



REPORT
OF THE
JUSTICE A.L.DAVE (RETD.) COMMISSION OF INQUIRY
(NALIYA INCIDENT)

**BUNGALOW NO.5, HIGH COURT JUDGES' BUNGALOWS, BODAKDEV,
AHMEDABAD-380054**

TABLE OF CONTENTS

Sr. No.	Particulars	Page Nos.
1	INTRODUCTION	1-25
2	PART-I	26-156
3	PART-II	157-171
4	CONCLUSION	172-179

as

INTRODUCTION

INTRODUCTION

1. An unhappy incident of gang rape of a young lady came to fore when the lady lodged FIR with Naliya Police Station of Kutch District bearing FIR No. 7 of 2017, dated 01-05-2017. The incident received media attention in amplitude. Political activists, social activists, NGOs had also highlighted the incident and an atmosphere was created that the Police is not investigating the case properly and the ruling party, because of involvement of its workers, is trying to hush up the case. A hue and cry was raised on the issue. The Government appointed a Commission of Inquiry for the Naliya incident under the Commission of Inquiry Act, 1952 (60 of 1952) and by Notification No. GK/15/2017 /COI/ 102017/ 49/A, dated 16-03-2017, Justice A.L.Dave, former Judge of High Court of



Gujarat came to be appointed as a Commission of Inquiry in the matter. The Notification reads as under:

"NOTIFICATION
Legal Department, Sachivalaya, Gandhinagar,
Dated the 16th March, 2017.

No.GK/15/2017/COI/102017/49/A: **WHEREAS**, a complaint in the incidents of rape, alleged to have been committed at various places, on a young woman of District Kutchchh, during the period from August, 2015 to November, 2016 came to be registered with Naliya Police Station, vide I.C.R. No. 03/2017, District Kutchchh on 25/01/2017 under Sections 354,376,355,328,343 and 120B of the Indian Penal Code.

AND WHEREAS there is a widespread demand from different sections of people, to look into various aspects of the said incidents of rape of a young woman of District Kutchchh.



AND WHEREAS the Government of Gujarat is of the opinion that it is necessary to appoint a Commission of Inquiry for the purpose of making an inquiry into the above the incidents, being the matter of definite public importance.

NOW, THEREFORE, in exercise of the powers conferred by Sections 3 of the Commission of Inquiry Act,1952 (60 of 1952), the Government of Gujarat hereby appoints a Commission of Inquiry consisting of Justice A.L. Dave, Former Judge of the High Court of Gujarat.

2. The terms of reference of the Commission shall be -

(1) to inquire into various aspects of the said incidents of rape of a young woman of District Kutchchh, during the period from August,2015 to November, 2016, identify the lapses, if any, on



the part of the police or any other authority or person that contributed to the occurrence and fix responsibility for the lapses and negligence on the part of the police or any other authority or person.

(2) to suggest measures to prevent recurrence of such incidents in future, particularly in the District of Kutchchh and generally in the whole State of Gujarat.

3. The Commission shall submit its report to the Government of Gujarat as soon as possible, but not later than three months from the date of its first sitting.

4. The Commission may, if it deems fit, make interim report to the Government of Gujarat before the said date of any of the matter mentioned in paragraph



5. The headquarters of the Commission shall be at Ahmedabad.

6. The Government of Gujarat is of the opinion that, having regard to the nature of inquiry to be made by Commission and other circumstances of the case, all the provisions of sub-section (2), sub-section (3), sub-section (4), and sub section(5) of section 5 of the said Commission of Inquiry Act, 1952 shall be made applicable to the Commission and the Government of Gujarat, in exercise of the powers conferred by sub-section (1) of the said Section 5, hereby directs that all the provisions of the said sub-section (2),(3),(4) and (5) of that section shall apply to the Commission.

By order and in the name of the Governor of Gujarat,

S/D.
(P.M.UNADKAT)
Deputy Secretary to Government,
Legal Department."



2. The Commission of Inquiry headed by Justice A.L.Dave after its appointment, to become functional needed; (1) premises suitable for functioning of the Commission, (2) staff, (3) infrastructure like furniture, computers, telephone connections, GSWAN connectivity etc.(4) appointment of Public Prosecutor (5) Government Notifications granting exemption from levy of Court Fees and granting exemption from stamp duty payable on affidavits that may be filed before the Commission and (6) authorisation of Officer for administering Oath to the witnesses who may propose to file affidavit before the Commission, at various places.

3. First help came in the above context in the form of appointment of Under Secretary Shri Dharmesh Modi on 18-07-2017, followed by appointments of Secretary to the Commission



Shri V.S.Dave (then District and Sessions Judge) on 14-08-2017 and Deputy Accountant Shri D.H.Modi on 15-09-2017. Further, the premises for the office of the Commission was identified, up dated and possession was handed over in the month of September, 2017.

Appointments of retired Government employees Mr.A.R.G.Nair (Personal Secretary), Mr. M.K.Rajpara (Personal Assistant), and Mr. P.U.Jani (Shirestedar) came to be made by Government on 14-08-2017, 06-11-2017, 14-08-2017 respectively. In the meantime, Government had sanctioned staff to be recruited by way of outsourcing. That exercise was undertaken and appointments came to be made of Data Entry Operators, Chopdar and Peons on 10-10-2017, 12-10-2017, 23-10-2017 and 06-03-2018.

3.1 The Commission was all set to proceed with the work by January,2018 but needed the Government Notifications/orders



granting exemption from the levy of Court Fees, authorisation of Officers to administer Oath to witnesses and granting exemption from stamp duty payable on affidavits. Such Notifications/orders came on 11-01-2018, 01-02-2018 and 17-02-2018 respectively.

3.2 In the meantime, Commission had requested Superintendent of Police, Kutch-Bhuj by communication dated 08-02-2018 to supply a set of Xerox copies of complete investigation papers of Naliya incident, including FIR, statements, etc., which was supplied to the Commission on 27-02-2018.

4. The Commission issued Notification on 19-02-2018 of having become functional and inviting persons to file their respective affidavits along with supporting documents in respect of Naliya



incident, in consonance with the Notification of appointment of Commission and points of reference therein. The last date of filing of such affidavit was notified to be 19-03-2018. The Notification was published by the Commission in widely circulated newspapers, that is, in Ahmedabad Edition of English daily Newspaper "Times of India" and in Gujarati daily newspapers "Gujarat Samachar" and "Divya Bhaskar". It was also published in Kutch Edition of daily English Newspaper "Times of India" and in Gujarati daily newspapers "Kutch Mitra", and "Sandesh".

4.1 The Notification reads as under:

**JUSTICE A.L. DAVE (RETIRED) COMMISSION OF
INQUIRY
NOTIFICATION**

Notification No.COI/Guj.Ahmedabad/31/2018

as.

1. Whereas by Notification No.GK/15/2017/COI/102017/49/A, dated 16-3-2017 issued by Legal Department, Government of Gujarat has appointed the Commission of Inquiry consisting of Mr.Justice A.L.Dave (Retired) as set out in the Notification to inquire into the incidents of rape, alleged to have been committed at various places, on a young woman of District Kutch, during the period from August, 2015 to November, 2016, and to identify the lapses, if any, on the part of the police or any other authority or person that contributed to the occurrence and fix responsibility for the lapses and negligence on the part of the police or any other authority or person.
2. And also to suggest measures to prevent recurrence of such incidents in future particularly in the District of Kutch and generally in the whole State of Gujarat.
3. Now, therefore, in exercise of the powers conferred on it under the Commission of Inquiry Act, 1952 the Commission hereby issues this Notification inviting the persons acquainted with the subject matter of the inquiry to furnish to the Commission a statement in writing as indicated in Para - 4 below relating to following matters:



4. (1)(a) The facts, circumstances and course of events that led to incident of rape of a young woman of District Kutch, during the period from August, 2015 to November, 2016.
- (b) The fact that the steps taken by the Police, in this regard are adequate or not.
- (c) To identify the lapses, if any, on the part of the police or any other authority or person that contributed to the occurrence.
- (d) To fix responsibility for the lapses and negligence on the part of the police or any other authority or person.
- (e) To suggest measures to prevent recurrence of such incidents in future, particularly in the District of Kutch and generally in the whole State of Gujarat.
- (f) Other suggestions which the person giving information to this Commission might like to make as would help this Commission on the subject matter of the Inquiry.
- (2). Every statement furnished to the Commission should be accompanied by the affidavit in respect of the facts set out in the statement, sworn by the person submitting the statement duly affirmed before the Notary Public or Executive or Judicial Magistrate or the Registrar of the City Civil Court,




Ahmedabad, Registrar of the District Court, Kutch at Bhuj or any Registrar of Taluka Court of District Kutch, who is specially authorized in this behalf. The affidavits should contain the complete postal addresses of the persons making the same. The affidavit to accompany the statement to be furnished to the Commission is exempted from the levy of the Court Fees as per Notification No. GK/01/IOCF/2017/UOR-207/H, dated 11/01/2018, issued by Government in Legal Department and also exempted from Stamp Duty as per Order No.GHM-2018-20-M-TPS-122017-2083-H-1, dated 17-02-2018, issued by Government in Revenue Department.

(3). Every person filing the statement before the Commission shall also file along with such statement a list of documents, if any, on which he proposes to rely and forward to the Commission wherever possible the original or the true copies of such documents as may be in his possession and power and state the name and address of the person from whom the remaining documents could be obtained.

(4). Every person filing the statement before the Commission shall file along with the statement three (3) spare copies of such statement as also the affidavit and the list of documents and the copies of the documents.

The statement aforesaid along with the affidavit, the list of documents and the documents or their copies and the spare



copies thereof may be delivered personally or sent by Registered Post to the Secretary to Justice A.L.Dave (Retired) Commission of Inquiry, Bungalow No.5, High Court Judges Bungalows, Bodakdev, Ahmedabad 380054, so as to reach him on or before 19-03-2018.

Ahmedabad
Date: 18/02/2018

Sd/-
(V.S.Dave)
Secretary
Commission of Inquiry

4.2 Since no one came forward to throw any light on the incident and on the investigation done by the Police in respect of the Naliya incident, the Commission deemed it proper to extend time upto 09-04-2018 and again a Notification was published on 18-03-2018 in Ahmedabad Edition of daily English Newspaper "Times of India" and in Gujarati daily newspaper "Sandesh" and "Divya Bhaskar". It was also published in Kutch Edition of daily English Newspaper "Times of India" and in Gujarati daily newspaper "Kutch Mitra".



4.2.1 The second Notification reads as under:

**Justice A.L.Dave Commission of Inquiry (Naliya incident),
5, High Court Judges'Bungalows,
Bodakdev, Ahmedabad-380054**

Notification No. COI/Guj.Ahmedabad/56/2018,

Whereas the last date for submission of statement in relation to the Naliya incident was fixed by the Commission to be 19th March, 2018, as per Notification No. __COI/Guj.Ahmedabad/31/2018, published in News Papers on 19th February, 2018.

And whereas the Commission deems it proper that people in know of facts get adequate opportunity to represent their case, time for filing such statement, supported by affidavit, be extended, hence this Notification.

as

The last date for submission of statement, supported by affidavit, before the Commission, stands extended to 09/04/2018.

All the conditions and requirements for submission of statement, as reflected in Notification No. COI/Guj.Ahmedabad/31/2018, published in News Papers on 19th February, 2018 will remain unchanged.

Place: Ahmedabad.
Date:16 /03/2018

Sd/-
(V.S.Dave)
Secretary

4.3 Again on second occasion also as there was no response, the Commission decided to extend the time upto 30-04-2018 by way of last opportunity and Notification came to be published on 09-04-2018 in Ahmedabad Edition of daily English Newspaper "Times of India" and in Gujarati daily newspapers "Gujarat Samachar" and



"Divya Bhaskar". It was also published in Kutch Edition of daily English Newspaper "Times of India" and in Gujarati daily newspapers "Gujarat Samachar", "Kutch Mitra" and "Sandesh".

4.3.1 The third Notification reads as under:

**Justice A.L.Dave Commission of Inquiry (Naliya incident),
5, High Court Judges' Bungalows,
Bodakdev, Ahmedabad-380054**

Notification No. COI/Guj.Ahmedabad/77/2018,

Whereas the last date for submission of statement in relation to the Naliya incident was fixed by the Commission to be 19th March, 2018, as per Notification No.COI/Guj.Ahmedabad/31/2018, published in News Papers on 19th February, 2018.

And whereas the Commission deemed it proper that people in know of facts get adequate opportunity to represent their case,



time for filing such statement, supported by affidavit, was extended, upto 9th April,2018.

And whereas the Commission still deems it proper that people in know of facts get adequate opportunity to represent their case, time for filing such statement, supported by affidavit, be extended, hence this further Notification.

As a last opportunity, the last date for submission of statement, supported by affidavit, before the Commission, stands extended to 30th April, 2018. A statement, not supported by affidavit, if tendered before the Commission, will not be entertained.



All the conditions and requirements for submission of statement, as reflected in Notification No. COI/Guj.Ahmedabad/31/2018, published in News Papers on 19th February, 2018 will remain unchanged.

Place: Ahmedabad.
Date:06/04/2018

Sd/-
(V.S.Dave)
Secretary

5. In response to the last notice, Ms.. Meenakshiben Pravinbhai Joshi and Dr. Jharnaben Kalindhibhai Pathak, members of Forum of Concerned Citizens for Naliya Incident ("Forum" for short) filed their affidavits with supporting documents on 09-04-2018.

5.1 On 30-04-2018, the Investigating Officer of the Naliya case - Mr. J.M.Aal, Police Inspector (LCB) Kutch-Bhuj filed his affidavit indicating the steps taken during investigation.



6. The Notification appointing the Commission expected the Commission to submit its final report within three months from the date of hearing, which was 19-03-2018. As could be seen from the above narration, the Commission was expected to submit its report latest by 18-06-2018. Since it was not possible to conclude the Commission's work and prepare and send a report before the stipulated date, a request was made to the Government to extend the time for submission of Report by six months, that is, by the end of December,2018. The Government, however, vide Legal Department Notification No. GK/22/2018/COI/102017/49/A, dated 05-06-2018 extended the time till 30-09-2018.

6.1 The Notification reads as under:

" NOTIFICATION
Legal Department
Sachivalaya, Gandhinagar
Dated the 5th June, 2018.



No. GK/22/2018/COI/102017/49/A: **WHEREAS**, the Government has under Government Notification, Legal Department No.GK/15/2017/COI/102017/49/A dated 16th March, 2017 appointed a Commission of Inquiry under Sections 3 of the Commission of Inquiry Act,1952 (60 of 1952) to inquire in to a complaint in the incidents of rape, alleged to have been committed at various places, on a young woman of District Kutchchh, during the period from August, 2015 to November, 2016 which came to be registered with Naliya Police Station, vide I.C.R. No. 03/2017, District Kutchchh on 25-01-2017 under Sections 354,376,365,328, 343 and 120B of the Indian Penal Code.

AND WHEREAS the Commission was required to complete the inquiry and submit its report to the Government of



Gujarat as soon as possible but not later than three months from the date of its first sitting;

AND WHEREAS the said Commission has requested the Government to extend its time limit upto 30th December, 2018 and the Government of Gujarat is of the opinion that the Commission should complete the inquiry and submit its report to the State Government on or before the 30th September, 2018;

NOW, THEREFORE, in exercise of the powers conferred by Sections 3 of the Commission of Inquiry Act, 1952 (60 of 1952), the Government of Gujarat hereby amends the Government Notification, Legal Department No. GK/15/2017/COI/102017/49/A dated 16th March, 2017 as follow a namely:-

In the said Notification, in paragraph 3, for words, figures and letters "as soon as possible, but not later than three months from



the date of its first sitting." the words, figures and letters "on or before the 30th September, 2018." shall be substituted.

By order and in the name of the Governor of Gujarat,

S/D.
(H.R.SHAH)
Deputy Secretary to Government,
Legal Department."

6.2 The Commission proceeded further with the work of receiving affidavits, offering the witnesses with the cross-examination, hearing parties, etc. Since the work could not have been completed by 30-09-2018, the Commission again requested the Government to extend the time for submission of Report by six months, that is, upto the end of March,2019. However, the Government by Notification of Legal Department No. GK/40/2018/COI/102017/49/A, dated 20-09-2018 extended time till 31-12-2018.



6.3 The Notification reads as under:

**"NOTIFICATION
Legal Department,
Sachivalaya, Gandhinagar,
Dated the 20th September, 2018.**

No. GK /40/ 2018/ COI / 102017 /49/A: **WHEREAS**, the Government has under Government Notification, legal Department No.GK/15/2017/COI/102017/49/A dated 16th March, 2017 appointed a Commission of Inquiry under Sections 3 of the Commission of Inquiry Act,1952 (60 of 1952) to inquire in to a complaint in the incidents of rape, alleged to have been committed at various places, on a young woman of District Kutchchh, during the period from August, 2015 to November, 2016 which came to be registered with Naliya Police Station, vide I.C.R. No. 03/2017, District Kutchchh on 25/01/2017 under Sections 354,376,365,328, 343 and 120B of the Indian Penal Code.



AND WHEREAS the Commission was required to complete the inquiry and submit its report on "as soon as possible but not later than three months from the date of its first sitting." as provided in the aforesaid Notification of 16th March, 2017 and thereafter within the time limit extended till on or before the 30th September, 2018 as provided in the subsequent Notifications;

AND WHEREAS the said Commission is not likely to complete the inquiry and submit its report into the said matter to the State Government till Now;

AND WHEREAS the said Commission has requested the Government to extend its time limit upto 31st March, 2019 and the Government of Gujarat is of the opinion that the Commission should complete the inquiry and submit its report to the State Government on or before the 31st December, 2018;



NOW, THEREFORE, in exercise of the powers conferred by Sections 3 of the Commission of Inquiry Act,1952 (60 of 1952), the Government of Gujarat hereby amends the Government Notification, Legal Department No. GK/15/2017/COI/102017/49/A dated 16th March, 2017 as follow a namely:-

In the said Notification, in paragraph 3, for words, figures and letters "on or before the 30th September,2018" the words, figures and letters "on or before the 31st December,2018." shall be substituted.

By order and in the name of the Governor of Gujarat,

S/D.
(C.H.SHAH)
Deputy Secretary to Government,
Legal Department."



PART-I

PART I

1. The terms of reference requires the Commission :

"(1) to inquire into various aspects of the said incidents of rape of a young woman of District Kutchch, during the period from August,2015 to November, 2016, identify the lapses, if any, on the part of the police or any other authority or person that contributed to the occurrence and fix responsibility for the lapses and negligence on the part of the police or any other authority or person.

(2) to suggest measures to prevent recurrence of such incidents in future, particularly in the District of Kutchch and generally in the whole State of Gujarat"



2. So far as the first part of the terms of reference is concerned,

it can be sub-divided as under:

- (i) Inquire into various aspects of the incidents of rape of a young woman of District Kutch during the period from August 2015 to November, 2016.
- (ii) Identify the lapses, if any, on the part of police or any other authority or person that contributed to the occurrence.
- (iii) Fix responsibility for the lapses and negligence on part of the police or any other authority or person.

3. To address these issues the Commission has before it

submissions made on behalf of Forum and depositions of :

- (a) Ms. Meenakshiben Pravinbhai Joshi
- (b) Dr. Jharnaben Kalindhibhai Pathak



- (c) Ms. Leelaben Ankoliya, Chairperson, State Women Commission
- (d) Mr. S.S.Trivedi, Inspector General of Police CID (Crime-2)
- (e) Mr. Ashish Bhatia, Director General of Police, CID (Crime and Railways)
- (f) Mr. J.M.Aal, Police Inspector, Naliya and Investigating officer of the incident.

3.1 The Commission also has before it the submissions made by learned advocates, copies of investigation papers, deposition of victim (**Exh.37**) before the Sessions Court, Bhuj in Sessions Case No.32 of 2017, and a set of papers and a CD submitted on behalf of the Forum..

3.2 So far as the second part of the terms of reference is concerned, the Commission deemed it proper to have a meeting



and discuss the aspects with independent and unbiased academicians, having expertise in various fields, like, Sociology, Psychology, Law, etc.

4. In the joint affidavit (**Exh.1**), sworn on 09-04-2018, it is stated by Ms. Meenakshiben Pravinbhai Joshi and Dr. Jharnaben Kalindhibhai Pathak, that Forum of Citizens for Naliya Incident was formed on 16-02-2017 and they are members of that Forum. They have stated that they are submitting the written submissions before Hon'ble Justice A.L.Dave (Retd.) Commission, with regard to the incident that took place at Naliya. They have declared that the averments contained in Page 1 to 6 of the written submissions, separately attached, are true and correct, according to their knowledge and belief.



5. In the written submissions, it is stated that the Citizens' Forum, concerned about the Naliya incident, welcomes the Notification and are hopeful that woman victim of the atrocity, will get justice. On behalf of the Forum, it is stated that they assure the Commission that they will co-operate so that the victims get justice. They are making the submissions on the basis of meetings with the victim, her father and mother, representatives of different groups and leading people. It is stated that, with shock, they are mentioning that they felt that the ordinary people of Kutchh are under fearful atmosphere and women and society were living in terror between February 2017 and March 2018 as was noticed by them during that period.

5.1 It is also stated that, more than sixteen years had passed after the horrible earthquake of 2001. Now, horrible political earthquake



repeated and the entire State was shaken up. On 25th January, the complaint of the victim was converted into an FIR, and when the details came out, for the first time on 10th February, some Women Organizations of Ahmedabad protested for justice for "Nirbhaya of Naliya".

5.2 Just as the further details of this incident started coming out through media, out of concern, one public rally was held on 16-02-2017. At the end of various discussions in the meeting, and learning from experience of Patan incident, all unanimously felt the need for a Citizens' Forum to take up the agitation for the entire cause. Therefore, on the same day the Citizens' Forum for Naliya Incident was formed. Reputed citizens, voluntary organizations, women's organization, leaders of Labour Unions, lawyers, writers and citizens joined the Forum.



5.3 It is further stated that, thereafter, the Forum took up wide spread agitation and conducted many programmes, the details of which are as under:

5.3.1 On 16-02-2017, members of Women's Organisations, Women Workers, Trade Unions, reputed citizens, etc. met at Ahmedabad like a public meeting and the Forum of Concerned Citizens for Naliya Incident was formed. At that time, the Forum took four following important decisions:

- (i) To write an open letter to the members of Legislative Assembly on the first day of Budget Session of the Gujarat Assembly and appeal to them to seek justice for the "Nirbhaya" of Naliya.
- (ii) To send a team for verification of Naliya incident.



- (iii) To give a Memorandum to the President of India, the Chief Justice of India and the Prime Minister for a speedy and independent investigation/inquiry.
- (iv) To organize a rally or other public programmes to oppose the incident on "International Women Day".

5.3.2 Following the above decisions, the Forum took following action:

- 1* An open letter was sent on 19th February, to Members of Legislative Assembly.
- 2* A team of Forum visited Naliya on 20th February, collected details from father and mother of the victim by meeting them personally for assessment of the situation.
- 3* On 27th February, memorandum of articles/representations was sent to the President of India, Chief Justice of



Supreme Court and Prime Minister and details regarding visit to Naliya were published through press conference.

- 4* As permission for rally and public meeting was not granted, in view of Notification by Police Commissioner, citizens meeting was held on 6th March, though such meeting was originally scheduled to be held on 8th March, the International Women's Day.
- 5* On 7th March, an appeal was made to all lady Sarpanchs of the country to raise their voice for justice to Naliya Nirbhaya.
- 6* On 8th March, the Forum participated in the group discussion organized by Bhuj-Kutch Women's Development Organisation, with regard to atrocity against women and also visited the victim girl at Kothara village.

- 7* Again visited the girl at Ahmedabad on 10th March.
- 8* On 16th March, a press conference was held at Ahmedabad by the Forum. Appointment of Justice Dave Commission for inquiry into Naliya incident was declared by State Government in the Legislative Assembly.
- 9* On 8th April, a meeting was held and it was decided to take out a rally on 22nd April.
- 10* On 10th April, Forum made submissions to the Mamlatdar, Naliya, Police Inspector, Bhuj District Collector, Police Superintendent and DSP, to get a copy of Notification regarding appointment of Justice Dave Commission.
- 11* On 10th April, a request letter was sent for permission to meet the first Lady DGP of Gujarat..



- 12* On 20th April, a representation was sent through mail to DGP, with a view to get justice in respect of Naliya and Mandvi incidents.
- 13* On 22nd April, State-wide convention of representatives and Press Conference was held.
- 14* On 2nd May,2017, a request for permission to meet His Excellency the Governor of Gujarat and DGP was made.
- 15* On 8th May, 2017, the members of the Forum met His Excellency the Governor of Gujarat and submitted a representation.
- 16* On 31st May,2017, a delegation of Forum personally met the Addl.DGP and submitted a representation.
- 17* On 13th June, Jivan Prabhat Bal Ashram, managed by Arya Samaj, Gandhidham was visited by the Forum for



checking the details about the missing children and girls of Jivan Prabhat Bal Ashram.

18* On 11th April, a request for the details regarding the Justice Dave Commission was made under Right to Information Act to the Chief Information Commissioner and Human Rights Commission and received reply on 28th July.

19* On 28th July, met different groups and people of Kutch.

20* On 5th September, 2017, through Registered Post A.D. , a letter was written to the Commission for a meeting. The same was returned with a remark "Not Known", on 13th September.

21* Six months was over on 18th September, 2017 after the publication of Notification, therefore, the State Government was asked through Press release "Whereis the



Commission?". It was also said that "Strong Gujarat", was also strong in exploitation of women and denial of justice to them.

22* On 6th February, 2018, the members of the Forum personally went to the office of the Commission, and asked for time to meet the Commission.

23* On 15th February, 2018, through Press Conference, the Government was asked "Where is the Commission" even after 11 months.

24* On 19th February, 2018, the Notification of the Commission was published.

25* On 20th March, the Forum also insisted that there should be representation from Kutch also, therefore, it met some acquaintances and groups there.



6. The Forum, on being asked by the Commission to make point wise submission, made following submissions:

(a) While inviting attention to the incidents of rape on young women of Kutch District, and the related facts, circumstances and incidents, during the period between August 2015 and November 2016, it is stated that at this time; when on behalf of the Forum, submissions are being made, one year is already over, since the lodging of FIR by the girl. The trend towards the women and the details of offences against them, are shocking., in the State and the Country. Generally, the dignity of the society is gauged by depending upon how it deals with women. As per the details of economic survey, which came out recently, about 2.1 crore girls are unwanted. About 6.3 crore girls are being aborted during pregnancy itself.



(b) Since 1971, there is an increase of 902 percent, in the offences against women, especially offences of rape and abduction, in the country. There were 472 cases of atrocity in the year 2016 and 479 cases in the year 2017, in the State. The sex ratio in Gujarat in the year 2014-16 is 1000 (men) : 848 (Women). Comparing with the ratio of sex of other States, this difference in the ratio is 63% higher. For speedy trial in cases of offences against women, Fast Track Courts have been allocated Rs. 400 crores for the State, as per the 14th Finance Commission Report, but still it is not implemented. As on January, 2017, there are 13,54,189 pending cases in respect of offences against women in the State.

(c) Just one or two days before, there were comments of the Hon'ble Supreme Court in the Newspapers regarding the slow progress in the police action by the State in the atrocity case against



Asharam, which has become the news of the Nation. The Forum has further noted that in the month of September 2016, a complaint was lodged by a sitting Scheduled Tribe Women member of BJP of Mandvi Taluka, against offences committed on her and the unsuccessful and disappointing nature of investigation by police (Annexed FIR).(Note: Factually such FIR is not annexed and is not on record of this Commission)

(d) The Kutchh incident would not have depicted a healthy and wholesome society, either in the State, or in the country before the world.

(e) After the earthquake in Kutch, industries came in huge numbers in rehabilitation centres, however, along with it no restrictions have come. Kutch district is difficult to access geographically, being a boarder District, having thin population and



adorning the conservative feudal values with patriarchal social life.

While visiting Kutch, many ladies sarcastically commented that "after making the road, the filth of the City has reached our village". On the other hand, the slogan of empowerment of women, was not connected with economic right and self employment. In other words, the empowerment of women cannot even walk on crutches.

(f) In other words, in the country as well as State, especially in Kutch, the Government and its machinery, failed completely, in taking adaptive steps in that direction. The country had seen a hysteria while fighting the honor of women in the case of "Nirbhaya" and the related recommendations of Justice Verma Committee, provisions of Criminal Law (Amendment) Act of 2013, provisions of Sexual Harassment of Women at Workplace



(Prevention, Prohibition and Redressal) Act, 2013, ("Sexual Harassment Act" for short), Nirbhaya Fund and One Stop Centers and other various Helplines for women protection could not make wide impact, which are being noted with much shock, annoyance and awe.

(g) In the process of globalization, in the entire world, the labourers in the unorganised sector are in majority and in India, about 94% of women are working in this sector and they have to face more discrimination.

(h) Therefore, the present incident and its circumstances are its basis.

6.1 The Forum offered following comments on whether the steps taken by the police, in this regard, are sufficient or not?



(a) Indian Police has an assumption that out of 10 cases of atrocity, only 4 cases are being registered. As per the Report by National Crime Research Bureau (2015), in our country, 50% of arrested accused are being acquitted, because of lack of necessary investigation by police and delay in collecting evidence.

(b) As per the information with the Forum, in connection with atrocity cases, the steps taken by Police are incomplete and are insufficient.

(1) The victim, gave her written complaint on 12th January, 2017 before Naliya Police Station. The same was converted into an FIR on 25th January, 2017. What is the reason for delay in registering the FIR? Therefore, the Forum felt that the performance of the concerned PI, Naliya is suspicious in nature and anti-women and helpful to the accused.



(2) The victim, gave a copy of the complaint to District Superintendent of Police, Bhuj and at the office of Deputy Inspector General. It was Inwarded on 18-01-2017. Still, why this much time was taken in registering the FIR? It is quite natural that question may arise regarding the efficiency of In-charge DSP and In-charge DIG.

(3) Even after five days of registering the FIR, not a single accused (though all the accused are of Kutch District) is arrested, therefore, also the steps taken by police are capable of creating doubt.

(4) After registering the FIR, two times Police made reports to the learned Magistrate for adding different Sections, which shows lack of seriousness in the functioning of Police.

(5) The absence of Senior Lady Police Officer in the Special Investigation Team (SIT) constituted by the Office of District Police Superintendent, will catch the eye of everyone.



(6) Even at the time of including additional members in the Investigation Team, there was absence of Lady Police Officer in it, which will also catch the eye of everyone.

(7) On 4th March and 8th March, 2017, through Fax, the members of the Forum requested the District Police Superintendent to grant permission for personal meeting. However, no written reply was given. Even during telephonic talk, a insensitive attitude towards the entire incident was found.

(8) Even after CID, Crime (Gandhinagar) was constituted to look after the merit and progress of the investigation, it appears that no solid inquiry was held about the involvement of 35 to 40 women and 65 accused, as per the FIR.

(9) The following is as per the say of the complainant:



1* Her medical examination was conducted in absence of lady Medical Officer.

2* Moreover, by going against the norms of procedure, in the absence of the representatives of the Voluntary Women Organization, her statements were recorded.

3* Asking many Indecent and shameful questions, during recording of her statement, resulted in adding further shock to her.

4* Senior Police Officers, offered big money and various facilities to her.

5* Police were repeatedly telling her to write what they say, and threatened that they cannot write what she says.

6.2 In short, all the steps taken by the entire police machinery, are insufficient and looks like somewhere the judicial process is obstructed.



(A) If any error is committed either by Police or other authority or any other person, he may be removed.

(1) The first error is of Government. The declaration regarding appointment of Naliya Inquiry Commission was made in the Legislative Assembly, on 16th March, 2017. However, after 11 months and 3 days, the advertisement was published in News papers, regarding the working of Commission and submissions to be filed before it (19th February, 2018)

(2) The second error. Though the girl made her first complaint to the elected member of the Parliament, he being the representative of the people, failed in performing his duties and in giving justice to the girl.

(3) The Third error. Concerned opposition leader of the Legislative Assembly, who instead of giving the CD regarding the



proof of offence to the Chief Justice of High Court, gave it to Deputy Chief Minister and thereby caused injury to the self respect of women of the State.

(4) Fourth error. Concerned Deputy Chief Minister, kept with him the CD , which was handed over to him by the concerned opposition leader, instead of submitting it to the Hon'ble High Court.

6.3 To decide the responsibility with regard to any error or carelessness committed by the Police or any other authority or any person.

(1) To fix the responsibility of concerned President of B.J.P. of Kutch District who published the identity, photo and name of the complainant and to give punishment under Section 228 (C) of IPC.



(2) To fix the responsibility of concerned M.L.A. for identifying the girl with burning wood and to give punishment for the same.

(3) To fix the responsibility of Chief Officer of Nagarpalika, Gandhidham, in respect of criminal negligence committed and softness shown during the process of disqualifying the two accused, who are elected members, from the membership of Nagarpalika and to give punishment.

(4) The concerned Kutch District Collector, had not taken steps in respect of the error committed in the performance of duty by the Chief Officer of Gandhidham Nagarpalika and further, the Office of Kutch District Collector had committed delay in taking action under the provisions of Sexual Harassment Act, 2013.

(5) The Kutch Ladayak Manch, published advertisements in different Newspapers of Kutch, and assassinated the character of



complainant, declaring the accused not guilty, by assuming itself to be a Court.

(6) Members of State Women Commission, National Women Commission and National Human Rights Commission have not visited the place of offence and collected reports, and the process of justice was not made quick. There was also absence of public information about the work of above Commissions.

6.4 To suggest measures to prevent recurrence of such incidents in future, particularly in the District of Kutch and generally in the Gujarat State.

A Short Term:

(1) Firstly, to create atmosphere so as to enable 35 to 40 women, except the complainant, who are the victims of exploitation and outrage, to come forward for filing complaint, without fear of social



or political pressure, and to hold the hearing by the Commission at Kutch.

(2) In this connection, to collect the CD from the leader of Opposition and Deputy Chief Minister.

(3) At first, it is necessary and unavoidable that the police should take seriously the complaint filed by women and it should be registered first by it and should give importance to it. In this connection, it is necessary to keep in mind the judgment of Hon'ble Supreme Court in the case of Lalitakumari v. Uttar Pradesh.

(4) To establish "One Stope Centre" from the Nirbhaya Fund, in every District.

(5) As a special case, to give relief of Rs.10 lacs to the complainant immediately.



(6) To eliminate such offences, it is necessary to create a requisite atmosphere by the Government, and Create Public Watch Dog Committees, in consultation with citizens, workers, Women Organisations and voluntary Organisations, with no interference of Government.

(7) Bring immediate prohibition on advertisements, TV serials, Films, Sites, SMS, MMS, Facebook and WhatsApp chatting etc. which caused injury to self respect of women and portrays body of women as chattel.

(8) Provide employment to women to empower them in true spirit.

(9) Active implementation of provisions of Sexual Harassment Act, 2013 in School and College premises and at Working places of women.



(10) Every month the office of District Collector should obtain an Action Taken Report (ATR) in relation to implementation of Sexual Harassment Act, 2013 and it should be published.

(11) State Election Commission should disqualify every elected member, starting from Panchayat to Legislative Assembly, who is accused of committing exploitation of women.

B Long Term:

(1) Establish an omnibus policy for rehabilitation of all victims of sexual harassment, in the State.

(2) Introduce a subject in the curriculum of Schools and Colleges on the subject of prevention of discrimination against women, and outrage and exploitation of them.



(3) State Government should seriously Implement the recommendations of Justice Verma Committee constituted after the "Nirbhaya Incident".

6.5 Other Suggestions:

(1) Looking to the news items published in the media in Kutch District, by making personal visit, more details can be collected.

(2) Information can be collected from those who have made submissions at the relevant time, as well by holding Press Conferences. Assistance can be taken from Press cuttings of local media, annexed herewith

(3) Implementation of approach envisaged in the recommendations of Justice Verma Committee Report (To complete the circle from the stage of complaint till completion of trial)



(4) As per the above recommendations, make necessary changes immediately in the Police Department of the State.

6.6 On 5th April, they have applied for certified copies of charge-sheet and other relevant documents before the learned Sessions Court, Bhuj-Kutch. After the study of the above documents, they may make further submissions in the event of finding any other extra error committed during the police investigation. (The relevant receipts are annexed herewith)

It is further averred that their right to make, interim submissions, may be reserved.

7. The Commission recorded the statement of Ms.Meenakshiben Joshi on 16-05-2018. She has stated that she received the copies of police papers on 2-5-2018. She wants to study the same. She has also stated that she is not associated with legal



fraternity and, therefore, she wanted to take help of an Advocate.

She requested for time to make submissions by way of an application. Mr. Chetan Shah did not object to such request.

Therefore, time was granted.

7.1 She has further stated that after obtaining legal advice she will decide as to whether witnesses are to be examined, or not, and, if so, how many. She has further stated that she had visited Naliya-Bhuj on different dates and she felt that nobody wants to discuss about this incident. She has submitted that she will submit the details of witnesses, if any, to be examined, before the Commission, within one week. Mr. Chetan Shah, Special Public Prosecutor and Mr. J.M.Aal, the Inquiry Officer also requested for time of one week.



8. On 24-05-2018 an application (**Exh.4**) was submitted by Meenakshiben and Dr.Jharnaben, stating that they want to appoint Mr. Rahul Sharma, as advocate, on behalf of the Forum of Concerned Citizens for Naliya Incident. Further they have stated that on behalf of Forum, they want to call all the members of Special Investigation Team for cross-examination. It will be in the interest of justice if cross-examination of the members of SIT, by advocate, before the Commission is done, after the recording of their evidence by the Trial Court.

8.1 Application Exh.4 was made by the Forum declaring that they propose to examine all the SIT members before the Commission. At the same time, requested that, that examination may be deferred till the trial before the Criminal Court is over. Application **Exh.7** was



tendered by the Forum elaborating the facts stated in Exh.4 and making following prayers:

"A. Allow this application

B. Issue summons to the Superintendent of Police, Kutch West District to produce a list of officers associated with the SIT or who may have been involved with the investigation of the case including those officers who had investigated the case before the creation of the aforesaid SIT and further direct him to provide a copy of their Weekly Diaries to this Hon'ble Commission as well as the applicant herein.

C. Issue appropriate orders directing that the witnesses sought to be examined by the applicant or the State be examined after the closure of evidence in this case.



D. Any other order that may be deemed fit in the interest of justice."

8.2 The applications were replied to by Special Public Prosecutor Mr. Chetan Shah at **Exh.9** contending as under:

8.2.1 The Forum who has filed the application before the Hon'ble Justice A.L.Dave (Retd.) Commission must declare the facts known to it. It is to be mentioned that the Government has appointed Justice A.L.Dave (Retd.) Commission of Inquiry and a Notification in this regard was published, vide Notification No.COI/Guj./Ahmedabad / 31/ 2018. The essence of the Notification is that the person or organisation coming before the Commission has to make submissions itself.

8.2.2 It is clear from the application that the Forum itself has no facts to disclose out of its own knowledge about the incident, nor



does the Forum propose to examine any witness. Therefore, both the above applications submitted on behalf of the Organisation, may be rejected, in the larger interest of the society.

8.2.3 The application dated 12-06-2018, is filed by suppressing true facts, with ulterior motive. Moreover, the present advocate of Citizens' Forum has earlier made submissions during the trial of different cases before Nanavati Commission and K.G.Shah Commission. According to the provisions of Section 6 of the Act also, it is clear that the present application is filed with ulterior motive.

8.2.4 That there is no dispute with regard to the averments made in Paras Nos.1 to 8 of the application dated 12-06-2018 submitted by the Forum.



8.2.5 That according to the provisions of the Commission of Inquiry Act, the Forum making application itself had to state the facts known to it and had to take steps as per the Notification.

8.2.6 That in view of Section 6 of the Commission of Inquiry Act, 1952, all the facts mentioned in this Para are not sustainable.

8.2.7 It is contended that the prayers made by the Forum before the Commission, are not grantable.

8.3 Both Mr.Sharma and Mr.Shah submitted orally on lines of their application and reply to it respectively. Additionally, Mr. Sharma relied upon the judgment of the Supreme Court in the case of **Kehar Singh v. State (Delhi Administration)**, reported in (1988) 3 SCC 609.



8.3.1 The Commission after considering rival submissions and judicial precedents passed an order on 22-06-2018 rejecting the prayers by reasoned order holding that no prejudice is likely to be caused if the Commission proceeds with recording of evidence before the trial is over, since the scope and area of operation of a Criminal Court and the Commission are different.

9. On 24-06-2018 an application (**Exh.10**) was moved by the learned advocate for the Forum to summon Mr. Ashish Bhatia, Director General of Police, CID (Crime and Railways), Mr. S.S.Trivedi, Inspector General of Police, CID (Crime-2) and Ms.Leelaben Ankoliya, Chairperson, State Women Commission as witnesses.

10. Witness Meenakshiben Pravinbhai Joshi came to be cross-examined on 13-07-2018 in respect of her affidavit Exh.1, jointly sworn with Dr.Jharnaben Pathak. In her cross-examination to



Special Public Prosecutor, she has stated that she is not sure as to the number of members of the Forum. She stated voluntarily that about a hundred persons had gathered in the first meeting of the Forum. She stated that all were unanimous that the issue should be taken up by some NGO and that it should function under the name of "Citizens' Forum". This Forum is an informal Institution/ Organization. No Resolution was passed in the first meeting authorizing them to pursue the issue. She admitted that papers accompanying her affidavit do not disclose the names of members of the Forum. She also admitted that she has stated nothing about the Naliya incident on oath. She has stated that they have proceeded on media report as a public body since they are not directly involved with the victim of Naliya incident. She admitted that none of the documents produced along with her affidavit are



original or certified true copy or true copy. She stated that she has applied for certified copies on 5th April to the Sessions Court at Bhuj which she had not received till 30th April. Thereafter, they have been produced before the Commission by their advocate. She admitted that she has not met any of the accused. She also admitted that she had no personal knowledge about the Naliya incident but she had met the victim and she had disclosed certain facts. They had met her on 20-02-2017 at Kothara. At that time they have also met her parents. She stated that she had not recorded statement of either the victim or her parents. She stated that they did not do so out of sympathy as they were in trauma. She states that she has not stated these aspects anywhere else nor has she made any note thereof. She has stated that she had stated about the version of the victim on page 4 of her representation dated 9-4-2018 submitted



along with her affidavit to the Commission. She has stated that they have not initiated any Court action on the basis of what was disclosed by the victim. She has stated that she met the victim last in September 2017 while she was proceeding from Kutch to Mumbai and she had visited her at Ahmedabad. At that time also she was in trauma. She has stated that she felt that the victim was in trauma because the victim avoided talking about the incident. She does not know whether the victim had again gone to Kutch from Mumbai but she had read in the newspapers that she (victim) had deposed before the trial Court. She has not met the victim after September 2017 but had telephonic talk with her when she asked for the phone number of the Special Prosecutor which the witness states that she gave. She has stated that she learnt through media that the deposition of the victim had started. But at that time, neither herself



nor any body else on behalf of the Forum contacted the victim or tried to lend support to the victim. She had stated that they had contacted the lady advocate of Kutch Mahila Vikas Sangathan requesting to lend support to the victim and, if need be, the Forum will be able to provide assistance of advocate, etc. The learned advocate for Kutch Mahila Vikas Sangathan had met the victim and had talked to her husband on his telephone and had conveyed the feelings of the Forum but there was no response from either the victim or her husband. The witness stated that she does not know the present status of the criminal trial. The witness admitted that the Superintendent of Police, Kutch had constituted Special Investigation Team(SIT) and the names of the members have been brought on record of this Commission which include names of two lady Officers. The witness stated that Forum has not made any



representation against the investigation or the charge-sheet filed by them as the main aim of the Forum was to have an Inquiry Commission established, so that proceedings may be initiated against 65 accused persons and in favour of 35 lady victims. Witness admitted that she has not produced any identification details in respect of 35 victims referred to in her papers produced before this Commission. She stated that attempt was made by the Forum to get the names of this 35 victims but nobody has made any disclosure in then prevailing circumstances. According to her, this was because of the delay. She stated that the Forum has not initiated any proceedings for the delay caused in investigation and trial. However, representations have been addressed to the Hon'ble Governor and Director General of Police. The witness stated that she is aware about the fact that if representations do not yield



result, appropriate proceedings can be initiated before a competent judicial court. She stated that the Forum refrained from doing so because of financial constraints. Witness stated that she is involved in social activities for last ten years. She is aware about the free Legal Aid Scheme. She stated that advocates working with them are involved in such activities and they had opined that proper assistance would not be available under the Scheme of free Legal Aid. She stated that she had utmost faith in the Hon'ble Judges of the High Court. She states that she does not want to disclose the identity of that lady advocate as that was an informal talk. She states that one Hon'ble High Court Judge is the Executive Chairman of the Gujarat State Legal Services Authority and that she has never contacted the said Legal Services Authority. She denied the



suggestion that she has appeared before the Commission only to bring fame to the Forum.

11. Witness Dr.Jharnaben K.Pathak came to be cross-examined on 13-07-2018. In her cross-examination to Special Public Prosecutor Mr. Chetan Shah she has stated that she is connected with social organizations for about 15 years but is active for last about four years. She stated that she is aware that in cases relating to atrocities or injustice to women, legal aid is available. She admitted that her organization has not taken any action in respect of Naliya incident. She stated that her Organization had obtained legal expert's opinion. By her "organization" she meant the Forum. She volunteered to state that researchers, legal experts and activists group are involved in the Forum and, therefore, the Forum keeps on getting legal opinion. She stated that it is true that in the instant



incident they did not get any opinion for initiating legal proceedings.

She stated that according to her, this happened because the victim did not approach her organization and the main aim of the organization was securing gender justice.

11.1 In reply to the question put to her by the Commission she replied that her Organization is not a registered Organization. She stated further that she and Meenakshiben had collectively convened the meeting of people concerned with Naliya incident. The said Forum had not passed any Resolution authorising her or Meenakshiben to initiate any proceedings or to take any action in respect of Naliya incident.

12. The Commission issued Summons to Mr. Ashish Bhatia, Director General of Police CID (Crime and Railways), Mr. S.S.Trivedi, Inspector General of Police, Crime-II, CID (Crime) and Ms.Leelaben



Ankoliya, Chairperson, State Women Commission to appear before the Commission on 24-07-2018, 26-07-2018 and 31-07-2018 respectively. Director General of Police CID (Crime and Railways), expressed his inability to appear before the Commission on 24-07-2018 and, therefore, his deposition was posted on 07-08-2018. Similarly, Inspector General of Police, Crime-II, CID (Crime), also expressed his inability to appear on 26-07-2018 and, therefore, his deposition was also posted on 07-08-2018 and Summons were issued to them accordingly. These two witnesses were also asked to bring with them copies of supervisory directions, if any, as requested by learned advocate Mr. Rahul Sharma, appearing for the Forum.

12.1 On 07-08-2018, Mr. Ashish Bhatia, Director General of Police CID (Crime and Railways) and Mr. S.S.Trivedi, Inspector General of



Police, Crime-II, CID (Crime) appeared before the Commission and filed their affidavits sworn before Notary. The Forum vide application Exh.23 prayed for time to enable them to study the affidavits sworn by these Officers and the documents submitted by them before the Commission. The matter came to be adjourned to 14-08-2018.

13. Mr. Ashish Bhatia, Director General of Police CID (Crime and Railways) in his affidavit in lieu of examination-in-chief Exh.21 has stated that while he was working as Addl. Director General of Police, CID Crime & Railways, Gujarat State, Gandhinagar, in the year 2017, the Director General of Police and Inspector General of Police vide letter No. G-1/CRIME/Te-1/1188/2017, dated 18-02-2017, directed him to review the procedure adopted, till then, in relation to Crime Register No.F.I.R.No.03/2017 for offences



punishable under Sections 376, 328, 342, 365, 120(B) registered at Naliya Police Station, Kutch-Bhuj and to make sure that the entire inquiry is in right direction and faultless. Till the disposal of the case, he was also told to personally supervise the progress and investigation. Vide Order No.Te-2E/Naliya F.3-17/99/2017, dated 18-02-2017, a team consisting of Director General of Police, Crime-2 and other Officers was constituted. A copy of the said order was annexed with the affidavit.

(a) On 18-02-2017, he called the concerned Investigating Officer and obtained information regarding the progress in the investigation and after necessary discussion and deliberation, gave oral instructions to the concerned Investigating Officer, at the relevant point of time.



(b) He has further deposed that vide letter No.T-1A/NALIYA INCIDENT/Spl.P.P./701/2017, dated 30-10-2017, a proposal to appoint Mr. K.C.Goswami, District Government Pleader, Bhuj as Special Public Prosecutor was sent to Secretary, Legal Department, Gujarat State, Gandhinagar and again, on 01-03-2018, another proposal has been sent, in this regard. Copies of both the proposals are annexed with the affidavit.

(c) Besides, in respect of the investigation into the crime, frequently necessary oral instructions and suggestions were given to Investigating Officer and Inspector General of Police (Crime-2).

(d) He has stated that what is stated above is based on documents, prepared on the basis of documents available with him.

13.1 He came to be cross-examined on 14-08-2018 by learned advocate Mr. Rahul Sharma for the Forum. In his cross-examination



he has stated that while constituting the Special Investigation Team, by order dated 18-02-2017, a direction was given to make a report on action taken, in writing and orally every week. He stated that he did not receive such report every week, but he did receive progress reports.

13.2 He has further stated that he had received a proposal to appoint Mr. K.C.Goswami as Special Public Prosecutor in the matter from Superintendent of Police, Kutch which he had forwarded to the Legal Department and Home Department. Mr. Goswami is the Senior Advocate from Kutch-Bhuj and has been Public Prosecutor and Government Pleader and, therefore, he had occasion to meet him. Therefore, he also felt that the proposal is proper and, therefore, he had forwarded the proposal. No separate proceedings were undertaken.



13.3 In re-examination to learned Special Public Prosecutor Mr. Chetan Shah the witness stated that the procedure for appointment of Special Public Prosecutor was in accordance with the legal provisions.

14. Mr. S.S.Trivedi, Inspector General of Police CID (Crime-2) has stated in his affidavit Exh.22 sworn on 06-08-2018 before Notary that, in the year 2017, while he was working as Director General of Police, CID (Crime-II),Gujarat State, Gandhinagar, he was directed by written order No.Te-2E/Naliya F.3-17/99/2017, dated 18-02-2017, addressed by Mr. Ashish Bhatia, Addl. Director General of Police, CID Crime & Railways, Gujarat State, Gandhinagar to monitor the incident in question, in relation to Crime Register No.F.I.R.No.03/2017 for offences punishable under Sections 376,



328, 342, 365, 120(B) registered at Naliya Police Station, Kutch-Bhuj.

Copy of the written order was annexed.

A By way of monitoring the investigation, he had given different suggestions and directions. The copies of such suggestions/directions are also annexed .

(a) On 18-02-2017, the Inquiry Officer Mr. J.M.Aal, Police Inspector, LCB, Kutch-Bhuj was called to come with the original case papers and he became aware of the facts of investigation. He has stated that he held meetings with Mr. Ashish Bhatia, Addl. Director General of Police, CID Crime & Railways and necessary discussions and deliberations took place and he gave oral instructions to the Investigating Officer at the relevant point of time.



(b) Office Letter No: - Table-2E/Naliya 3/17/103/2017 dated
20/02/2017

(c) Office Letter No: - Table-2E/Naliya 3/17/105/2017 dated
21/02/2017

(d) Office Letter No: - Table-2E/Naliya 3/17/65/2017 dated
22/02/2017

(e) Office Letter No: - Table-2E/Naliya 3/17/145/2017 dated
08/03/2017

(f) Office Letter No: - Table-2E/Naliya 3/17/160/2017 dated
15/03/2017

(g) Office Letter No: - Table-2E/Naliya 3/17/185/2017 dated
21/03/2017

(h) Office Letter No: - Table-2E/Naliya 3/17/247/2017 dated
11/04/2017



(By this letter the Police Superintendent was directed to make recommendation to appoint Special Public Prosecutor in the case)

(i) Office Letter No: - Table-2E/Naliya 3/17/249/2017 dated 12/04/2017

(j) Office Letter No: - Table-2E/Naliya 3/17/266/2017 dated 15/04/2017

(k) Office Letter No: - Table-2E/Naliya 3/17/169/2017 dated 18/04/2017

(l) Office Letter No: - Table-2E/Naliya 3/17/309/2017 dated 29/04/2017

(m) Office Letter No: - IGP/Crime-2/Naliya 3/17/189/2017 dated 02/05/2017



(n) Office Letter No: - IGP/Crime-2/Naliya 3/17/215/2017 dated
16/05/2017

(o) Office Letter No:- Table-2E/Naliya 3/17/SPP/625/2017
dated 21/09/2017

B Further, they visited the places mentioned by the victim on
16th,17th and 18th March,2017, where the offences were alleged
to have been committed, as under:

(1) Bhuj Lohana Samaj Bhavan

(2) Hotel Royal Palace, Madhapar, Bhuj

(3) Nakhtrana Hotel Fun & Food

(4) Naliya White Bungalow

(5) Office of Bharat Gas Agency, Naliya

(6) Shop of accused Vinod alias Baba Sheth at Naliya

(7) Hotel Holiday Village Resort, Gandhidham



C He has stated that he held meeting with the Investigating team consisting of Police Superintendent, Bhuj and Inquiry Officer of the Inquiry Team and made necessary suggestions. He had given instructions to send the charge-sheet against all the arrested accused, to the Court of law.

D He has further stated that, thereafter, on being transferred, he was relieved on 05-10-2017 from CID (Crime), and reported at Costal Security.

E He has stated that what is stated above is based on documents, and prepared on the basis of documents available with him.

14.1 During cross-examination to learned advocate Mr. Rahul Sharma appearing on behalf of the Forum, he stated that he had given instructions by a Confidential Letter dated 20-02-2017 to the



Superintendent of Police kutch-Bhuj(West) to get prepared a sketch of Vipul Thakkar and Payal. He can not say as to what happened pursuant to that direction. He states that in such cases, the sketches are prepared and are given wide publicity but he can not say whether that had happened in the present case. He stated further that he can not say if a revision was preferred before the Sessions Court pursuant to instructions given in letter dated 21-03-2017. He states further that he cannot say at present as to what was done to the directions given by him by various letters while monitoring the investigation. He stated that whatever action was taken by him has been stated in the affidavit sworn by him.

14.2 In reply to question by the Commission he stated that it did not come across any lacuna or lapses in the investigation and gave instructions to any subordinate Officer.



15. Ms.Leelaben Ankoliya, Chairperson of State Women Commission was summoned as a witness by this Commission. In that context a communication was received from the Member Secretary of the State Women Commission stating that Chairperson enjoys the status of a State level Minister of the State and is a Constitutional functionary. As per Section 14(b) of Gujarat State Commission for Women Act,2002, the Women Commission is required to tender its report to the State Government and, therefore, the Women Commission is required to send its report to the State Government only. The letter also referred to provisions of the said Act providing protection of action taken in good faith by Chairperson or any member or any officer or other employee of the Commission or any person acting under the direction either of the State Government or of the Commission. The letter states further



that the Women Commission has not made any inquiry into the Naliya episode but only the spot visit was made and a meeting was held with the victim and her family members in respect of which a report is made to the State Government. This letter further went on to request to reconsider the summoning of the Chairperson of the Women Commission.

15.1 The above request was opposed to by learned advocate Mr. Rahul Sharma for the Forum by filing a reply at **Exh.27** stating that the Chairperson or members of the Women Commission do not enjoy any privilege by way of exemption from appearing before the Commission of Inquiry.

15.1.1 Learned Special Public Prosecutor Mr. Chetan Shah in his submission **Exh.28** has stated that according to him in light of what is disclosed in the Communication from the Member Secretary,



there is no need to examine the Chairperson of the Women Commission.

15.2 After hearing learned advocates, this Commission passed order on 05-09-2018 directing its Registry to issue summons to the Chairperson of the State Women Commission requiring her to appear before the Commission on 19th September, 2018 at 2.30 PM.

15.3 A request was made by the learned advocate Mr. Rahul Sharma to summon the witness with a direction to come along with its report made to the State Government on Naliya incident. That request, however, was rejected by this Commission by that very order dated 05-09-2018 passed below Exh.24.

15.4 As stated above, the Chairperson of the Women Commission Ms.Leelaben, wife of Babubhai Parshottambhai Ankoliya was



summoned to appear before the Commission on 19-09-2018 at 2.30 PM and accordingly she appeared before the Commission along with an affidavit sworn by her before a Notary Public stating *inter alia* that :

(a) She is the Chairperson of the State Commission for Women, Gujarat State. She stated that she had taken action in connection with the said incident that fell under her jurisdiction. She had met the victim and her family and had acquainted herself about the incident. Thereafter, she had convened a joint meeting with the then D.S.P. and Collector, Kutch-Bhuj at Circuit House at Bhuj and had obtained required information and had issued instructions. She stated that she has tendered a report to the State Government in this regard and that the said report is confidential and is not required to be made public. She has stated that in the present case,



she has not collected any investigation papers and had not acquainted herself with them and she has no personal knowledge about the same.

15.5 The witness came to be cross-examined by Meenakshiben of the Forum. During her cross-examination she has stated that she had visited Naliya on 10-02-2017 and 11-02-2017. First she went to the Circuit House. This visit was arranged by her on the basis of news report on television. After reaching Naliya, she learnt that the incident occurred in the office of P.G.V.C.L. and, therefore, they went there where number of villagers had assembled which included two-three ladies, as well. She learnt later on that they were spouses of the accused. Those ladies had stated to her that victim is not from Naliya and she had never been seen in Naliya earlier.



15.6 The witness stated that on 10-02-2017 they went to Kothara and met the parents of the victim, but not the victim. They solaced the parents. It is stated that on 10th February evening after reaching Circuit House at Bhuj she had called DSP and Collector of Kutch and had impressed upon them to ensure that the victim gets justice. The witness stated that she had expressed her desire to meet the victim. She does not remember if by then, the accused were arrested or not. Officers had however assured her that they were working in right direction.

15.7 The witness stated that pursuant to the instructions given by her to DSP and Collector, she had a meeting with the victim on 11-02-2017 which lasted for about ten minutes. The witness stated that she solaced the victim and had told her not to worry and to let the witness know if she had any difficulty. The victim told her that



Police is giving good cooperation and there is no difficulty faced from the police. The witness stated that when she met the victim, no one else was present in the room and that the lady PSI was present outside the room.

16. Investigating Officer Mr. J.M.Aal has filed his affidavit in lieu of examination-in chief at Exh.2 stating *inter alia* that :

16.1 He has stated that he was appointed as Chief of Special Investigation Team vide letter dated 29-01-2017 addressed by Superintendent of Police, Kutch-Bhuj (West) in connection with FIR No.3 of 2017 for the offences punishable under Sections 376,328,342, 365 and 120B of IPC. Ms. R.J.Sisodiya Lady Police Sub Inspector, Parole Furlough Squad, Bhuj and Ms. P.K. Tabiyar, Lady Police Sub Inspector, Ladies Police Station, were appointed as Team Members.



16.2 On being appointed as Chief of Investigation Team, on 29-01-2017 he collected all the case papers relating to above offences from Mr. D.M.Zala, Police Sub-Inspector, Naliya Police Station. After intensive study of the case papers, he started an impartial and thorough inquiry, bereft of political pressure or influence of any kind. He conducted the inquiry in such a way that the accused should get punishment for his crime and complainant should get full justice. He made full attempt to nab all the accused involved in the offence. All the accused involved in the offences were arrested and sent to Jail and initiated all legal actions against them. A final charge-sheet, as per Section 173 of Cr.P.C., was filed before the concerned Court.

16.3 After taking charge and collecting all relevant case papers from Mr. D.M.Zala, Police Sub-Inspector, Naliya Police Station in



connection with FIR No.3 of 2017 for the offences punishable under Sections 376,328,342, 365 and 120B of IPC., he fully studied following documents;

- (i) Complaint of Kavina, wife of Tejas Sayar, dated 25-01-2017
- (ii) Public report, declaring offence under Section 157 of Cr.P.C., dated 25-01-2017
- (iii) Further statement of complainant, dated 27-01-2017
- (iv) Report dated 27-01-2017 whereby the complainant was produced before learned Judicial Magistrate, First Class, Naliya Court for recording statement under Section 164 of Cr.P.C.
- (v) Report dated 27-01-2017 written to Medical Officer, Naliya Government Hospital, regarding medical examination of complainant,



- (vi) Statement dated 27-01-2017 given by Daxaben Jethabhai Parmar, Lady Police Constable, who had accompanied the complainant while going for medical examination,
- (vii) Further statement of complainant, dated 27-01-2017
- (viii) Statement dated 28-01-2017 of witness Mahipat Sinh Pragji Jadeja, at whose house, the complainant was living on rent.
- (ix) Statement dated 28-01-2017 of Devyaniben, wife of Himat Khimjibhai Shah, who is mother of complainant.
- (x) Panchanama of the medical check-up and sample of the victim dated 29-01-2017, Report given by Medical Officer, Civil Hospital, Bhuj and forwarding letter of F.S.L, etc.

16.4 On 30-01-2017, he and the other members of SIT jointly made further investigation in the matter, and found as under:



16.4.1 On 30-01-2017 the victim showed the room in Hotel Royal Palace at Madhapar , where the alleged crime was committed and a Panchanama of the scene of offence was prepared and, thereafter, recorded statements of concerned persons of Hotel Royal Palace.

16.4.2 On 31-01-2017 the victim showed the room in Hotel Holiday Resort, at Gandhidham, where the alleged crime was committed and a Panchanama of the scene of offence was prepared and, thereafter, recorded statements of concerned persons of Hotel Holiday Resort. Further, the victim had shown the room in Hotel Fun and Food at Nakhatrana, where the alleged crime was committed and a Panchanama of the scene of offence was prepared and, thereafter, recorded statements of concerned persons of Hotel Fun and Food. Since accused in the present case were absconding,



different teams were formed which inquired at residential places of accused, their Offices, besides their friend circle and their relatives.

16.4.3 During the inquiry on 01-02-2017, it came on record that gang rape was committed on the victim by the accused persons, therefore, a confidential report was made to Hon'ble Naliya Court for adding Section 376(d) of IPC. The statement under Section 164 of Cr.P.C. of the victim was recorded before Judicial Magistrate, First Class at Naliya Court. The victim had shown the Office of Bharat Gas Agency where accused Shantilal Devji Solanki had allegedly committed crime on her and a Panchanama of the scene of offence was prepared. As accused of this case Shantilal Solanki had allegedly committed crime on the victim and made a video clip, a Panchanama in the presence of Panchas was drawn on



01-02-2017 and statements of concerned witnesses have been recorded.

16.4.4 On 02-02-2017, the victim had shown Shivam Farm, near Dhavada village, where crime was allegedly committed on victim and a Panchanama of the scene of offence was prepared in presence of Panchas. From near the house of accused Shantilal Solanki, a Swift Car bearing No.GJ-12-CG-5676, which was allegedly used in commission of the crime, was seized. The value of the car was assessed at Rs.5,00,000/-. The shop of accused Vinod alias Babasheth Vishanaji Thakkar situated at Kumbharvas,Naliya, where the molestation is alleged to have been committed was shown by the victim and a Panchanama of the scene of offence was prepared in the presence of Panchas. With a view to prevent the accused from fleeing India, he collected their names and details of Passport and



informed all the Immigration Check-posts in India through T.P. Message. He interrogated the relatives of the accused involved in the offence.

16.4.5 On 03-02-2017, further statement of complainant, the victim, was recorded. As the names of the accused were short, the Computer Operator opened their face-book Accounts and the victim identified their photos. By this way, he obtained their full names and addresses. He recorded additional statements of the victim and her husband. The Superintendent of Police, Kutch-Bhuj (West) included in the SIT (1) Mr. Y.B.Gohil, Police Sub-Inspector, LCB, Bhuj (2) Mr. L.P.Bodana, Police Sub-Inspector, Nakhatrana Police Station, and (3) Mr. D.M.Zala, Police Sub-Inspector, Naliya Police Station, to expedite the investigation. He also made attempts to obtain the call details of the accused.



16.4.6 In the beginning, to nab the accused, he analysed the call details of the relatives and friends of the accused and raided about twenty places to nab the accused, by forming different teams of police from Kutch-Bhuj (West). He also recorded statements of more than 101 persons. Keeping in mind the likely places of taking shelter by the accused, Kutch-Bhuj Police (West) contacted the Police authorities of other States and Cities to locate the accused.

16.4.7 In connection with the offences, he arrested the following accused:

(1) Vinodkumar alias Baba Sheth, S/o. Vishnaji Thakkar, aged 67 years, arrested on 07-02-2017 at 15:30 hours and remanded for 14 days, (2) Chetan, S/o. Vinodbhai alias Babasheth Thakkar, Naliya Village, Taluka Abadasa, aged 35 years, arrested on 07-02-2017 at



15:30 hours and remanded for 14 days, (3) Ashvin Ravilal Sejpal Thakkar, Maninagar, Nakhtrana, aged 44, arrested on 07-02-2017 at 15:30 hours and remanded for 14 days, (4) Shantilal Devji Solanki (Tailor), Panchvati Soc., Naliya, Taluka Abadasa, aged 48 years, arrested on 08-02-2017 at 13:30 and remanded for 14 days, (5) Bharat Narendrabhai Chauhan (tailor), Mahavirnagar, Naliya, Taluka Abdasa, aged 37 years, arrested on 8-2-2017 at 13:30 hours and remanded for 14 days (6) Govind Arjundas Parumalani, Ward No.2-B, Plot No.347, Aadipur, Taluka Gandhidham, aged 38, arrested on 08-02-2017 at 13:30 and remanded for 14 days (7) Ajit Parumal Ramvani, Sector-4, Plot No.203, Gandhidham, aged 43 years, arrested on 11-02-2017 at 10:30 and remanded for 12 days, and (8) Vasant Karshandas Bhanushali (Chandra), Apnanagar, A-17,



Gandhidham, aged 44 years, arrested on 11-02-2017 at 10:30 and remanded for 12 days.

16.4.8 He produced them before the Court and obtained remand orders, as above. The clothes worn by the accused and their mobile phones were seized. After completion of their remand period, all the accused were produced before the Court and were sent to judicial custody. In the meanwhile, medical evidence was collected by sending accused for medical examination. The clothes of the accused and the clothes of the victim were seized and sent it to F.S.L., Rajkot .

16.4.9 During the period of remand to police custody, a demonstration Panchanama of the place of incident was drawn, keeping the above accused in company. CCTV DVR of Bharat Gas Agency, Naliya, Hotel Fun & Food, Nakhatrana, Hotel Royal Palace,



Madhapar, Hotel Holiday Resort, Gandhidham were seized. Also, C.P.U. of the computer of accused Vinodkumar alias Babasheth were seized from his shop. Mobile phones of the accused were seized from the residential houses of accused Vinodkumar alias Babasheth and his son Chetan Thakkar and accused Bharat Darji and Shantilal Solanki. Mobile Sim card of accused Ashvin was also seized. Copy of the Customer entry register of the hotel and copy of identity proof which were available, were obtained. The seized Muddamal articles were sent to F.S.L. for examination.

16.4.10 The accused were sent to F.S.L. Gandhinagar for LVA and SDS Tests and conducting the psychological test. The accused did not agree to LVA test, therefore, LVA and SDS Tests of the accused were not done.



16.4.11 Reports were submitted before the learned Judicial Magistrate, First Class, Naliya Court on 16-02-2017 for conducting Narco Test and Lie Detect/Paleographic Test/ Brain Electric Osler Signal Profile (BEOSP) Test of all the arrested accused. In this regard, the Hon'ble Court directed that the accused be presented before it on 20-02-2017. Accordingly on 20-02-2017, under proper police custody, the accused were produced before the Hon'ble Naliya Court, however the accused did not consent for the above tests. The relevant application was rejected by the learned Naliya Court. The Revision Application preferred before the Sessions Court, in respect of above Tests, was rejected by the learned Sessions Court, Bhuj.

16.4.12 A suicide note addressed by the victim to her father was produced, by the victim, in which the victim has written about



her own grief. She has stated therein that she had gone, without the protection of her father and mother, to Shanti Solanki to withdraw her salary. She was made semi-conscious, by spiking cold drink, by taking advantage of her loneliness. Three persons gang raped her. As Shanti Solanki was blackmailing her, she was tired of it, therefore, she was going to commit suicide. The xerox copy of the suicide note was seized under a Panchanama. She stated that original suicide note is misplaced at Bhuj somewhere while shifting the luggage and that she will produce the original, later on, after she finds it out. The above aspects were noted in the Station Diary at Tulanj Police Station, under Nalasupara.

16.4.13 As CID Crime and Railways, Gujarat State, Gandhinagar, was entrusted with supervision of the investigation, the case diary and progress reports were forwarded to it every



week. Accordingly, till the charge-sheet was filed, the case diary and progress reports were sent regularly. Thus, the directions of the above authority were implemented.

16.4.14 The accused in the present case were medically examined. Necessary samples were collected and their potency tests were conducted.

16.4.15 The call details of mobile phones of the accused were collected. After study of the above material, the information was collected, regarding how many instruments were used. The information regarding the above instruments and the use of different Sim Cards, were collected. Total eighteen Mobiles, earlier used by the accused were seized and they were sent to F.S.L., Gandhinagar and the examination reports in respect of them were collected. A detailed investigation in respect of other supporting,



circumstantial and electronic evidence as well as whether other accused are involved in the offence or not, was made.

16.4.16 In the present case, the C.D.R. analysis of mobile instruments of accused, victim and her husband was made and during the analysis, IMEI Numbers of mobile instruments of accused, victim and her husband have been found and call details of IMEI Numbers were called for. On receipt of details, analysis of Numbers of other SIM cards was made. On getting the call details of present Numbers of accused, victim and her husband, a list of persons was prepared, as per call details. They were interrogated and statements were recorded.

16.4.17 The receipt regarding money sent to victim through P. M. Angadiya, Gandhidham by accused Govind Arjundas Parumalani,



was produced by Pratik Amratbhai Thakkar, Proprietor of the Angadiya. Looking at the receipt, it was found that the name of sender of money was "Govind" and the name of the recipient of money was "Kavya" and Mobile No.9099181387 was written on it. The receipt for Rs.4000/-, dated 27-08-2016 was seized under a detailed Panchanama.

16.4.18 On being interrogated Tinminpalsinh Lalaram Fojdar, Receptionist of Holiday Resort, Gandhidham, he stated that Room No.211 was allotted to Ajit Ramvani, on 27-07-2016. A bill for Rs.1799/- in the name of Ajit Ramvani Rudraksh Mandap was prepared. A detailed statement in this regard was recorded.

16.4.19 On interrogating Sunil Brijmohan Mishra and Dilipsinh Shethansinh Gehlot, of Holiday Village Resort, Gandhidham it was



revealed that during 23-07-2016 and 24-07-2016, 15-08-2016 and 16-08-2016 Room Nos.211 and Room No.123 and on 29-09-2016 Room No.202 was occupied by Govind Rudraksh Mandapwala and whatever room services were ordered were signed by two persons. The samples of the signatures were obtained and seized under a Panchanama and were sent to FSL, Gandhinagar.

16.4.20 Police Inspector Mr. V.K.Gadhvi, District Traffic Branch,Bhuj and lady Police Sub-Inspector Ms.P.K.Tabiyar were appointed in the Special Investigation Team, who inquired about Payal, named in the FIR and about 60 to 65 persons involved in the sex racket from the Office of Superintendent of Police, Kutch-Bhuj, and no useful information was revealed. No written information or complaint in any of the Police Stations of Kutch District (West) have



been received. An inquiry was made on 181 Helpline which revealed that no such complaint is received by them either telephonically or in writing. Statements of more than 500 reputed citizens of Kutch have been recorded in respect of alleged sex racket being run at Lohana Bhavan. The Trustees, Manager, Watchman and neighbours of Lohana Bhavan and office bearers of other social organisations have been interrogated and statements obtained and none of them lend any support to the alleged sex racket.

16.4.21 Mr. Shashikant Trivedi, Inspector General Police (Crime-2), C.I.D. Crime, Gandhinagar, visited Bhuj and Naliya. He visited the palace of offence. A meeting of the SIT was convened and discussed about the investigation. He gave necessary instructions and guidance.



16.4.22 The victim, had, in her written complaint dated 25-01-2017 submitted at Naliya Police Station revealed the name of Atul Thakkar, but in her further statement on 27-01-2017 before the Investigating Officer and her statement under Section 164 of Cr.P.C. before the Magistrate she has not alleged any such act against the said person. The investigation also revealed no material to support the allegation that the said person runs a sex racket and in absence of any material or proof, he has not been arrested.

16.4.23 In the FIR, the first informant has stated that the accused person and others totaling to about 65 persons have formed a group and have involved 35 to 40 girls in their racket. There is one girl named Payal of Naliya, who helps them running the sex racket. Same way Atul Thakkar of village Kothara running a



Canteen in Bhuj Lohana Bhavan and a lady working in the kitchen called ""Bhabhi" will have material to expose the sex racket. The witness says that he and other members of the SIT made intensive investigation by taking help of other informants and police force which revealed that there are 3 ladies named Payal in electoral roll of Naliya. They all have been interrogated and their photographs have been shown to the victim and the victim stated that none of them is Payal.

16.4.24 The first informant had made Special Criminal Application No. 1791 of 2017 before Hon'ble Gujarat High Court seeking transfer of investigation to CBI. The Court was satisfied about the investigation made and, therefore, the application was dismissed.



16.4.25 During investigation, statement of Devki alias Geeta (Bhabhi), wife of Shripal Pal, of Mirzapar, Taluka Bhuj was recorded. On interrogating the victim, she has denied involvement of this lady Devki alias Geeta (Bhabhi) in the sex racket. The investigation in respect of Bhabhi and Vipul Thakkar is being continued under Section 173(8) of Cr.P.C.

16.4.26 He has stated that he had conducted the investigation faithfully and with enthusiasm to ensure that the victim gets justice. He further stated that he had investigated thoroughly to ensure that no important person escape if he is involved in the crime. He has stated that he had arrested all the persons involved in the offence. He had tried to have a sketch prepared by sending an expert along with a lady police officer to the victim, who had gone to Mumbai



but failed in the attempt. About 58 persons named Vipul Thakkar have been interrogated. Their photographs have been shown to the victim and she has stated that none of them was miscreant.

16.4.27 Different arrested accused persons moved different courts of the State and Hon'ble High Court and Supreme Court for their release on bail which he had opposed and have shown the connecting material. He has also filed affidavits opposing their bail applications, as a result of which not a single accused has been released on bail.

16.4.28 It may be noted that the investigation in this case was under the supervision of CID (Crime) Gujarat State and a weekly report of investigation was sent to Addl. DGP, who in turn issued instructions and gave guidance.



16.4.29 Local head Dy.S.P. of CID (Crime) and P.I. were in constant touch and were fully informed about the investigation on day to day basis and investigation was carried out as per the guidance and instructions and as such, the investigation was under a unbiased monitoring. The Addl. Superintendent of Police, Nakhatrana Division, Superintendent of Police, Kutch-Bhuj(West) and Director General of Police, Boarder Range, Bhuj, were constantly supervising the investigation.

16.4.30 All the accused persons are in judicial custody. A charge-sheet for offences under Sections 376, 376(d), 377(2)(n), 354,328, 342,365,120(b), 506 and 506(2) of Indian Penal Code came to be filed in the Court of Judicial Magistrate, First Class, Naliya on 01-05-2017. The case has been committed and Sessions case No.32



of 2017 has been registered. The trial in the Sessions Court is on and the next date of hearing is 07-05-2018.

16.5 This witness Mr.Aal, came to be cross-examined by learned advocate Mr.Sharma for the Forum on 05-10-2018. He was asked that the procedure adopted by the I.O. for identifying the miscreants with the help of Face Book Accounts is not proper in law to which the witness replied that Face Book Accounts carry full names of the Account Holders whereas in the investigation only short names of the miscreants were revealed and, therefore, to find out the miscreants this method was employed. He stated that copy of the Face Book Accounts is included in the investigation papers. He also stated that he had disclosed about the method adopted by him in his report to his superior. This procedure was not carried



out in presence of Panch witnesses. Face Book Accounts can be considered as an electronic evidence. He stated that he has not obtained any certificate as provided for in Section 65(B) of the Indian Evidence Act.

16.6 The witness stated further that he had not conducted any identification parade. He volunteered to state that as the photographs of the accused persons were published in media and newspapers, he had not conducted the parade. This was in respect to all eight accused persons.

16.7 He further stated that the victim had disclosed in her FIR that she had injured accused No.1 with a cutter when he pressed her to resume her service. Accused No.1 was sent for medical examination as per instructions of CID (Crime) by letter dated 17-02-2017. Accused No.1 was taken for medical examination on 22-02-2017.



The accused was in judicial custody and he was required to be produced in Court on that day and, therefore, while taking him to Court, on the way he was taken to Doctor. The Certificate issued by the Doctor was included in Part-II of the investigation papers.

16.8 As the victim had, in the FIR, alleged about sex racket, P.I.

Mr.V.K.Gadhvi was instructed and a team was created

incorporating lady PSI Ms.P.K. Tabiyar, who made a detailed

investigation. They had interrogated NGOs, 181 Mahila Help Line,

Kem Chho Kutch, the employees of Lohana Bhavan, neighbouring

School employees, women organizations and individuals. They also

investigated at Naliya but they found no substance in the allegation.

No lady named Payal was found to be running any such racket and

a detailed report in this regard was to sent to CID (Crime).



16.9 In reply to the question of the Commission, the witness replied that the victim's deposition in the Sessions Case is concluded. In the Sessions trial, the victim had not levelled any allegation or made complaint against him (the witness) during her deposition.

17 The Citizens' Forum closed their evidence by filing Purshish **Exh.31**. Mr Chetan Shah, learned Special Public Prosecutor closed evidence on behalf of the State by filing Purshish **Exh.33**

18. Arguments of both the sides were heard on 15-8-2018. Learned Special Public Prosecutor produced on record the copy of deposition of victim before the Trail Court with an application **Exh.35**.



18.1 Learned advocate Mr. Rahul Sharma appearing for the Forum broadly submitted his arguments in three fold. First, he focused on investigation and lacuna therein. The second fold of his argument was regarding working of State Women Commission and its role and the last part was regarding criminal trial.

18.2 Mr. Sharma submitted that considering the scope of reference of this Commission and considering the allegations made in respect of the incident, they are in a wider perspective and nature and the Forum's endeavor is not to work with a limited focus on Naliya but on a broader perspective of empowerment of women and gender equality. Mr. Sharma submitted that if the deposition of the Investigating Officer Mr. Aal is seen, he has stated in his affidavit that he got the accused persons identified by the victim with the help of Face Book. He did not conduct any such identification parade



in presence of Panch nor did he kept any panch present while carrying out the identification procedure with the help of Face book.

Mr. Sharma submitted that the Investigating Officer has admitted that he did not obtain any Certificate under Section 65-B of the Indian Evidence Act which according to Mr.Sharma is essential. Mr. Sharma submitted that Face Book is an electronic media and Certificate under Section 65-B is essential, which having not been obtained by the Investigating Officer, the investigation was not done properly.

18.3 Mr. Sharma submitted that Face Book being an electronic media is prone to hacking and manipulation. Therefore, a Certificate should have been obtained. This has left a lacuna in the investigation.



18.4 Mr. Sharma submitted that the Investigating Officer ought to have been in touch with some legal expert who could have advised him for a better and fool proof investigation. The investigation is carried out in a casual manner and lacks professionalism. If investigation papers are seen, it reflects that the investigation was not done with seriousness, that the incident demanded.

18.5 The Investigating Officer has not probed into the character of the accused properly. Mr. Sharma submitted that the victim was examined by a male Doctor at Bhuj as there was no lady Doctor available at Bhuj Hospital. The system lacks good infrastructure for proper investigation, in accordance with law.

18.6 Mr. Sharma submitted that the investigation shows lack of adequate sensitivity to a serious incident of gang rape involving a



victim from weaker sex. The Investigating Officer has not paid heed to guidance issued by Hon'ble Supreme Court while prosecuting the trial. The names of the accused and the victim have been revealed and they emerged in the media, as such.

18.7 The inadequacy of infrastructure and hierarchy also need to be improved. Mr. Sharma submitted that CID and IB both have acted as political hands. ATS was under CID and IB, therefore, they also lack independence.

18.8 The victim protection aspect does not seem to have been properly observed or implemented. As is reported, the victim had turned hostile before the Sessions Court and nobody has probed into question what led to this hostility.

18.9 Three victims and thirty five accused have gone to Police. There is a CCTV camera in the police station where these persons



had gone. Who went to police station has not been brought out from the CCTV footage. Thus, the investigation is not properly done.

18.10 So far as the State Women Commission's working is concerned, Mr. Sharma submitted that the Women' Commission has not reacted to such a serious incident to the extent expected of it. The report of the Commission is not made available. This is another handicap. Mr. Sharma submitted that the report is superficial and perfunctory as can be seen from the deposition of witness Ms.Leelaben Ankoliya. The Government and the Women' Commission, both have not bothered into granting proper protection and arranging for proper rehabilitation of the victim.



18.11 As regards the prosecution aspect, Mr. Sharma submitted that the deposition of the victim was in camera. The objectivity of selection of Special Public Prosecutor is missing as can be seen from deposition of Police Officer. They have routinely appointed Prosecutor instead, there should be standard procedure for appointing Special Public Prosecutor.

18.12 Regarding suggestions, Mr.Sharma submitted that Schools and Colleges must have a Special Cell to educate girls entering puberty, about the hazards they are likely to face and how to protect themselves.

19. Learned Special Public Prosecutor Mr. Chetan Shah submitted that the victim has chosen not to appear before the Commission. There is no other person who has deposed about the



alleged incident at Naliya. There is no material on record to infer that there was laxity or slackness in the investigation or that there was no co-operation from the Investigating Agency towards the victim. In fact, the investigation was made in the direction shown by the victim and the entire investigating agency has made a collective effort and has prosecuted the miscreants. No material could be gathered showing involvement of persons other than the accused, in spite of due diligence. It cannot be said that the investigation was insensitive to the victim. The Investigating Officer has tried to explore the electronic media, as well. According to Mr. Shah, Section 65-B of the Evidence Act is not attracted at all, as expert help is not taken in this case. Face book was used only to have the persons identified, whose only first names were revealed by the victim and not full name. Many of the aspects alleged by the victim did not



receive due support during course of investigation but whatever part of the version received support was utilised to prosecute the accused. The allegation, therefore, that the investigation has not been properly carried out is not correct. Mr.Shah submitted that the Investigating Officer has deposed in clear terms that because the photographs of the victim and the accused persons were published in the media, he did not hold identification parade. No purpose would have been served by this. The deposition of police witnesses would reveal that every police personal involved in the investigation was vigilant and prompt in acting.

19.1 Mr.Shah submitted that the Forum has not made any attempt to produce either the victim or any other witness to support the case of the prosecutrix made out in the FIR. On the



contrary, the prosecutrix before the Sessions Court has turned hostile during criminal trial. The Investigating Officer appeared before this Commission, but no question has been put to him regarding the victim's behaviour. The Investigating Officer has, to make sure that the victim or the witnesses do not give a go by to their original version has got recorded statements by a Magistrate under Section 164 of the Cr.P.C.

19.2 Mr.Shah submitted that if the present scenario is seen, women in the society need to be extended protection, particularly while the girls are in the stage of transformation from a girl to a woman. A Ladies' Cell should be created with sufficient manpower to be posted at or around educational and other institutions, so that miscreants or suspected miscreants can be nabbed. Head of the Institution must spare some time every day to educate the girl



students. Counselling facility should be provided in Schools and Colleges. Women Organisations should be encouraged to go to villages and educate female folk. Women should be made stronger, physically and mentally by proper education. Every investigation must be helped by a legal expert.

19.3 Mr.Shah, lastly submitted that in the instant case though eight persons have been arraigned as accused and kept in custody as under trial prisoners, the victim has turned hostile and no other evidence has come on record to support the case of the victim of alleged gang rape, intimidation, attack by the victim upon accused No.1 and causing him injury on his arm. The investigation has been properly done observing the provisions of law and the prosecution has been launched, but victim has chosen not to appear before this



Commission and has not supported her version emerging from her first information.

20. The terms of reference have been narrated in para 7 and analyzed in para 8 above. The Commission is expected to inquire into various aspects of rape of a young woman at District Kutch during the period from August 2015 to November 2016. While examining various aspects of the incident, this Commission would be required to go into the facts leading to filing of FIR and resulting in investigation and prosecution.

21. To examine the above aspects, the Commission has to have some material as to occurrence and other aspects.

22. Although the Naliya incident attained heights of public attention and agitation by media and social organisations, unfortunately, the Commission does not have any material to come



to a specific conclusion that the alleged incident occurred or did not occur as would be seen in the discussion in the paragraphs to follow. Despite providing several opportunities, no person has ever approached this Commission, who has some knowledge about the incident at Naliya or who can even say that such incident occurred. The victim has chosen not to appear before this Commission at all. This victim has made allegations of being victimised and raped by several persons on several occasions which would have led to investigation, prosecution and a trial and a decision from a competent criminal Court, resulting in conviction or acquittal of the accused. But, because the incident received unprecedented attention by the media and the society, this Commission came to be appointed.



23. The Investigating agency on basis of the FIR lodged by the first informant victim and her further statement/s, arrested several people and charge-sheeted them. At that point of time, she was unable to support her allegation showing involvement of several other accused persons and victims in the sex racket being run at Naliya and surrounding villages in Kutch. The investigating agency showed several persons of the name given by the victim living in that area, but she did not put finger on any of them. The victim has no grievance, grudge, dissatisfaction or complaint against Police action as it is revealed from evidence of Ms. Leelaben, Chairperson of Women's Commission and C.D. tendered by Forum.

24. The criminal trial has already begun and the victim came to be examined before the trial Court. She has given a total go-bye to



her original version emerging from her FIR and statements. She has denied the very fact of being victimised, raped repeatedly and/or gang raped. She has also denied the allegations made by her in respect of sex racket involving several other accused persons and several other victims. She came to be declared hostile by the prosecution and cross-examined, where she denied all the suggestions of having lodged FIR as it runs and of having given further statement/s as they run; even before Judicial Magistrate under Section 164 of the Cr.P.C. although she admits her signature.

24.1 It is thus clear that it cannot be said with certainty that an incident of gang rape occurred on a young woman in Kutch District at Naliya as is perceived and referred to in the Notification appointing the Commission.



25. Apart from the victim not appearing before the Commission and not supporting the prosecution in the criminal trial, Commission has before it, evidence of Ms.Meenakshiben and Dr.Jharnaben. A collective reading of evidence of this two witnesses makes it clear that they have no personal knowledge about the incident. They had called people, people had assembled, constituted Forum and had passed a resolution of taking following four actions in the matter:

- (i) To write an open letter to the members of Legislative Assembly on the first day of Budget Session of the Gujarat Assembly and appeal to them to seek justice for the "Nirbhaya" of Naliya.
- (ii) To send a team for verification of Naliya incident.



- (iii) To give a Memorandum to the President of India, the Chief Justice of India and the Prime Minister for a speedy and independent investigation/inquiry.
- (iv) To organize a rally or other public programmes to oppose the incident on "International Women Day".

Those actions were taken by the Forum and the Forum then pursued the case even before this Commission.

25.1 However, it has to be stated that the Forum made it clear that it did not appear before this Commission as an adversarial litigant but appeared only with a pious object of helping the victim.

It was also clarified that they are not adversarial but want to assist the Commission in its assignment. The witnesses have admitted that the Forum was constituted for securing gender justice and for having an Inquiry Commission appointed. They claim to have met



the victim and her father but state that they did not have anything to state about the incident. In their deposition, they have stated that the victim was in traumatic condition and they have not pursued the cause as the victim did not approach them. The Forum seems to have been constituted and activated out of a disturbed sentiment and emotion on basis of media report, because the witnesses have admitted that they acted mainly on the basis of media reports.

26. Incidentally, it has to be recorded that none from the media has approached this Commission to assist it in its assignment, although as can be seen from the bunch of papers and CD tendered by the Forum, media claimed to have detailed information about the incident.



26.1 Those reports speak of some Reports having been prepared and presented to the President of India by the Forum. But the representatives of the Forum Ms.Meenakshiben and Dr.Jharnaben do not even whisper about the existence of such Report. They do not speak about having tendered such Report to anyone. This is only with a view to indicate why no action can be taken or no conclusion can be arrived at on basis of media reports.

27. The Commission has before it the investigation papers pointing at occurrence. But they are falsified by the victim in her deposition on oath before competent criminal court.

28. The Forum has produced a CD by way of evidence. The Commission has viewed the CD which consists of five Video clippings



and one audio clipping. Three video clippings are of Mr. Shanker Sinh Vaghela. One is of News item of GSTV, one is of Maa Ashapura News (MA News) Channel. The two clippings of Mr. Shaker Sinh Vaghela have been viewed closely, where in one clipping he says that he has proof against the miscreants of Naliya scandal in form of CD. He has names of the miscreants. He says that it is the personal life of those miscreants and he does not want to use that CD as long as those miscreants do not create problem (for him). He cautions the lady Sarpanchs against participation in the PM's programme supposed to be held on Women's Day. In the second clipping his main target is Bharatiya Janta Party and its leaders. He has spoken about Sundari - Shabab - Kabab etc. He says that he will send the proof in form of CD to Mr. Nitin Patel, Deputy Chief Minister and will talk to him personally also.



29. The CD clipping contained an interview of Mr. Shanker Singh Vaghela where he says that he has proof and name of miscreants and he will send the CD to Mr. Nitin Patel and he will talk to him personally and request him to use them guardedly. In that interview, he has requested Congress party to create pressure on the Government for appointing an Inquiry Commission of a sitting High Court Judge. He had also requested the Governor to exert pressure on the Government. He talked about "Beti Bachao Yatra" from Naliya to Gandhinagar.

30. MA News Video clipping shows the news reader declaring that the victim has suddenly surfaced before media at Bhuj and has made shocking disclosure. The video clipping does not show the victim speaking anything. Only whatever is claimed to have been disclosed by her is telecasted in a female voice alleging that several



persons have raped her repeatedly. Shantilal Solanki is the main man who had raped her twenty four times. He would also exert pressure to indulge in the activity with the help of obscene video clipping and she was forced to succumb to men sent by him at various places like Car, Farm House, Resort etc. She had attempted a suicide and had written a suicide note where she had disclosed that if she does not get justice she would consume poison and commit suicide in open Court. Same video clipping shows a masked man purporting to be husband of the victim where he says that police has given them full support. The entire investigation is done by keeping them together. He gives names of Police Officer Mr.Aal, Jaiswal, lady Police Officer etc. and says that he is satisfied with the working of the Police. He then says that his wife had disclosed to



him that the accused had told her that they are a group of 65 persons and under him, 35 to 40 girls are operating.

31. All these details emerging in the CD tendered by the Forum are more or less in form of media reports, where a seasoned and senior political leader like Shanker Sinh Vaghela claims to be having a CD with him showing involvement of miscreants in the Naliya scandal. He says that it is the personal life of those miscreants and he would use this only if they create problem (to him). This Commission has issued three public notices inviting people to disclose before this Commission the information that they may have in respect of Naliya incident. In spite of these three calls, none has appeared before the Commission, except the Forum and P.I.Aal. There is no material to infer that he has a CD, that he has kept with



him or that he has passed it over to Deputy Chief Minister Mr.Nitin Patel as he is shown to be assuring that he will pass it over to Mr.Patel and talk personally with him and request him to use that CD guardedly. There is no material to infer that it was in fact handed over to the Deputy Chief Minister, though in audio clip it is stated that it was handed over to Deputy Chief Minister by Mr.Vaghela.

31.1 Similarly, neither the victim nor her husband has appeared before the Commission to say anything about the incident. On the contrary, the material produced by Mr.Aal indicate that the victim had not supported the prosecution case during trial and was declared hostile. She has given a total go-bye to her story, even about the occurrence of rape.



32. The sum and substance of the foregoing discussion in this paragraph is that the CD that was produced by the Forum does not lead the Commission anywhere regarding the incident or the factors that led to the incident or the factors which if applied could have avoided the alleged occurrence.

33. It was vehemently put by the Forum that though the victim had given information at Naliya and Bhuj it was registered only on 25-01-2017. This is not borne out from charge-sheet papers. It is revealed for the first time on 25-01-2017 only and further, there is no material to accept the say of the Forum that information was given much earlier.



34. It would be proper to record at this stage that it has been shown that Forum has no legal entity as it is not a registered Organization or NGO. It is also a fact that the witnesses appearing on behalf of the Forum have not given names of any of its members other than the two who appeared before this Commission. There is no material on record to know how the Forum is funded. Despite all these aspects, the Commission is of the view that the Forum has taken up a noble cause and it is not required to go into such technicalities and all the points raised by the Forum have been dealt with by this Commission.

35. It was canvassed by advocate Mr Sharma that Certificate as contemplated under Section 65B of the Indian Evidence Act, 1872 was not obtained by the Investigating Officer Mr.Aal. This is



admitted by Mr.Aal also. According to Mr.Sharma the Investigation was, therefore, not properly done.

36. Having taken a look at the provisions contained in Section 65B of the Evidence Act, it is clear that such Certificate is required to be obtained, only if it is desired to give a statement in evidence by virtue of that provision. In the instant case, as is disclosed by Mr.Aal, the electronic media in Form of Face Book was used only to facilitate the investigation in correct direction as full names of the alleged miscreants were not coming to surface and, therefore, photos of all persons with the same name were shown to the victim to trace the accused. The use of Face Book is not relied upon by the prosecution in the papers filed with the charge sheet and, therefore, it can not be said that the investigation is defective or weak.



37. It is thus clear that the Commission has no legally acceptable material to conclude that the alleged incident/s occurred.

38. With the above prologue if the Forum and its agitation is seen, it is clear that the Forum was overawed and swayed by the media reports. The Forum had resolved to send a team to Naliya for verification. It had gone and had a meeting with the victim and her parents so also her husband. But no contemporaneous record was made of that visit, no notes are prepared, no statements are recorded and all that the witnesses for the Forum state is that the victim was in trauma and was agitated. They are not able to give any detail as to incident or incidents alleged by the victim in the FIR or the reports of the media. The Forum has then taken the path of agitating before authority, mainly on basis of media reports. The



Forum is, therefore, not in a position to assist this Commission on factual aspects of occurrence of rape/gang rape. The victim does not appear before Commission and there is no other witness to conclude that such incident occurred and/or the occurrence was on account of lapse on part of police or any other authority or person.

39. If the material produced by the Forum before the Commission and the evidence of witnesses Ms.Meenakshiben and Dr.Jharnaben are seen, the first and foremost allegation is that because people of Kutch were under trauma and were scared between February 2017 and March 2017, no material could be gathered. This is a prompt inference to explain non availability of material to support the allegation. There is no material to support this inference. On the contrary, the investigation has been done during this period and

as..

material has been collected by the Investigating Agency. There is no source of information divulged by them and the witnesses of the Forum admitted that they were moved/driven by the media reports.

39.1 It is also alleged that the SIT constituted by the Superintendent of Police did not have a lady member and, therefore, the investigation was not proper. This aspect is falsified by the record produced by Police Officer before this Commission and un-controverted deposition of Mr.Aal.

39.2 Another ground that is canvassed regarding the carelessness on behalf of the investigating agency is that at a very later stage the Police made an application to add certain Sections. On the contrary, if the evidence of Mr.Aal is seen, it appears that the moment it



emerged that it was a case of gang rape, the Investigating Officer immediately moved the criminal court for adding that section in the charge sheet. As such, it can not be said that the Investigating Agency was either careless or biased against the victim or wanted to help the accused, as is alleged. Otherwise, no such application would have been made.

39.3 The Forum has represented that a CD was handed over to the leader of the Opposition, who ought to have handed it over to proper authority instead of handing it over to Deputy Chief Minister. In this context also barring the empty claim by Mr. Shanker Sinh Vaghela as emerging from audio clip in the CD produced by Forum, there is no material to infer that it was in fact handed over to Deputy Chief Minister. Mr. Vaghela has chosen not to appear and lead evidence on this aspect. The Forum also has not disclosed as to



how this audio clipping was made, by whom and how it came to its possession. There is nothing to accept this CD as genuine.

39.4 Interestingly, the newspaper cuttings produced by the Forum before this Commission indicate that the Forum had prepared a report and had sent it to the President of India. Surprisingly, both the witnesses are silent about it in their depositions and no such report is produced before this Commission. This reflects adversely on the news reports, their authenticity and trustworthiness. No conclusion or even inference on the allegation in the newspaper report can be arrived at.

39.5 It is also emerging from the papers produced by the Forum that there was report that attempt was made to offer money to the



victim. In this regard also since the victim has not appeared before this Commission, Commission has no material and as discussed earlier, no inference can be drawn only on basis of such media reports.

40. The Police Officers had deposed about how the investigation was carried out. Mr.Aal was put in charge of the investigation by letter dated 29-01-2017 from the Superintendent of Police, Kutch-Bhuj(West). The FIR was numbered as 03 of 2017 of Naliya Police Station in respect of Sections 354,376,365,328,343 and 120B of the Indian Penal Code. In the SIT appointed by the Superintendent of Police, Ms. R.J.Sisodiya, Lady Police Sub Inspector and Ms. P.K. Tabiyar, Lady Police Sub Inspector, Ladies Police Station, were made part of the team. Mr.Aal has given almost day to day account of the investigation carried out by him and other Officers. He had



also deposed that he was making a regular report to his superiors as directed by them. The superiors have also deposed that they had directed to make a weekly report about the investigation and the reports were made, though not regularly at weekly interval. On the basis of investigation, charge-sheet was filed and prosecution was launched. This deposition on details of investigation has remained unchallenged and uncontroverted besides it being based on contemporaneous record of investigation and can not be looked upon with doubt.

41. After the prosecution was launched, when it came to trial, the prosecutrix took a U-turn and did not support prosecution case which was launched after a detailed investigation. The prosecution will meet its own legal fate but fact remains that the Commission has no material to conclude on question whether the alleged



incident occurred or did not occur. If it had occurred and if it had caused prejudice to the interest of the victim, it is more on account of her not supporting the prosecution case, for whatever reason and if the incident had not occurred and the FIR was a falsity, the entire investigation has caused a lot of prejudice to the accused. Be that as it may, when there is no material as to the occurrence of incident, the first part of reference of inquiring into various aspects of the incidents of rape, on a young women in District Kutch, during period from August 2015 to November,2016 does not survive and cannot be addressed as a corollary.

42. Now comes the question whether there were any lapses on part of the police agency or any other authority or person that 'contributed' to the occurrence. The answer will virtually remain the



same because the occurrence is itself under a shadow of doubt, there cannot be lapse of anyone that would contribute to occurrence. However, this Commission has examined the investigating papers and the deposition of Mr.Aal, who has investigated the case. The proceedings have been recorded on day to day basis supported by contemporaneous material.

42.1 The victim had alleged that she had caused injury to accused No.1 on his wrist with cutter. This aspect is not only not supported but falsified by medical evidence. Accused No.1 was taken for medical examination while being produced before the Magistrate and that Medical Certificate is in Part II of the investigation papers as emerging from evidence of Mr.Aal, which means that he had no such injury on his person. If there was an injury, it would have been



part of the charge sheet papers. It would not have been in Part-II of the charge-sheet papers because they constitute the investigation material which are not in line with the case of the prosecution.

42.2 Further, during the course of investigation, the victim alleged the involvement of a woman called Payal. The investigating agency traced out three ladies named "Payal" with same name and asked the victim to identify and according to her, none of such lady was involved in the racket. Similarly, one person named, Vipul Thakkar was also alleged to have been involved in such incident. Police traced out 58 persons named Vipul, interrogated them, their photographs were taken and shown to the victim but she stated that none of them was a miscreant.



43. The police recorded statements of as many as 500 reputed citizens to find out if there was any such sex racket being run from Lohana Bhavan and they all gave a clean chit. With the Police having made all these efforts it can not be said that there is lapse in investigation or a slackness in investigation.

44. The picture that emerges, therefore, is that the Commission has a set of media reports which loudly allege improper and biased investigation to favour the accused at the instance of a particular political party. On the other hand, the victim does not support the prosecution case. There is no other material before the Commission to accept the media reports. Media reports can not be acted upon for the reasons discussed in the earlier part of this report. The story given by the victim about her having caused injury



on the wrist of accused No.1 with a cutter gets falsified immediately upon medical examination by Doctor of accused No.1. Therefore, if these two sets of material, namely, the deposition of investigating officer and other officers on one hand and medical report on other hand are pitted against each other, rationally speaking the material coming on record of the Commission through police agency supported by contemporaneous material has to be given its due weightage.

45. Incidentally, it has also to be considered that Ms. Leelaben Ankoliya, Chairperson of the State Women Commission had met the victim, had held meeting with the police officers and has made report to the State Government. She deposed that she acted on the basis of newspaper and media reports. If her deposition is seen, during cross-examination she has stated that victim told her that



police was giving good co-operation and there is no difficulty faced from police.

46. Thus, Commission has no material that point at any lapse, on part of police or any other authority or person that **contributed** to the occurrence, when occurrence itself is doubtful. There is no material to indicate any political influence on any officer or Agency involved in investigation. All the material that has come before this Commission is in respect of action, subsequent to the occurrence. There is no material worth a name that suggest at lapse on part of police or any other authority or person, prior to occurrence, contributing to the occurrence.



PART-II

PART - II

1. The second part of reference calls upon the Commission to suggest measures to prevent recurrence of such incidents in future, particularly in District Kutch and generally in the whole State of Gujarat.
2. There can be no doubt on the need for an offence free society and there cannot be any question on the Government's duty to take necessary steps to prevent occurrence of rape and at the same time, it is the duty of citizenry to take all steps to prevent occurrences of rape or gang rape or for that matter any offence.
3. Let us first examine the steps that the Government should take to eliminate the chances of occurrence of offence of rape. The

As..

Government can change or introduce new legislation introducing more stringent action against miscreants and providing harsh punishment for such miscreants. It has to provide and maintain a credible and trustworthy law enforcing agency, which should ensure prevention of such crime. Government has to ensure proper investigation and last but not the least a successful, speedy and fearless justice delivery system.

4. The experience has shown that an offence is not a result of weak law or law enforcing agency but it has its roots in the social, physical, psychological and economic facets of society. Education level and gender sensitivity of members of society (including men and women), the economic condition, the attitude of media and entertainment industry play a vital role in handling these issues.



5. This is a battle of society against crime and each of the segment of society must unitedly and unanimously open a fight against such crime, if some result is to be achieved.

5.1 There is a section of society which believes that a girl herself is accountable for having been raped. It is she, who is always found at fault with for the happening. This attitude has its root in lack of education and age old social psyche and expectations. Rape is not a problem prevalent only in India or restricted to India. There are different reasons for such offences, like sexual attraction, showing of power, and alcohol consumption has its own contribution towards such occurrence depending on the societal background.



6. Making stringent law and providing harsh punishment alone may not be sufficient for lighten the vice. Fear of punishment has hardly any deterrent effect.
7. Change has to come from within the society, from within the homes, from within the family and from within the heart and attitude of citizens.
8. However, the issue of prevention should not be taken to mean that the Government or Government agencies have no role to play or that citizenry is solely responsible for such crimes. Both have their effect on occurrence or non-occurrence of offences and both should make a consorted, continuous and long term effort to develop a crime free society by making efforts in implementing them whole heartedly by lending fullest support to each other.



9. So far as the steps that can be taken by the Government are concerned, they are mainly in form of introducing a Legislation or improving a Legislation providing for proper definition of all conceivable offences and providing appropriate punishment. In this arena, fortunately there is not much that is required to be done. While concluding and making recommendations the Committee (Justice Verma Committee) on Amendments to Criminal Law, in its Report dated 23-1-2013 observed thus:

"Part 1 - Conclusion

1. The existing laws, if faithfully and efficiently implemented by credible law enforcement agencies, are sufficient to maintain law and order and to protect the safety and dignity of the people, particularly women, and to punish any offenders who commit any crime. This is not to say that the



necessary improvements in the law, keeping in mind modern times, should not be enacted at the earliest."

10. However, the more relevant part and greater expectations is from the Government in establishing and ensuring working of a credible law enforcing agency.

10.1 A law enforcing agency would derive the tag of credibility by working honestly, efficiently and with transparency for offences like rape or for that matter any offence. The duty of the agency should be first to make all attempts to prevent such occurrence. If in case it fails and there is an occurrence, it must properly investigate into the occurrence and then to prosecute the offender. Offences of rape are slightly different than other offences. It is not sheer criminality that results into offence. Factors like sexual attraction, show of power, taking of revenge, consumption of



alcohol, influence of porn literature, primordial un-harnessed energy, lack of respect towards women and lack of sense of gender equality are factors that play a vital role in such occurrence. The law enforcing agency must be adequately manned by efficient personnel who are trained to sense the situation that leads to such occurrence and would be vigilant and bold enough to curb such situations. Similarly, the law enforcing agency must be adequately staffed with varying qualifications and/or specialization in different fields. Specialization must be given its due weightage. The prosecution agency must be well armed with able law experts, able to put the case before judiciary fearlessly and swiftly. Then only a successful prosecution can secure adequate punishment for the offender through judiciary.



10.2 There is one more aspect to the issue in question. Sometimes, roots of sexual offences lie in, superstitions and lack of understanding and respect for women. Better the education, greater understanding and logical and scientific approach. An educated person knows and respects law and is aware about the consequences of breaking law. That apart, from academic point of view, the horizon of vision, knowledge and attitude broaden with education. Education not only polishes the man but also softens him. The Government, therefore, should ensure cheap and quality education to the citizenry. Education system may be improved. Curriculum should include education on sex and gender equality. A boy or a girl in his or her adolescence should not be a stranger to biological changes within the body due to hormonal changes. An adolescent or teenager boy or girl should be able to discuss human



sexuality frankly and thoroughly with his or her parents or elder brothers or sisters. This level of education has to be attained for the dream of sexual offence free society.

11. Besides the Government, the society itself should take upon itself the responsibility of providing formal and sex education to their own children. Formal education may come from School but for education on human sexuality, best place is home where parents should discuss with children.

12. Lust is one of the factors that leads to sexual offences. Lust is un-harnessed energy. Parents must ensure that the adolescent and young are engaged in some positive/creative activity, which would channelise their energy.



12.1 The upbringing of children is very important. The aspects of gender equality, mutual respect, sensitivity etc. are to be imbibed in children. Last but not the least, social organizations must take a lead in empowerment of women. Empowerment should mean not only physical empowerment but should be in all fields of life.

13. It would be appropriate to refer to guidelines issued by Justice R.Banumathi in her separate concurring judgment, delivered on 5th May, 2017 in Mukesh & Another v. State for NCT of Delhi & Others, popularly known as "Nirbhaya Murder Case):

- * Stringent legislation and punishments alone may not be sufficient for fighting increasing crimes against women.



- * In our tradition bound society, certain attitudinal change and change in the mind-set is needed to respect women and to ensure gender justice.
- * Right from childhood years' children ought to be sensitized to respect women.
- * Gender equality should be made a part of the school curriculum.
- * The school teachers and parents should be trained, not only to conduct regular personality building and skill enhancing exercise, but also to keep a watch on the actual behavioural pattern of the children so as to make them gender sensitized.
- * The educational institutions, Government institutions, the employers and all concerned must take steps to create



awareness with regard to gender sensitization and to respect women.

- * Sensitization of the public on gender justice through TV, media and press should be welcomed.
- * Banners and placards in the public transport vehicles like autos, taxis and buses etc. must be ensured.
- * Use of street lights, illuminated bus stops and extra police patrol during odd hours must be ensured.
- * Police/security guards must be posted at dark and lonely places like parks, streets etc.
- * Mobile apps for immediate assistance of women should be introduced and effectively maintained."

14. While considering the making of suggestions for prevention of occurrences of sexual offences, the Commission deemed it



proper to have views of academicians with unbiased approach. The Commission, therefore, invited some academicians of which two turned up and had a meeting with the Commission. (1) Mr.J.C.Patel, Professor in Sociology, School of Science, Gujarat University, Ahmedabad, having vast experience of 32 years in the field of education and (2) Mr.K.C.Raval, Director, School of Law, Gujarat University, Ahmedabad has a vast experience of 23 years in the field of education, attended the meeting on 18-09-2018.

15. The Professors were briefed about the Notification appointing the Commission of Inquiry in respect of Naliya incident and that the Commission was supposed to suggest measures to prevent the recurrence of rape in future in the State of Gujarat. The said discussion ultimately zeroed down to suggestions like,



Government should take steps for awareness and social integration of youth, society should be made more gender sensitive, the punishment in such cases should be deterrent and trial should be speedy, there should be Schemes creating awareness in youth, they should be provided with creative work with more emphasis on Sports, Libraries and other social work, investigation should be done in a scientific manner by the Investigating Agency and for that they should be properly trained, the strength of per capita police population should be increased and repetitive broadcasting or telecasting or publication of such occurrences should be controlled. It was felt that sexual offences are normally committed in a clandestine manner and not publicly. It is, therefore, very difficult to prevent occurrences but occurrences can be reduced by



educating the society, better policing at vulnerable areas, providing better infrastructure, etc.

16. Before parting, the Commission would like to place on record its appreciation of the co-operation received from all relevant departments of the Government and the participants. Further, it must be recorded that it was because of active contribution, enthusiasm and untiring assistance of Officers and staff of the Commission that this Report could be prepared and submitted without delay.



CONCLUSION

CONCLUSION

1. With regard to first term of Reference, the Commission finds no material as to the occurrence of incident, therefore, the first part of reference of inquiring into various aspects of the incidents of rape, on a young women in District Kutch, during period from August 2015 to November,2016 does not survive. Similarly, the question whether there were any lapses on part of the police agency or any other authority or person that contributed to the occurrence is concerned, the Commission finds that there is no lapse on the part of police or any other authority or person, prior to occurrence, contributing to the occurrence. Reference No.1 is answered accordingly.



2. With regard to 2nd item of Reference, the following suggestions are made to prevent recurrence of incidents of rape in future, particularly in the District of Kutchchh and generally in the whole State of Gujarat.

(1) Police, which is the principal machinery for the maintenance of law and order, should immediately register FIRs filed by rape victims and victims of violence and complete the circle from the stage of complaint till completion of trial.

(2) Police Authorities should mobilize its resources and increase number of women police officers deployed near School and College premises and at working places of women.



- (3) Increase the number of police help booth/kiosks, especially in remote and lonely villages. They should be well maintained and functional and accessible to public.
- (4) There should be separate Police Cell to investigate offences like rape, in each District.
- (5) Government should consider increasing the strength of Police Force.
- (6) Separate departments for the purpose of investigation, handling Law and Order situations, traffic etc. should be established and trained for the purpose.
- (7) While conducting medical examination upon lady victim, a lady Police Officer/lady health worker must be present.



Health department should ensure availability of lady Doctors at its Hospitals.

- (8) Permanent Fast Track Courts, exclusively for trial of offences relating to crime against women are required to be established for speedy trial.
- (9) Trial in cases of atrocity/rape/violence against women should be speedy and punishment should be deterrent and exemplary.
- (10) Scientific investigation by Police will contribute to just punishment of offenders. Police personnel must be given special training for scientific and legal investigation. The force should be provided legal assistance in investigation.
- (11) State Government should consider seriously the Implementation of Report of the Committee on



Amendments to Criminal Law, popularly known as Justice Verma Committee Report.

- (12) Adequate sanitation facilities in villages are needed urgently, so that women may not have to go out of their houses to use sanitation facilities, at night, as these moments are abused by anti-social elements.
- (13) Provide employment to women to empower them in true spirit. Empowerment must be all round i.e. physical, mental, social, economic and education wise. Mere laws are not enough. Schemes must be introduced for the purpose and NGO undertaking such exercise should be encouraged.
- (14) Introduce a subject in the curriculum of Schools and Colleges on the subjects of gender quality, prevention of



discrimination against women, and outrage and exploitation of woman.

- (15) Programmes on social awareness/social integration of youth and awareness of gender equality with the help of TV, media and press should be encouraged.
- (16) Establish "One Stop Centre" from the Nirbhaya Fund, in every District.
- (17) Create Public Watch Dog Committees, in consultation with citizens, workers, Women Organisations and voluntary Organisations, with no interference of Government.
- (18) Bring laws to prohibit advertisements, TV serials, Films, Sites, SMs, MMS, Facebook and WhatsApp chatting etc. which causes injury to self respect of women and portrays body of women as chattel.



- (19) Women Organizations taking upon themselves the task of sensitizing women about their empowerment, equality, education, employment etc. need to be recognized and encouraged by Authorities. If need be, Laws and Rules should be made/amended and implemented whole heartedly.
- (20) Establish an omnibus policy for rehabilitation of all victims of sexual harassment, in the State. Society as a whole will have to be trained and set to accept the victim without any stigma/blemish and help her resettlement.
- (21) Use of people friendly street lights on roads and illuminated bus stops and extra police patrol during odd hours must be ensured, at dark and lonely places like parks, streets etc.
- (22) There should be a drive by Government for the equal upbringing of both boys and girls in the Society.



(23) There should be avenues for creative work for children, with emphasis on Sports and Libraries.

(24) Government should take steps to eliminate socio-cultural disparity, wherever found.

Ahmedabad
December 24, 2018



(A.L.Dave)
Chairman