by “The Promoting Prulasim Knowledge Programe” (PPKP) and were jointly co-ordinated by:

- I. Humanist Institute for Co-operation with Developing Countries, The Hague, The Netherlands.
- II. Kosmopolis Institute (University for Humanistics), At Utrecht, The Netherlands.
- III. Center for Religious & Cross-Cultural Studies, Indonesia.
- IV. Centre for the Study of Culture and Society Uttarahalli, Bangalore, India.
- V. Cross Cultural Foundation of Uganda, Kampala, Uganda.

21. That the Humanist Institute for cooperation with developing countries, (HIVOS), The Netherlands has jointly coordinated on all Pluralism working papers and also happens to be the main funding organisation for such programmes. HIVOS has its Liaison office in Bangalore also. Monogram of HIVOS is prominently displayed on the cover page of “The Patna Collective” run by Ms Shahrukh Alam.

22. That Kosmopolis Institute, The Netherlands is one of the joint coordinator of all Pluralism Working Papers. Kosmopolis Institute in its “The Pluralism Project” at Harvard University stated: “The Pluralism program in India started in 2008 and is coordinated by Prof Sitharamam Kakarala of the Centre for the Study of Culture and Society (CSCS) in Bangalore. The India program is developed in consultation with a regional team that includes academics, NGO based staff and representation of the Hivos Regional Office in Bangalore. The India program consists of initiatives in diverse Indian states, including Gujarat, Karnataka, Bihar, Kerala, Tamilnadu and Goa. The initiatives under the programme primarily focus on two core themes:

(1) *Human Rights, Pluralism and Rethinking the Secular State*: emerging challenges and dilemmas before human rights and secular interventions of civil society groups in

countering the rapidly growing Hindutva majority fundamentalism and its various manifestations such as communalism and communal violence. Initiatives here include studies into the role of civil society in post 2002 Gujarat violence, emerging context of inter-religious tensions and communal violence on the west coast of Karnataka, the impact of state-initiated remedies in the form of special judicial inquiries and commissions in providing justice to the victims of communal violence.

(2) *Faith and Diversity*: the dynamic interaction between social and cultural diversity on the one hand and 'faith'-based identities on the other and its implications for social action interventions. The theme is pursued through an active collaboration of Patna Collective, a Patna/Delhi based group, and consists of mapping: (a) how questions of caste, class and gender are influencing transformation processes within Muslim identity formations in India; (b) what kind of civic spaces are emerging within the Muslim community in addressing the challenges posed by communal violence and demands of everyday peace and coexistence". A copy of the same is annexed herewith and marked as **ANNEXURE-A-8** (At page ____ to ____).

23. It is submitted that evidently, "The Patna Collective" run by Ms Shahrukh Alam is closely and actively working in

collaboration with Kosmopolis Institute, The Netherlands. Undisputedly, The CSCS, Bangalore which has also jointly coordinated with the Pluralism Working Paper No 5 of His Lordship Hon'ble Mr. Justice Alam has close links with The Patna Collective run by Ms Shahrukh Alam. The monogram of CSCS, Bangalore are inscribed on the cover page of The Patna Collective's Workshop, further substantiating, that the two organisations are closely working with each other on 2002 Gujarat Violence and/or other Muslim Community related problems. Further more Mr. Sitharamam Kakarala, Serene Kasim, Lakshmi Arya, Sruti Changati and Elizabeth Thomas are not only members of the core team of Pluralism.in, a web portal of HIVOS, in which Ms Shahrukh Alam is also a core team member, but are also working as Research and associate Fellows in CSCS. The Patna Collective, Patna is Institutional Partner/Consultant of CSCS. A copy of annual report of CSCS for the period 2008-2009 is annexed herewith and marked as **ANNEXURE-A-9 (At page ____ to ____)**.

24. That it is submitted that "The Patna Collective", Patna/Delhi is an NGO founded by Ms Shahrukh Alam . The Patna Collective is associated with Humanist Institute for Co-operation with Developing Countries (HIVOS), The Netherlands and Centre for the Study of Culture and Society, (CSCS) Bangalore. Their Monograms are inscribed on the

cover page of every workshop of the Patna Collective. In conversation with Elise Van Alphen, Ms Alam, has explained that initially, “The Patna Collective was impelled by Islamic Liberation Theology, which focuses on social justice and the view point of marginalised groups”. The aims and objects of the Patna Collective are “the mapping of alternative and libratory theological strands within Indian Islam as also marginal histories and cultures of Islam that led to an alternative imagination of the self in at least some of its adherents”. The organisation is engaged in the mapping of questions relating to Caste, Class and Gender which are influencing transformation process within Muslim identity formations in India and the kind of Civic spaces that are emerging within the Muslim Community, whilst addressing the challenges posed by communal violence and demands of everyday peace and co-existence.

25. It is further submitted that whilst commenting on the case study of the demolition of Noor Masjid in Jungpura, Delhi by Municipal Corporation of Delhi as per the orders of Hon’ble Delhi High Court. Ms Shahrukh Alam has commented that “The Municipal Corporation didn’t demolished a similarly situated unauthorised temple, the DDA did not offer to sell the land to the Mosque trustees as they had done to the Temple trust to help them legalise the structure”. The opinions expressed, depict Ms Shahrukh Alam’s indictment of verdict of

the judgement of the Hon'ble High Court of Delhi, which is strongly perceived as Anti- Muslim. A copy of The Patna Collective Workshop No-1 is annexed herewith and marked as **ANNEXURE-A-10**(At page ____ to ____)

26. It is noteworthy that the Patna Collective, an NGO Founded by Ms. Shahrukh Alam and Khalid Anis Ansari was appointed by CSCS, Bangalore to carry out studies related to minorities, more particularly, Muslims and address issues related to them. CSCS, has on record confirmed, of having made payment, to the extent of INR 11,48,680 (after deducting TDS) to The Patna Collective of which Ms. Shahrukh Alam is a founder member.

It is further noteworthy that CSCS appointed MS Shahrukh Alam as research fellow under the PPKP program, India Component in July,2008 till March, 2010. Ms Shahrukh Alam received INR 4,45,000, from CSCS as salary over and above the amount of IRN 11,48,680 in the name of her NGO, the Patna Collective.

It is also note worthy that the co-founder of the Patna Collective, Shri Khalid Ansari was also paid INR 5,85,000 by CSCS starting from June, 2009.

The most importantly, CSCS, Bangalore has stated on record that the amount paid to the Patna Collective, Ms Shahrukh Alam and Mr. Khalid Ansari were paid from the foreign grants/contributions received from HIVOS and Kosmopolis

Institute of Netherlands, the main funder and the organizer of Pluralism Working Paper No 5,6 & 7.

27. It is respectfully submitted that Pluralism-in, a dedicated Web Portal of HIVOS, located at Netherlands where Ms.Shahrukh Alam is one of the Core team members. Its India regional team consist of following:

I. Activists/scholars:-

Mr. Ghanshyam Shah , Ahmedabad.

Mr. Mihir Desai (Mumbai) (He has been representing Teesta Setalvad, the petitioner herein, in various Court cases). A copy of Pluralism.in India regional page is annexed hereto as **ANNEXURE-A-11**. (At page ____)

II. Partners of Pluralism:

(1)The Patna Collective. A copy of Pluralism.in Partners page is annexed hereto as **ANNEXURE-A-12** (At page ____ to ____).

III. Consultants:

(1) Somnath Vatsa (Ahmedabad-Gujarat)

He was appointed by CSCS also to study 2002 Gujarat Riots and he has submitted his report in 2009.

28. That HIVOS, The Netherlands, has made direct payment made to following:

A. Citizens for Justice and Peace(CJP)- Euro 10,000 (Appx Rs 7 Lacs) in November 2009. CJP is headed by Ms Teesta Setalvad, petitioner herein.

Most surprising facts of this deal are as follows:

- A proposal by CJP submitted to the HIVOS, Netherlands on 07.11.09
- The proposal approved by HIVOS within just 7 working days and agreement signed between HIVOS and CJP on 16.11.09.
- Payment of 10,000 Euros got credited in the account of CJP on 23.11.09 itself.

It is submitted that the speed by which the proposal was approved and payment released that too for Meetings/workshops/establishment expenses in Gujarat raises serious questions and doubts. Copy of Budget Summary of project signed between CJP & HIVOS is annexed herewith as **ANNEXURE-A-13** (At page ____ to ____) in which, a budget was clearly earmarked for “Fortnightly meetings/workshops in Gujarat including travel expenses of CJP secretary i.e. Ms Teesta Setalvad and establishment expenses at Ahmedabad/Mumbai.

B. Mr. Mihir Desai- RS 45,000 (Mr. Desai is Sr Counsel of Ms Teesta Setalvad). Mr. Mihir Desai also got a payment of Rs 75,000 from CSCS, Bangalore in November, 2009. HIVOS

has Paid Euro 1150 (Rs 75,000) to CSCS on 24th Novemeber, 2009, a day after payment of Euro 10,000 was given to CJP. It is noteworthy that it was the only payment made by HIVOS to the CSCS in the Year 2009.

29. Admittedly, The Patna Collective is not a registered Trust, nor a registered society and without registration as a Trust or as a Society, permission under the Foreign Contribution (Regulation) Act, 2010 for receiving payment in foreign currency or from foreign sources is impermissible. The Ministry of Home Affairs, Government of India has responded to an RTI, stating thereunder, that the Patna Collective is not registered under Foreign Contribution (Regulation) Act, 2010. That being so, no payments could have been made directly by any Foreign Company, Organization or Body to the Patna Collective which is why payments made to Patna Collective has been routed through the CSCS, Bangalore.

30. It is respectfully submitted that the connection between the Patna Collective, HIVOS and CSCS is further established from the fact that the monogram of HIVOS and CSCS is inscribed on the cover page of Workshop No.1 of the Patna Collective, of which Ms Shahrukh Alam is co-founder.

31. It is further respectfully submitted that an account in the name of “the Patna Collective” group is also operated on the

face book, a social net working site. Ms.Shahrukh Alam and Khalidanis Ansari are two of its administrative members and Teesta Setalvad, petitioner herein, Javed Anand of CJP, Sitharamam Kakarala of CSCS, Ghanshyam Shah of Ahmedabad, Fr. Cedrick Prakash of Ahmedabad and Somnath Vasta from Ahmedabad are some of its other group members. A copy of Screen Shots of Face Book Account of the Patna Collective is annexed herewith as **ANNEXURE-A-14** (At page ____ to ____).

32. It is noteworthy, that from the year 2008 till 2012, HIVOS has made only one solitary payment to the NGO, headed by Ms. Setalvad, Citizens For Justice and Peace, to the tune of 10,000 EUROS in the month of December 2009 The said solitary payment was allegedly made under heading “documentation and dissemination”. Similarly, the payment to the extent of Rs. 45,000 by HIVOS to the Senior Counsel representing Ms Teesta Setalvad’s in her various litigations . It is respectfully submitted that Mr. Mihir Desai, an advocate shown as an activist/Sr. lawyer on the Web Portal, Pluralism.in of which Ms Shahrukh Alam is one of the core team member, has been paid such a huge amount by HIVOS, Netherlands, which is the main funder of Pluralism Working Papers, without having any direct connection with him, is also a matter which raises doubt.

33. That it is respectfully submitted that all the above referred facts, which are reproduced/summarized herein below lead to an inevitable conclusion that Ms.Shahrukh Alam and her Patna Collective are connected with HIVOS, Kosmopolis Institute, CSCS and Pluralism.in.

- a)** Ms.Shahrukh Alam was appointed by CSCS in 2008 for PPKP-India Program.
- b)** Ms.Shahrukh Alam also joined Pluralism.in, a web portal of HIVOS as a core team member.
- c)** His Lordship Hon'ble Mr. Justice Aftab Alam delivered a lecture on PPKP in October, 2009 at London which was jointly co-ordinated by HIVOS, KOsmopolis, CSCS etc.
- d)** Ms.Shahrukh Alam through her Patna Collective is closely working on Gujarat Riots-2002.
- e)** There is a Facebook account in the name of Patna Collective. It is a close group account on facebook, run by Ms.Shahrukh Alam and Mr. Khalidanis Ansari. Ms.Teesta Setalvad, Mr. Javed Anand, Fr. Cedrick Prakash and Mr. Sitharamam Karakala etc are also its members, which establish a link of Teesta Setalvad with Ms.Shahrukh Alam.
- f)** CSCS, Bangalore has admitted that it is getting grants/funds from HIVOS and Kosmopolis Institute,

The Netherlands. CSCS has also confirmed that payment made to Ms Shahrukh alam, the Patna Collective and Khalid Ansari were given from the supported funds of HIVOS and Kosmopolis Institute, The Netherlands.

g) The HIVOS monogram is also inscribed on cover page of Patna Collective Workshop; hence there is a possibility of funding by HIVOS to the Patna Collective

34. That the above-mentioned SLP (Cri) No. 5275-5276 of 2011 filed by Teesta Atul Setalvad V/s. The State of Gujarat was listed on 21.2.2012 before this Hon'ble court whereby His Lordships made the following observations in the open court:

“This is hundred percent spurious case to victimize the petitioner. This type of case does not credit to the State of Gujarat in anyway.” “You advise your client not to proceed with this type of case. You should show some responsibility and tell the government not to proceed with this case.”

35. It is respectfully submitted that the present case is of an extremely serious nature, where four accused persons namely Kutubsha Aiyubsha Divan, Gulam Gani Kharadi, Jabirsha Aiyubsha Divan and the present applicant (Respondent No-3), had given statements under section 164 of the Criminal Procedure Code before the Magistrate against Ms. Teesta Setalvad, petitioner herein, for her alleged involvement in the filing of the affidavits by the witnesses. The present applicant is one of the accused persons in this case. Even an

independent witness, Shri Rahul Singh, a senior journalist, working with a reputed National News Channel, present at the time of exhumation of the dead bodies, held Ms. Teesta Setalvad responsible for criminal conspiracy. It is respectfully submitted that in the light of voluminous material on record, the observations of His Lordship before the matter could even be opened/decided, may likely to jeopardize the fair hearing in the matter.

36. It is respectfully submitted that SLP No. 6754 of 2011 filed by Citizens For Justice And Peace, through Ms. Teesta Setalvad V/s. the State of Gujarat, is an important matter wherein the Hon'ble High court of Gujarat has upheld the order of the learned Metropolitan Magistrate for investigation against all those responsible for filing of fake affidavits of the witnesses. It is further respectfully submitted that ordinarily, the Hon'ble Court do not interferes in matters relating to investigation.

37. That the applicant has worked as field co-ordinator with Citizen's Justice and Peace an NGO headed by Ms Teesta Setalvad. As a colleague of Ms. Setalvad the applicant was privy to the manner in which the Affidavits of witnesses were made and filed by her in various courts, for and on behalf of the riot victims. Having given up the job, the applicant saw no reason to further involve himself in the matter till allegations were leveled against him for fabricating affidavits. The

applicant approached the Trial Courts and spoken the truth. It is respectfully submitted that on account of speaking against her, the applicant is now being considered as an Anti-Muslim, working against the community and regularly started getting threats to his life. The petitioner herein has very carefully launched a false propaganda against the applicant, through her Magazine Communalism Combat, Articles on various web portals of CJP and in the Court Proceedings, that the applicant herein has developed close ties with Vishva Hindhu Parishad (VHP) and also receiving patronage from the active members of VHP. Because of this false propaganda in the Muslim Community, the applicant is not only treated as Anti-Muslim but he and his family has been almost cast out and facing social boycott by the community. This fact was duly reported to the concerned authorities.

38. That in view of the facts and circumstances stated herein above, it is most respectfully submitted that, it is in the interest of justice and the dignity of the Institution, that His Lordship may recuse himself from adjudicating the present matters, which creates a reasonable likelihood of bias. The facts enumerated herein above are alarming in content and the ramifications of the same are wide and pervasive. The proximate financial and other links of Ms. Shahrukh Alam, with institutions, bodies, NGOS and individuals related to the Gujarat riots and various litigations ensuing there from, by

their very nature require that His Lordship Hon'ble Mr. Justice Aftab Alam may decline to adjudicate the present case.

39. That the Applicant wishes to sum up the core of his contention arising from the speech and writing and other facts mentioned in the preceding paragraphs. The crux of the Decisions of the Supreme Court of India is mentioned in a judgment of the Kings Bench judgment in *The King v. Sussex Justices* reported in 1924 1 K.B 256

A criminal prosecution for dangerous driving in public had resulted in conviction of the accused. It was then learnt that the acting clerk to the Justices was a member of the firm of solicitors who were acting for one of the parties who had a conflicting interest in the proceeding. At the conclusion of the evidence the justices retire to consider their decision and the acting clerk retired with them in case they should desired to be advised on any technical point of law.

The validity of the conviction was challenged the justices sworn that they had come to the conclusion of guilt without consulting the clerk or listening to anything from him. The affidavit of the justices was believed to be true. In spite of this the conviction was quashed as it was improper for the acting clerk even to be present when they were considering their decision. It is this case which established this principle that "it is not merely of some importance but is of fundamental

importance that justice should not only be done but should be manifestly and undoubtedly be seen to be done.”

Lord Hewart. CJ went on to say " The question therefore is not whether in this case the deputy clerk made any observation or offered any criticism which he might not properly have made or offered; the question is whether he was so related to the case in its civil aspect as to be unfit to act as clerk to the justices in the criminal matter. The answer to that question depends not upon what actually was done but upon what might appear to be done. Nothing is to be done which creates even a suspicion that there has been an improper interference with the course of Justice”.

Every Court or Tribunal exercising judicial or quasi-judicial proceedings must be able to act judicially; and it is of the essence of a judicial decision and judicial administration that Judges should be able to act impartially, objectively and without bias. In such cases the test is not whether in fact a bias has affected the judgment; the test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a member of the Tribunal might have operated against him in the final decision of the Tribunal. It is in this sense that it is often said that justice must not only be done but must also appear to be done.

The above proposition is fully supported and settled by another constitutional bench judgment is settled by Manak Lal Vs Dr. Prem Chand Singhvi 1957 SCR 575.

The above proposition has been further reiterated by this Hon'ble Court in the matter of Rupa Ashok Hurra Vs Ashok Hurra reported in (2002) 4 S.C.388. This judgment is remarkable for quoting with approval and following the judgment of the House of Lords in the case of Ex parte Pinochet Ugarte. On 25.11.1998 the House of Lords by majority of 3:2 restored warrant of arrest of Senator Pinochet who was the Head of the State of Chile and was to stand trial in Spain for some alleged offences. It came to be known that Lord Hoffmann had links with Amnesty International which had become a party to the case. This was not disclosed by him at the time of the hearing of the case. On coming to know of that fact Mr. Pinochet sought reconsideration of the judgment of the House of Lords. The ground urged in support was appearance of bias and not actual bias. The House of Lords fully supported the finding of this Hon'ble Court in the case of Manak Lal Vs Dr. Prem Chand Singhvi judgment quoted above. The rule of appearance of bias is not confined to pecuniary interest in a case but even an intellectual and legitimate interest in promoting the philosophy of one of the parties supporting a particular cause in which the judge himself believed. The

House of Lords held that this automatically disqualified the judge from hearing the appeal and the petition of Mr. Pinochet was allowed and the matter referred to another bench of the House of Lords.

40. It is respectfully submitted that the Applicant is not alleging actual prejudice in the mind of the Hon'ble judge but what he contents is that the speech of his lordship and the writing/ interview of his daughter may have created a prejudice against the majority community. That hostility of the Petitioner is so intense that witnesses have been made to give false evidences to discredit the accused belonging to the majority community and several witnesses have admitted that they have given false evidence because of improper inducement and promises by the Petitioner. It is respectfully submitted that the applicant as any reasonable man may apprehend that the mind of his lordship may be prejudiced though ultimately it may turn out that in fact it is actually not correct.

41. That the present application is being preferred in the interest of justice

PRAYER

In view of the above submissions, the applicant, therefore, prays that –

A. This Hon'ble Court be graciously pleased to allow this application and may further be pleased to direct that

Special leave Petition (Cri) Nos. 6754-6756 with Criminal Misc. Petitions 18230-18231, 18233-18235, 18239-18241, 18242-18244 of 2011 may be listed before some other bench where His Lordship Hon'ble Justice Mr. Aftab Alam is not a member in the interest of justice; and/or

B. Pass any other appropriate order or orders, as this Hon'ble Court may deem fit and proper in the interest of justice.

AND FOR THIS ACT OF KINDNESS AND JUSTICE, THE APPLICANT SHALL AS IN DUTY BOUND FOR EVER PRAY.

FILED BY

(Dr. Sushil Balwada)
ADVOCATE FOR THE APPLICANT

Drawn on: 18.02.2013
Filed on: 19 .02.2013
New Delhi