

TERROR BY PROXY

Lives, Livelihood and Democratic Rights in Godhra in the aftermath of POTA

On 27 February, 2002, coach S.6 of the Sabarmati Express was burnt in Godhra, Gujarat, leading to the gruesome death of 59 persons, some of whom were 'karsevaks' returning from Ayodhya. This was followed immediately by a communal onslaught including several calculated and bloody massacres directed against Muslims in several districts of the state for over more than 3 months. This occurred in the context of long-standing state-abetted communal mobilisation, with the Sabarmati incident providing the immediate pretext. Over 2000 persons, predominantly Muslims, lost their lives in the post-Godhra carnage and over 1,50,000 were rendered homeless.

Several criminal cases were initiated following the train burning incident and the subsequent carnage. An FIR was filed on 27 February 2002 (FIR No.9/2002) against several named and unnamed accused in the Godhra train burning incident. Several FIRs were also filed against the accused in the post Godhra carnage across the affected areas. In the train burning case, the police and authorities acted with remarkable promptness. POTO (Prevention of Terrorism Ordinance) was applied in the case in March 2002, and allegedly withdrawn, shortly thereafter. A large number of suspects were rounded up and questioned. The first charge-sheet was filed in May 2002 and 5 supplementary charge-sheets have been filed in the months that followed. A total of 57 persons were initially arrested under the first charge-sheet and 54 more were declared absconders. In February 2003, the Gujarat Government imposed *Prevention of Terrorism Act* (POTA) in addition to the existing charges against the accused. By then, many of those arrested in the case had already spent nearly a year in jail. Till date POTA has been imposed on a total of 125 persons in this single case, of whom about 80 persons are arrested. Three of those accused under POTA are minors - Firoz Sikandar Khan (16years), Hasan Wahid Khan Pathan (16years) and Haroun Ilyas (16 years) – and one of the accused, Fakruddin Yusuf Mian Sikligar, has died in judicial custody (See Box Three).

The imposition of POTA in the case formed the immediate context of the fact-finding undertaken by PUDR to Godhra in April 2003. With a list of the accused that appears to be still growing, this case has the distinction of having the largest number of accused under POTA in a single case. The PUDR team met the family members of nearly 20 accused, all of whom were residents of the localities Signal Faliya and Rehmatnagar in Godhra. The team also met lawyers, journalists and members of the Muslim community who were involved in providing relief to the victims of post Godhra communal carnage in the region.

This was PUDR's third visit to Gujarat in the course of its investigation into the carnage that began in February 2002. In all these visits we looked at the response of the state to the carnage, including the use of legal measures, the role of the police, courts as well as relief and rehabilitation work. The outcome of the two earlier investigations has been published in two separate reports *Maaro, Kaapo, Baalo: State, Society, and Communalism in Gujarat* (PUDR, May 2002), and *Gujarat Genocide: 'Act Two' - Six months later* (PUDR, September 2002).

It has been the considered position of PUDR that POTA, like other 'security' and 'anti-terrorist' laws before it, is undemocratic. Not only because it inverts the due

procedures which safeguard people's rights and afford protection against wrongful and arbitrary conviction, but also because these laws primarily serve as an instrument for securing the interests of the ruling sections. Their application more often than not is politically motivated. While the lives of previous such laws, have thrown up numerous instances of abuse, POTA, with all its claims of safeguards and accompanying rhetoric of indispensability, has so far given no reason to believe that its trajectory will be any different. Nearly two years of its existence on the statute books has confirmed that such laws are not only inimical to democratic rule, they are inherently anti-people, and promote the hegemonic designs of those in power. Several clauses under POTA do away with the safeguards a person enjoys under ordinary law. Once the persons are charged under any section of POTA, they are denied bail for a minimum of six months. They remain in police custody as long as the police think it necessary. Confessions before a police officer during this period are admissible evidence, even if they are later retracted or denied. This is contrary to the provisions of the Evidence Act, of which a central tenet is that confessions to the police are not admissible as evidence because they are so susceptible to being extracted by torture.

It must be recalled that the imposition of POTA in February 2003 in the Godhra train burning case came in the heels of state-wide violence against Muslims and destruction of their property, resulting in their dislocation and destitution. The Modi government was widely being seen as partisan, and complicit in the long drawn violence against Muslims. It had subsequently done little by way of providing relief and justice to the affected Muslims. On the contrary, it tried its best to scuttle the rehabilitation process by attempting to dismantle the relief camps that had been set up largely by non-state agencies, in order to raise a facade of normalcy in the state. Most cases against the accused in instances of violence against Muslims have staggered in the absence of a political will to punish those responsible for violence. PUDR's brief in the present fact-finding visit to Gujarat, was to see how the use of an extraordinary law like POTA has affected the lives, livelihood and democratic rights of the minority community in Godhra.

Terror by Proxy

"It was a pre-planned attack. The charred bodies which I saw at Godhra railway station testified to the black deed of terrorism."

- Narendra Modi, Chief Minister of Gujarat, February 28, 2002.

Curiously, the tragic incident of the burning of coach S-6 of the Sabarmati Express, whose circumstances are still being pieced together, was declared a 'terrorist act' immediately after it occurred. In the midst of the unbridled brutalities unleashed against Muslims in different parts of Gujarat, Prevention of Terrorism Ordinance (POTO) was applied in the train burning case on 2 March 2002. Contrary to popular perception, POTO was not subsequently 'withdrawn' in this case under pressure from NDA allies in 2002. An application filed on 25 March 2002 by K.C.Bawa, Deputy Superintendent of Police before the Railway Court, Godhra, requested that offences under POTO be kept in abeyance 'for the time being'. Bawa reports having received 'legal opinion from the Gujarat Government 'according to which it was not appropriate to take action under POTO under existing circumstances'. Thus the application of POTO was only 'kept in abeyance', i.e., deferred, till more suitable circumstances presented themselves. The existing circumstances, it appears, meant not only

pressures from the ruling National Democratic Alliance (NDA) allies, but also the fact that POTO, still an ordinance, was to come up before the Parliament for approval before it became an Act. POTA got enacted in an unprecedented and extraordinary joint session of Parliament on 26 March 2002. Modi's government continued to defer its application in the train burning case. Significantly, many of the post-Godhra carnage accused were important VHP, Bajrang Dal, or BJP functionaries. There was always the apprehension that the Modi government would be put under pressure to treat them at par with the accused in the Godhra train burning case.

Circumstances 'then' made the application of POTA politically inexpedient for the government. Similarly, it was circumstances 'later' that determined its re-application on 19 February 2003. For a year Modi had been explaining away the post Godhra killing of Muslims in Gujarat, as a 'justifiable' reaction to the tragedy at Godhra. In the months after the genocide as the victims of killings and destruction gradually lost hope of redress from the state, the self-proclaimed avatar of Sardar Patel, Modi, riding a wave of popularity, returned to power in the state elections. Godhra, joined later by Akshardham (24 September, 2002), continued to be the symbol around which Modi's credentials as an aggressive proponent of Hindutva, wound themselves. Together, the two incidents, reiterated in speeches and exhortations, made the Muslims in the state a suspect community. This involved projecting the incident in Godhra as a criminal act against Hindus, and by implication, against the Indian nation. Around the time that the anniversary of the train burning incident was approaching, and plans to commemorate it were afoot among BJP, VHP and Bajrang Dal members, the Gujarat High Court granted bail to two accused in the train burning case. With two accused having been released on bail earlier in August 2002 by the Godhra Sessions court; and two more on 14 February 2003 by the Gujarat High Court, and six more bail applications due to come up on 19 and 20 February before the High Court Judge C.K Buch, who had earlier granted bail, the case against the accused seemed to be giving way. In an attempt to conserve the case against Muslims in Godhra, the state government took recourse to the instrument it had 'held in abeyance' for a year. Following the arrest of a senior and influential leader of the Ghanchi Muslim community of Godhra, Maulavi Umerji, generally known as the Maulana, it decided to re-invoke POTA on 121 (at the time) accused in the case.

A confidential government order No.S.B.V/POTA/202003/477, dated 11/3/03, Government of Gujarat, Home Department, Sachivalaya, Gandhinagar, authorised the Godhra Railway Police Station under section 50 of POTA to carry on investigations in ICR no.9/2002, under the provisions of POTA. The grounds for invocation of POTA were that the accused, *with an intent to threaten the unity and integrity of India and to strike terror in the people*, had used 'inflammable substance' and 'lethal weapons', causing the death of 59 persons and injuries to 48 persons, 'damaged public property and disrupted essential services' like the movement of trains. The accused committed thereby a 'terrorist act' under the provision Section 3, sub clause 1(a) of POTA. The Gujarat government took the position that there existed prima facie evidence against the accused persons, having their involvement in the commission of the offences under sub clause (2) and (3) of the section 3 of POTA as well. The order elaborates that 'a criminal conspiracy was hatched' during two meetings held on the night of 26 February 2002, in Aman Guest House, Signal Falia, Godhra Town, which was attended by the accused Abdul Razak Mohammad Kurkur, Salim Haji Ibrahim Badam @ Salim Panwala, Bilal Ismail Abdul Majid Sujela @ Bilal Haji and others. Some of the

accused led by Salim Panwala and Razak Kurkur collected 140 litres of petrol in 7 cans from a nearby petrol pump and kept it in Aman Guest House. In the morning of 27 February, 2002, the hawkers quarrelled with the passengers of Sabarmati train in order to assemble persons of Muslim Ghanchi community and arouse their passions for the 'execution of the conspiracy'. The order further mentions that for the last 5-6 years, Maulavi Husain Umerji received large sums of money through hawala channels, and used them for 'purposes other than welfare activities'. Each of the accused persons arrested, it stated, 'appears to have been receiving Rs.1500 per month from Maulavi Husain Umerji'.

When the PUDR team visited Gujarat in April 2003, three charge-sheets in the Godhra train burning case (1 main and two supplementary) had already been filed and the fourth was about to be filed. The charge-sheets include statements by the passengers travelling in the Sabarmati express, eye witness accounts, inquests of damages, properties, etc. and reports and orders by the state government. There are glaring inconsistencies both within and between charge-sheets. A careful perusal shows, however, a clear pattern whereby with each successive charge-sheet the case for a premeditated conspiracy became progressively stronger, preparing the grounds for the re-invocation of POTA. The first charge-sheet describes coach S- 6 as having been burnt from outside with no indication in any statement of any premeditated activity. In subsequent charge-sheets, the anonymous mob of the first charge-sheet starts narrowing down to a few named individuals, and attempts to identify a conspiracy planned by them. In the third charge-sheet, the spotlight is focussed on three culprits, and their alleged connections with terrorist outfits. The fourth charge-sheet goes further. With the help of statements from local witnesses, it shows in graphic detail, how the 'plan' to burn the train was hatched on the previous night and executed in the morning, hinting in the process at a chief conspirator and 'master mind'.

The main charge-sheet filed on 22 May, 2002, is over a thousand pages long and written in Gujarati. Based on FIR no. 09/ 2002 lodged on 27/02/02 by the driver of the Sabarmati Express, Rajendrasingh Raghunathrao Jadav with the Railway police, it carries statements recorded 27/02/02 onwards. Besides the driver's testimony, it also includes the testimonies of a ticket collector and other railway personnel, statements of survivors, karsevaks, and other passengers, some of the accused, and local VHP activists/leaders who were at the Godhra station as part of the reception committee for karsevaks.

At about the same time as the first charge-sheet was filed, the findings of the Forensic Science Laboratory pertaining to how coach S-6 of the Sabarmati Express had been burnt, were released on 17 May 2002. The FSL report, pointed out that '...the height of the window of the coach [S-6] was 7 ft. from the ground of that place. In the circumstances, it is not possible to throw the inflammable liquid with the help of containers like, bucket or carboy inside the coach, because on doing like this, most of the liquid was being thrown out of the coach'. It concluded that 'no inflammable fluid had been thrown inside the coach from outside' and that '...60 ltrs. of inflammable liquid was poured with the help of a bucket having a large mouth, standing at seat no.72, in the eastern side door towards the northern side of the S/6 compartment, and immediately thereafter, the fire was set in the compartment'. These findings not only ruled out

the possibility of the compartment having been set on fire from outside by a mob, they also questioned the credibility of the statements of karsevaks recorded in the first charge-sheet.

Strangely enough, police 'investigations' after the release of the FSL report seem to have changed track. Significantly, an eyewitness, vendor Ajay Kanubhai Baria surfaced, whose account of how the coach was burnt, tallied with FSL findings. Ajay Baria not only reported to having seen the entire process whereby the coach was set on fire, he actually accompanied the accused everywhere. It is indeed surprising that the 'terrorists' should have allowed an 'outsider' in their midst and executed their plans in his presence. What is even more amazing is that they should have spoken to him of their intentions at almost every step. Baria claimed also to have seen the accused actually pouring petrol into the compartment after cutting through the connecting passage between S-6 and S-7 – the exact manner in which the FSL report had concluded the coach could possibly have been burnt. Baria's testimony formed the basis of the second charge-sheet that was filed by the police on 20 September 2002. Along with more statements of survivors, karsevaks, and others, the second charge-sheet contains several statements mainly from the vendors on the station whose narratives shift the focus of the incident in a subtle way towards a group of local Muslim men planning and leading the attack. The third charge-sheet filed on 19 December 2002, with largely similar contents, ends with an order by the government of Gujarat issued on 18 December accusing Sabbir alias Bhupatno Bhurio Abdul Rahim Badami, Abdul Rajak Mohummad Kurkur and Nannumiyan alias Nikki Tamjadali Chaudhary of conniving and hatching a conspiracy and inciting the minority community residing near Godhra Railway station to burn the Sabarmati Express on 27 February 2002.

After the third charge-sheet was filed, the Special Investigating Team (henceforth SIT) arrested Jabir bin Yamin Behra, on 25 January 2003. Behra had allegedly participated with others in the burning on the instructions of Kurkur. Behra's 'confession' made on 5 February 2003 [which was retracted on 29 August 2003], formed the basis for the arrest of Maulavi Umerji on 6 February 2003 and the end of the hunt for the 'master mind' in the conspiracy. Subsequently POTA was re-invoked on 19 February 2003, on all accused in the case.

A fourth charge-sheet was filed on 17 April 2003, more than a year after the train burning incident. This charge-sheet containing statements, reports and orders further modifies the official account to bring it more strongly than before in line with the conspiracy theory. The charge-sheet describes with the help of statements by local witnesses and polygraph examination of suspects, how the plan to burn the coach was hatched on the night before the attack on coach S-6, and tries to posit a 'master mind' behind it. 'Further investigation has revealed', states the order of the state government, 'that large sum of foreign money through hawala channels was received by the accused Maulavi Umerji, since last 5-6 years'. It is alleged that most of the said money is used for the purposes other than welfare activities for the member of the community and also each of the accused person so far arrested in the aforesaid offence appears to have been receiving Rs.1500/- per month from Maulavi Husain Umerji'. Subsequently, two more charge-sheets were filed on 5 May 2003 and , implicating Jabir bin Yameen Behra and Maulavi Husain Umerji, respectively.

The attempt with each consecutive charge-sheet to build a story of conspiracy and connection with terrorist groups, is interspersed with several unresolved mysteries and significant points of contention (See Box Four).

It is not incidental that trial and investigation in cases of communal violence that followed the Godhra incident have languished, waiting to peter out, or, as witnessed in the Best Bakery case, are more likely to be snuffed out. The record of these cases shows that there has so far been no conviction. Of the over 23,000 accused arrested, ninety percent are out on bail. Moreover, in many cases, statements of witnesses have not been recorded and the persons named by them, not included in the FIR. In the Best Bakery case, the Gujarat government filed an appeal in the High Court forty-three days after the lower court order that acquitted all the accused. On the other hand, it swung immediately into action when Gujarat High Court granted bail on 3 July 2003, to four accused in the Godhra case. The four accused – Mohammad Hussain Kalota, Siraj Jamasa, Mohammad Musiali and Samil Shaikh - had moved the High Court after their bail plea was rejected in the Sessions Court. Within four days of the High Court order granting them bail, the Gujarat Government submitted a prayer to the High Court for a month's time to move an appeal against the order in the Supreme Court. It also requested that the four accused be kept in custody till then – a plea that was granted by the High Court.

BOX ONE

PROGRESS OF THE MAJOR CASES IN GUJARAT COMMUNAL VIOLENCE

Source: 'Cases of Injustice', *Frontline*, August 1, 2003, p.28

CASE	KILLINGS	DETAILS
Naroda Patiya, Ahmedabad	83	Trial yet to begin. Some accused absconding. Two still in jail. Two witnesses were also jailed.
Naroda Gaam, Ahmedabad	12	Trial yet to begin. Witnesses who named politicians jailed in connection with a murder case.
Chamanpura, Ahmedabad	67	Witnesses asking for their statements to be recorded properly and for a thorough investigation.
Sardarpura, Mehsana	33	Witnesses asking for a special public prosecutor. District public prosecutor is a VHP leader.
Randhikpur, Dahod	18	Case closed as true but undetected (owing to lack of evidence). Main witness named the accused. But police have not arrested them. Instead police have declared witness 'unstable'.

Pandarwada, Panchmahal	21	Accused acquitted.
Khanpur, Panchmahal	73	All accused acquitted. During trial, the witnesses identified the culprits. They said that they did not name these accused to the police and that the real accused were different people. The witnesses named the real accused in the court. But the public prosecution did not make an application to bring the real accused before the court. The court while acquitting the accused had passed some observations against the police for not investigating the case properly.
Anjanwa, Panchmahal	11	20 absconding, 5 accused not named in the chargesheet. Witnesses have asked for the arrest of the accused or for their property to be attached as was done against the absconding in the Godhra case.
Ambika Society, Kalol, Panchmahal	13	FIR clubbed with three other cases that occurred in three separate places: Kalol, Boru and Vejalpur. Trial has not yet begun.
Eral, Panchmahal	9	Witness is a woman whose daughter was raped and killed. She has asked for the 'absconding' to be arrested and for names to be included in the chargesheet. Judge will not proceed until all 32 witnesses are present at same time in court.

Godhra in the grip of POTA

Following the Sabarmati train incident, a clash between the Hindus and Muslims occurred in Godhra in which two Muslims were killed in police firing. This, incidentally, was the only loss of life that occurred in Godhra in the aftermath of the burning, while the rest of Gujarat experienced widespread violence and killings of Muslims. There was, however, extensive destruction of Muslim property in Godhra during the VHP and BJP sponsored bandh on 27 and 28 February 2002. The biggest properties destroyed, belonged to Bohra Muslims. Trucks owned by Muslim transporters were also destroyed resulting in the complete breakdown of their businesses. In Signal Falia, the locality along the railway station inhabited by Ghanchi Muslims, the Municipality pulled down illegal structures, including garages, to clear the area of 'anti-social' elements. The police, in a 'cleaning up spree' burnt down 400 Muslim shops in Polanbazar and near the Godhra Railway Station.

Thousands of Muslims affected by post train burning communal violence converged in Godhra town from neighbouring villages and were given shelter in relief camps organised by middle class Muslims including Maulavi Umerji. Both the Government and the Hindu community of Godhra made no effort at organising and distributing relief to displaced Muslims, making both the pain of violence and destitution, as well as its mitigation, a private and personal matter of the Muslim community. Thus, the

general picture of the socio-economic relations that obtained in Godhra in the months immediately after the train incident was that of insulated communities.

Meanwhile the on-going investigation in the Sabarmati Express case meant that several, mainly Ghanchi, Muslims from Signal Faliya, Rehmatnagar and a few other localities were rounded up for interrogation. Most of those who were picked up by the police were tortured during investigation, and subsequently sent to jail, where they still languish. Intermittent raids were conducted in these areas leading to prolonged harassment of the families of those arrested or absconding. Till February 2003, more than 75 people were arrested and by April 2003, 124 had been named accused.

When the PUDR team visited Godhra on 18 April 2003, after the re-imposition of POTA in the train burning case, the threat and persecution experienced by the Muslims seemed to have aggravated considerably since our last visit in September 2002. This experience was moreover, no longer confined to Ghanchi Muslims who were among the first to bear the brunt of police excesses, but had widened to engulf the entire Muslim community.

The Silenced Muslim middle class

The team was particularly struck by the change in the circumstances of the Muslim middle class, who had in our previous visits come across as a confident section. They had stepped in where the state had failed, working tirelessly to provide relief and rehabilitate the victims of communal carnage. This Muslim middle class, constituted primarily of professionals, businessmen and clerics seemed to have been the worst affected by the imposition of POTA. A predominant sentiment among them was one of fear and persecution, derived from the feeling that the state was consciously targeting the Muslims of Godhra. The Act has the possibility of criminalising any person who is in any way, directly or indirectly, associated with the accused- whether kinship, communication or financial transaction. Its broad sweep brings under its purview a wide range of what may be otherwise legitimate activity, besides attaching the stigma of 'terrorist'. It is thus that POTA's regime of terror renders people utterly vulnerable.

It was Maulavi Umerji's arrest that precipitated the sense of anxiety and uncertainty amongst this section. His arrest was followed by raids in the offices of the relief camp during which material and files were mishandled. Incidentally, all papers connected with the case of Bilkis, a young pregnant women from Randhikpur (who was gang raped by the men of her village, after 14 members of her family were killed) have been missing from the relief camp office since then.

To some, the Maulavi's arrest appeared to be a case of political vendetta as he had openly campaigned for the Congress in the previous year's state assembly elections. The way in which the arrest was conducted also raised suspicion. The police declared a 'red alert' two days before Jabir bin Yamin Behera actually confessed giving rise to a premonition of something extraordinary about to take place. Some members of the Muslim middle class felt that Behera's 'confession' was compelled by the poverty of his family.

The Maulavi had been the prime force behind the organisation of relief in Godhra. His arrest, allegations made by the police that 'hawala' money was used to fund relief work and police raids conducted in the relief committee office combined with phone-tapping and surveillance of relief workers prompted the latter's withdrawal from relief work. **The most obvious and tragic consequence of the Maulavi's arrest and POTA**

in Godhra has thus been the complete suspension of all relief work among vast numbers of Muslims affected by the post Godhra carnage. Since this was the only relief that the victims were getting, its discontinuation has spelt desolation for a community that has been repeatedly brutalised and disabled over the last one and a half years. The discontinuation of relief work has rendered helpless Muslim villagers from Delol, Pawagarh and Kanjari (all in Panchmahals) among others. These villagers had fled their homes in the wake of the riots, have nothing to go back to, and had been dependent entirely upon relief. The issue of rehabilitation continues to concern the relief organisers, but at the same time the dread that they too may be framed under POTA has forced them to withdraw the slender hope of continued survival that they were able to hold out to the victims.

Some middle class Muslims engaged in relief work, had been vocal in their criticism of the response of the political, administrative, and law and order machinery to the post Godhra carnage, especially the unevenness in the manner in which legal-judicial procedures were unfolding after the riots. They had spoken to NRI panels and democratic rights groups about the abuse of the rights of Muslims of Gujarat, and had testified before panels against Hindu accused. *These vocal sections felt especially vulnerable under the political, legal and juridical regime that was likely to unfold in the wake of POTA. They considered it significant that only Muslim relief workers were being targeted.* The constant monitoring and the threat of possible arrest have generated a severe sense of insecurity and uncertainty among them. Some of them were even contemplating relocation outside Godhra, fearing that they would (like the Maulana and others) be arbitrarily framed by the police. Hounded by such fears, even two months after the Maulana's arrest, some of the relief workers were unable to sleep in their own houses. The atmosphere of dread that obtained in the aftermath of POTA seems to have been so overpowering that middle class Muslims who had actively co-ordinated over relief and bringing about communal harmony, interacting on a daily basis in the course of their relief work, had not met each other for over two months.

The difference in the confidence levels of women relief workers is particularly poignant. They had found self-esteem and a sense of purpose as active agents in these efforts, engaging with issues of education, healthcare and livelihood of displaced persons. Following POTA, fear of police persecution has caused one of the more prominent women workers to suffer from frequent anxiety attacks. She appeared extremely unhappy as she looked back at the time when she had begun working with the women-victims of the riots and had felt liberated in the experience of her own importance as an active member in the relief work. The distress she felt at the sudden abbreviation of her work was captured in her tearful confession that they had not anticipated that they would be compelled in this manner to return to the confines of home.

The personal experience of one of the middle class members of the Muslim community (whose family has lived in Godhra for several generations) has shown how POTA enveloped his professional and personal life with tentativeness and trepidation. A week after the Maulavi's arrest, the Gujarati print media referred to him as someone associated with numerous "NGOs and social organizations and (is) in trouble with the State and Judiciary". This coincided with rumours that started circulating in the circle of professionals about his alleged involvement and close nexus with the Maulavi. This was sufficient for his well-wishers, to worry about his safety, and put

pressure on him to stop his relief activities. His family had even considered shifting to another state.

Apart from the relief and rehabilitation of riot victims, the organisation of legal aid was yet another operation that suffered a drawback with the imposition of POTA. The PUDR team met some members of the Committee in charge of providing legal aid to the accused in the Godhra case. This Committee, comprising of small traders and professionals was constituted to appoint lawyers, co-ordinate with them and maintain a link between the families of the accused and the lawyers. With the imposition of POTA on the accused, members of the Committee were afraid of police crack down on them for mere 'assembly'. This could be seen under POTA as an act of forging conspiratorial alliances for perpetuating or aiding terrorism. Afraid to meet and carry on its activities, the eleven-member committee was now proving ineffective. One member was in fact forced to give a verbal assurance to the police that he would not be part of any relief or legal committee.

'Jaamin [bail] kab milegi?': The refrain from Signal Faliya

Signal Faliya is the largest locality of the Ghanchi Muslims in Godhra. It runs along the length of the railway station, separated from it by a high brick wall that lines a substantial length of the station. The locality opens up to the main road that is laid parallel to the station wall. Most of Signal Faliya dwellers who had been arrested and charge-sheeted were poor and illiterate, and worked either as hawkers or as casual labourers.

A number of middle class Muslims organising the defense of the accused of Signal Faliya felt that the latter were not involved in the killing of train passengers. Some of them believed that the train was carrying corpses (of both Hindus and Muslims) even before it reached Godhra. On the other hand, there was also a section that felt that Ghanchi Muslims being naturally hot-blooded and violent could have committed the act in a spontaneous retaliation to provocation from the VHP and Bajrang Dal Ram-Sevaks. The people of Signal Faliya themselves, however, stuck to their version that in anticipation of trouble from the Ram Sevaks returning from Ayodhya, they had specifically prohibited youngsters from coming on to the main road while the trains carrying volunteers arrived or waited on the station. On 27th February, however, the children and youth of the locality managed to escape to watch the burning coach. Their elders followed them and that is how, they say, the crowd collected near Cabin A of Godhra railway station.

While judging the veracity of these diverse statements was beyond the scope of our fact-finding investigation, we found that the people of Signal Faliya bore the immediate brunt of police repression after the burning of the coach. As far as the effect of POTA was concerned it was evident that the **majority of the residents and families of the accused were not aware that the Act had been applied in the 'dabba case'**, nor did they have any knowledge of the legal implications of its imposition. Almost all of them believed that POTA was a punishment – a sentence – and could, therefore, be handed down only by the court and that too, at the end of the trial, if guilt was proved. The information that it had been imposed left them dumbfounded with confusion and disbelief.

For the family members of the accused, primarily Ghanchi Muslims belonging to the lower socio-economic layers of the Muslim community, the economic and social hardships faced since the arrests, have intensified. As the much-needed financial support that had been coming from the Maulavi had ceased, the immediate implications of POTA have begun to be felt by the families of the accused. The continued confinement of the men, some of them for almost a year, has made it difficult for the families to make ends meet. In most cases the women had taken up jobs as domestic help in middle class Muslim households. Dwindling hopes for bail, in most cases, of their sole earning members, truncation of legal aid that the middle class was organising, lack of direct access to lawyers who are taking up the cases, combined with incomprehension of the legal intricacies involved, has made their condition even more precarious.

Patterns of arbitrariness: random arrests and illegal detention

According to the residents of Signal Faliya the police did not make any instant or 'on the spot' arrests on the morning of the burning. Instead it started its 'combing' in the afternoon, picking up people at random. Hafiz Junaid Farukh Hayat, who had recently completed his madrasa education and returned home to Godhra, was picked up from his lane as soon as he left his home to take a walk. Four other persons were similarly picked up from their homes, a 'curfew' was imposed, and the police started throwing stones at the women who happened to be outside. This was the beginning of an intense repression spread over a long duration during which the police would regularly raid the working class settlements of the Muslim community, ransack their houses, destroy their belongings and abuse the women and children. During these raids both the city and railway police came, some in uniforms, with upto 15-20 vehicles including Tata Sumos and the police trucks referred to as 'pinjras' by the residents. The police picked up in particular all the hawkers and vendors and submitted them to questioning. It was only in the last two months, i.e. after the Maulavi's arrest, that the police stopped visiting the locality everyday. It appeared, however, that at least some policemen had continued to visit and harass the residents of Signal Faliya. A group of children, extremely forthcoming with information, but also careful that the older women do not hear what they were saying, insisted that the police still visited Signal Faliya, at least once a week, in order to take away poultry and livestock. This had become a habit with the police ever since they got a taste of it during the regular combings.

As Yamin Biriyani, brother of accused Kasim Abdus Sattar Biriyani, pointed out, the arrests were always made in an extremely random fashion and very few of them were accompanied by warrants. We were told that lawyers advised the affected families to "surrender" at least one male member per family to the police for interrogation as an interim strategy to ward off the immediate police excesses during combing at Signal Faliya. Following this advice, the youngest brother, Kasim, decided to hand himself over to the police as the rest of the brothers were all married and had families to look after. The police had initially assured them that Kasim would be released after some preliminary formalities. Kasim has not come back since then. The same strategy was adopted in Rehmatnagar where family members were assured that those picked up would be set free after questioning by the 'barra saheb'. None of those who accompanied the policemen have been released till now.

Munni Bai, who had to be literally forced to speak to us, recounted after much persuasion from other women, the trauma she had faced. A migrant from U.P., Munni Bai's husband, Roshan Sheikh, an accused in the case, was a bangle seller who had gone to replenish his stock when the police came. Munni Bai cannot recall with precision the exact date the police arrived. In fact she wavers between four months after the train burning to 2-3 days immediately after. While the other residents who had gathered around her drew consensus on the latter date, for Munni the incident could have taken place yesterday. The police started banging the door at 2 a.m. and she took some time to open it as the light bulb had fused that very instant. Four or five policemen entered the house and slapped and verbally abused her, asking "*Batti kyon bujha rakhi thi, saali?*" One policeman put a gun to her head and threatened her, withdrawing only when she said she was so scared that she was going to vomit and defecate. Then they beat her and the two other women who were sleeping in that house with sticks. When the police were told that Roshan Sheikh had gone out, they disbelieved her and ransacked the house, going upstairs and overturning the grain basket, damaging the tailoring machine used by her sister-in-law and throwing the clothes about. This they did for about an hour, after which they went to other houses. The other women surrounding us also agreed vociferously about the intensity of the police attacks. The night raids were made by both the GRP and the City Police, who would come in a contingent of a dozen vehicles inducing grave fear in the minds of the women.

The police also targeted some persons specifically. Haji Abdurrahman Dhantiya, the ex-Municipal Councillor was one such person. Haji Dhantiya's wife told PUDR that the local VHP had been waiting for an opportunity to get him. He was picked up while resting at home at around 6:30 p.m. Since then, the police have not divulged adequate information regarding the reasons of his arrest to his family. They are kept in the dark about the exact charges under which he is being tried, and the current status of his case. Her constant complaint was that the police as well as the local people from her own community were refusing to share any information with her. She seemed uncomfortable talking about the way in which the police harassed her in her husband's absence. However, she informed us that the women in her neighbouring house had been subjected to beatings and verbal abuse despite the fact that there was no male member in the family who could be either questioned or arrested on suspicion of involvement in the carnage. Dhantiya's wife denied working at other people's houses and revealed that she was living on the savings made by her husband. She went to Vadodara, once a week, to meet her husband in jail and denied having received any relief aid from the Maulavi.

Ramzani Bin Yamin Behera is the brother of Jabir, the man whose confession became the basis for the Maulavi's arrest. Jabir and his other brother, Habib were both wanted by the police and were absconding when Ramzani was arrested in October, 2002. An auto-rickshaw driver by occupation, who routinely ferried school children, Ramzani managed to earn Rs. 60 to 70 a day to sustain a household consisting of his 6 children, wife (Hasina) and his mother (Hanifa). Ramzani was arrested in Polan Bazar at noon while on his way to pick up kids from school. The police was a frequent visitor at their house even before Ramzani's arrest, looking for or enquiring about Jabir and Habib. We were informed that after his arrest, Ramzani was kept in the Railway lockup for 17 days. After the first 5 days of illegal detention he was given a 12 day-remand. During this time, he was beaten up everyday with batons. He sustained thigh injuries whose nature and seriousness was still not clear. The police continued to come even after his arrest. They came late at night, abused both Hanifa and

Hasina, and forcibly woke the children up, refusing to accept the women's plea of ignorance regarding the whereabouts of Jabir and Habib. It was only recently, with Ramzani's transfer to Vadodara jail, that the police had stopped coming to their house. Things have been relatively better for Ramzani as well. The beatings in jail have stopped and Hasina manages to meet him periodically and enquire after his well-being. She goes to Vadodara with her children, whenever she can afford it. Before the Maulavi's arrest, they used to get Rs.1000/- per month and some food grains as assistance from him. After his arrest, no one has extended a helping hand to her. Hasina, who stays with her own parents after the arrest of her husband, is completely dependant on her own earnings as a washerwoman, making Rs.20-25 a day, and help from her parents for sustaining herself and her children. Before going back to her own village in Rajasthan, Ramzani's mother, Hanifa, contributed through her earnings from her milk business. Hasina laments that she cannot go to visit her husband as often as she would have liked because each trip to Vadodara works out to about Rs.150, a large amount to bear in her case.

It is quite apparent that Behera's family was being ostracised by the other members of the community. In our conversations with all other families, residents from the neighbourhood who invariably surrounded us, contributed with useful inputs and information. Our meeting with Hasina was marked by their absence. Hasina herself had shifted to her parent's house and had come to Ramzani's house only to talk to us. Both Haseena and her brother Hussain looked scared. Ramzani's bail application, which had been moved on 17 April 2003 had been rejected. Ramzani had never been able to meet his lawyers, as the police would not allow him to do so. The brother and sister were not aware that Ramzani's basic rights had been violated by this denial of permission. On being asked whether either of them knew anything about POTA, they hesitated and then said that POTA is a law that is applied as a punishment only after an accused is convicted by the court. As we were leaving, Hasina asked hesitantly, "People do get bail in a few months, don't they? Why is he not getting bail?"

Like Hasina and Hussain, Yamin, brother of Kasim Abdus Sattar Biriyanis was not clear about POTA and the implications of its application in the 'dabba' case. Yamin, however, felt that POTA resembled Public Safety Act (PSA) and that it had not yet been invoked in the case. He too believed that POTA could be imposed only if charges against the accused were proven. However, he wondered, why, even after the lapse of more than a year, Kasim and others had not been released on bail. Yamin also told us that the lawyers never came to explain the court situation to them and all they got to know about it was through rumours, hearsay and information given by erstwhile relief workers in the area.

Razia, Mehboob Yaqub Meetha's wife is 25 years of age but looks older, beaten down and worn. She has 5 children (3 boys and 2 girls) of whom 2 attend a local school. She stays at home with her mother-in-law. Her husband, Mehboob worked as a cleaner of a truck that plied locally within Gujarat and earned around Rs.1000 per month. Mehboob's name, we were told, had not figured in the list of those wanted yet he was arrested, around the same time as Ramzani. Like Ramzani, Mehboob was illegally detained for 5 days, after which the police got a twelve-day remand for him. Razia informed that 6-7 jeeps had come to make the arrests during a general combing operation. Mehboob had been subjected to severe interrogation and frequent beatings inside the lockup, during his detention. The police had told him earlier that they would 'talk to him' and let him go after two-three days. He was kept in the Railway Police Station for 17

days. The family met him daily in the Police Station and carried food. After Mehboob was sent to Vadodara Central Jail, they were able to meet him only once or twice in a month. However, they continue to send him food daily. A boy carries food from fifteen families to the Central Jail and is paid Rs.15 per day by each family. Razia informed the team that the police had not interrogated her. After the arrest of Yaqub the police did not come to the house. Razia does not know anything about POTA, but she has heard from others that "POTA lagne wala hai". Razia does not know the name of the lawyers who are dealing with the case. The children have been visiting their father in jail, so they know that he is in prison. Razia was quiet on the issue of receiving assistance from the Maulavi. But others in Signal Faliya offered the information that Razia's family too was recipient of assistance from the Maulavi. She is, however, being supported by her family – her father gave her nearly Rs.500 and her father-in-law has also been supportive. She, her children and her in-laws are able to sustain themselves. Both her father and father-in-law are employed with the Railways.

Ahmad Abdurrahman Kala, aged 30, and his uncle were arrested while they were coming out from the mosque at 5 p.m. Ahmad was a vendor, sold fruits on his *laari* (handcart) in the rains and switched to selling *sherbat* in summers. His father is mentally unstable, cannot take care of himself and the mother is physically challenged. His younger sister, aged about fifteen years, now supports the family by doing housework. The family was not allowed to meet Ahmad and his uncle while they were in Godhra. It was only when they shifted to jail that the family could meet them. They too were receiving support from the Maulavi, to the tune of Rs.1000 a month. The support having stopped after his arrest, Ahmad's family lives in misery.

Asif Siddiq Qadir, 18 ½ years of age, son of Mehmoona Siddiq Qadir (50 years), was arrested on 27 February 2002. Asif worked as a welder and earned Rs.20-25 daily. The police came to their house, beat up Asif and the women, and took him to the police station. Asif has also been charged under section 302 (along with POTA) and is in Ahmedabad-Sabarmati Jail. Mehmoona now sells sweets etc. and maintains her family from the Rs.15-20 that she earns daily. She has not been able to meet Asif after his arrest. She claims to have received no support from any source, has had no contact with lawyers, and does not know what POTA means.

Anwar Pittal, 22 years, owned a welding shop in which he worked, earning on an average about Rs.50 per day. He was picked up by the police when he had gone out of his house to collect his son from school. His wife Naseem Anwar Pittal (22 years) informed us that they were staying in a rented house in a Muslim housing society, which they have now left. The rented shop has also been given up. They now stay with her mother-in-law and five brothers-in-law. The Maulavi used to visit them nearly three to four times a month and distributed rations – wheat, rice, soap etc.

Inayas Abdul Sattar Juara (58 years) worked in the PWD in the accounts department, earning about Rs.7000 per month. He has 5 daughters and 2 sons. He has also been booked under section 302 of IPC. His family members informed us that Inayas had left for his office on 27th Feb 2002 at 10 a.m. and was arrested while leaving at 3 p.m. His boss, Mr.Chowksi has stated in writing that he was in his office the entire day. The police version however is that they arrested him on 27th at 10 a.m. Inayas has been in jail for over a year now. He was getting half his regular salary, until he retired while still in prison.

Abdur Rahman Haji Yusuf Dhantiya, another accused in the train burning case is sixty years old, owns a farm, tube well and tanker, and is therefore, relatively affluent. They have been able to pay the lawyer a sum of Rs.10,000 for his services. Abdur Rahman has a 15-year old son and four married daughters. On the day of the burning of the train he had supplied 6-9 tankers of water to the fire brigade. We were told that Abdur Rahman's efforts had been appreciated by the Superintendent of Police, Raju Bhargava. In fact, Mr.Kalota, President Nagar Palika, told him that his name would appear in the newspapers the next day. He was arrested five days later. Despite the fact that the family has access to the lawyer, they had no clear understanding of POTA. They too feel that it is a conviction, a sentence following confirmation of the crime. Abdur Rahman's family was keen that the case should be investigated by CBI.

Rehmatnagar: stories of repression

Around 11 persons from Rehmatnagar have been put behind bars and charged under POTA along with those from Signal Faliya in the train burning case. A small settlement on the outskirts of Godhra town, nearly 4 kilometres away from the Godhra Railway Station, Rehmatnagar is situated on an arid, uneven terrain. The settlement was brought up in 1989 as an interim arrangement for rehabilitating flood affected people from adjoining areas. While the Maulavi facilitated the purchase of land through community donations, the site has been sustained as a permanent settlement for its 500 odd resident families. The people in this area are mostly Sheikhs with a few Pathan families. Simultaneous to the combing operation in Signal Faliya, Rehmatnagar was also subjected to similar treatment. We encountered similar tales of police repression of residents, random arrests, illegal detentions, impoverishment of families, and limited or no access to legal aid and information.

Here too, police raids stopped after the Maulavi's arrest. The response to POTA too was similar. The women claimed ignorance about the charges under which the men were arrested, and were convinced of their innocence. They did not know who the lawyers in their case were and had never met them. The men had vaguely heard that POTA was a law that could be applied in the 'dabba case'. When informed by the PUDR team that POTA had already been invoked in the case and that would mean a virtual closure of the possibility of securing bail for the accused, they were taken by surprise, while the women started weeping. After the arrests of all earning members of the families, the women of the houses were forced (as in the case of the Signal Faliya families) to work as domestic servants in the houses of Bohra Muslims in Godhra.

Three of her four sons, arrested and now imprisoned in Sabarmati Jail in Ahmedabad, Bibi Khatoon Sultan Khan Pathan, recounted the general repression that was unleashed in the settlement, as well as that experienced by her personally. Her sons, Shamsheer Khan (30 years), Sadiq Khan (25 years), and Nasir Khan (19 years), all of them commercial painters by profession, were picked up by the police around 5:30 in the evening on 27 February, 2002. All of them had returned home from work early since the town had been shut down. Her other son, Aziz Khan, Sadiq's twin, escaped imprisonment as he was not at home. Even 8-9 months after the first round of arrests, the police continued to visit the area and search for the young boys and men in order to pick them up, detain and harass them. On one such occasion, they had even

chased Aziz Khan with guns and had almost shot him. Usually, the children would watch out for the police and on spotting their arrival from afar, they would raise an alarm for the men who would then run away to the nearby woods around the canal and go into hiding for the night. The police would then resort to harassing, abusing and beating the women up. Some of the younger women would also run away with their men to evade harassment. For nearly a year, none of the men in the settlement slept at home, but went to the riverbed to hide themselves and kept awake.

Thirty five year old, Shaabir Anwar Ansari like the Khan brothers was at home on the evening of 27 February, when the police arrested him along with his brother Allauddin. Shaabir and his wife, Hazira, lived comfortably with their 4 children in Rehmatnagar and ran a biscuit bakery from which they earned enough to sustain a modest standard of living. Angry police constables smashed their bakery. Hazira's life has changed since her husband's arrest. Forced into working as a domestic help in Godhra town, she does not feel safe travelling to the town to work.

Fakruddin Yusuf Mian Sikligar and his younger brother Mohammend Yasin Habib Malik were also at home, when the police came and arrested them. While Fakruddin was a truck driver working casually for different owners and earning about Rs. 1800/- per month, Yasin earned his living by preparing *samosas* for different shops. The family they have left behind is a large one, Amina (Yusuf Mian's wife), their six children, and Husaina (Yasins's wife) and their three children, all of whom had been dependent on the earnings of the two men. At about 5.30 p.m. on 27 February 2002, policemen came to Amina's door. About 9 police jeeps were standing some distance away from her house. A policeman came and asked her husband to go and meet the senior officer in the jeep, who wanted to talk to him. Fakruddin followed the policeman outside. That was the last she saw of him. According to Amina, the police who came to her house did not know her husband's name. Similarly 10 others were randomly picked up from the locality. Again, like the other arrests, here too, the men were initially detained illegally. The families of those picked up were not told anything at the time of arrest except that the men will return after the senior officer had talked to them. Thereafter, they had to run from pillar to post to find out their whereabouts. After about 4-5 days the local police told them that they were to take clothes for the 11 men where they were being detained in the custody of the Railway Police. The families of all picked up from Rehmatnagar then went to meet them. They managed to give them clothes but were not allowed to give them food. Amina was also not allowed to meet Fakruddin. No papers were processed or signed at the time. She next heard from him through his letter that she received from Sabarmati Jail. He wrote that the railway police that had detained him initially had beaten him and all the others who had been picked up. When our team met her, Amina told us that she was unable to meet Fakruddin in jail frequently, for a trip to jail meant loss of a day's work as well as an expense that she could ill afford. She has not been able to meet him in the past 2 months. When she did manage to visit him, she was allowed to see him across barred doors for about 20 minutes.

Amina and her daughters now support themselves by working as maids in middle class Muslim families. Her youngest daughter is 13 years old. The boys who are younger study in school in classes 5 and 4. The eldest daughter Naseem Bano Amir Khan Malik, 22 years old with 2 children, used to live in Mahuliya village on the Baria road with her husband. Theirs was the only Muslim house in the village. Their house was burnt down in the post Godhra carnage. They managed to save themselves with

the help of a Hindu man in the village. Naseem and her husband now stay in Rehmatnagar and try to support themselves and their children. Apart from the impoverishment and uncertainties that the events in Gujarat have cast on their lives, Amina's anxieties are aggravated by the thought that she may be unable to get the rest of her daughters married. *(Note: Fakruddin Yusuf Sikligar died in Ahmedabad Civil Hospital on 29 April 2003, reportedly due to 'cardiac arrest'. The special POTA court passed an order for investigation into his death in response to Amina's application. See Box Three)*

Maulavi Sattar Ismail Giteli, 40-45 years, was also among those picked up by the police on the evening on 27 February. His wife, Railabibi, informed us that the Railway police which came to pick up Giteli was accompanied by the city police. While the former came in their uniforms, men of the city police were not in uniform and had covered their faces to avoid recognition. Despite this attempt to disguise themselves, Railabibi and others however state that they recognised these policemen. These men in civilian clothes helped railway police 'select' people, choose those who were to be picked up, or at least choose their houses (*vey pahchaan ke liye aaye the*). Two of Railabibi's children go to school and study in classes 2 and 1. The other children are younger. She gets some financial support from the parents of Giteli's students.

Sugra Bibi Firoz Khan Pathan, wife of POTA accused Firoz Khan Zafar Khan Pathan (24 years), lives with her 4 year old daughter, 2 year old son, and her mother in law, in a one room semi-*pucca* dwelling in Rehmatnagar. Firoz worked at Vadodara Apollo Tyre Company. He had been trained at the Industrial Training Institute, Benaras Hindu University, and was earning about Rs.50 per day. It had been over a year since Firoz was picked up by the police on 27 February 2002 at 5.30 p.m., from the Steel Kothi of Firdaus Haji belonging to the Company where he was employed. Sugra managed to meet Firoz 3 days after his arrest, at the Railway Station lock-up. She received a letter from Firoz 3-4 months later stating that he had been confined in what appeared to him like a dark cave, a 'gufa'. Sugra has, continued to meet her husband once every eight days, with her children and her mother-in-law. Each visit costs nearly Rs.200-250. The children are taken to the jail for the visit, especially because their father does not want them to forget him. The children therefore know that their father is in prison. The younger one responded on being asked that the police took his father away. Sugra Bibi and others like her, however, do not know that the accused have been charged under POTA.

In other cases, the police seemed to have targeted those residents of the locality, who were 'known criminals'. Shabir Hussain Abdurrahim Badaam, for instance, convicted along with six others in a murder case, had come home on parole in February and had to return. He skipped parole because his mother's hand got fractured and was since 'wanted' by the police. Shabir subsequently went into hiding, while his wife Rehana was staying in Rehmatnagar in her parents' house. The police started coming to her house, routinely harassing her and her parents, despite their statements that they did not know where he was. They would come in about 10 vehicles, create havoc in the house, release the goats etc, and hurl terrible abuses at them. Rehana has been supporting herself (since 1997 when her husband was convicted) by selling eggs and goat milk and by working in the Bohra areas in Godhra town. A month after the train incident, the police barged into her house and took her, one of her two small children and her mother to the railway police station, and detained them all day, questioning them incessantly about the train incident and about her husband's whereabouts at

the time. Some time later, in the month of June, the police came and took Rehana's father, Hussain Adam Posti, and detained him illegally for 10 days, questioning him in a room in the railway police station. They threatened to charge him in the 'dabba' case if he did not surrender Shabir. The police finally caught Shabir in Halol in September 2002 and charged him in the 'dabba case' as well. He was badly beaten by the police. Shabir's uncle's son Saiyad Abdus Sattar Badaam, also convicted for murder in 1997 was similarly charged. He had come home for Bakr Id and then went back to jail. He was charged in the case while he was in jail one month after the incident. He was then handed over to the railway police. His wife too has to work outside to support herself and her 7-year-old son.

BOX TWO

The arrest of Maulavi Umerji

Maulavi Umerji was sought to be identified as a 'mastermind' behind the train burning incident. The Maulavi belongs to a family of traditional timber merchants in Godhra. He was perceived by the local community as a philanthropist and was always among the first to organise relief in the various calamities that had occurred in Gujarat in the recent past. He had also helped in the Bhuj earthquake relief by sending truckloads of food grains and other materials for survival. The relief material would be collected from the community and well-wishers, as well as relatives settled outside Godhra. This relief-contingency fund was a regular feature of the budgeting done for the local mosque.

According to local community leaders and his family, the Maulavi's arrest was executed by a police contingent of 2000-2200 personnel who came in about 32 jeeps. Madari Kaka, a community leader of Ghanchi Muslims, felt that this show of strength was ridiculous, as Maulavi Umerji did not even offer resistance. He had been quite ill of late and all family members were quite anxious about this arrest.

According to the SP, Government Railway Police, the arrest would not have taken place had the Maulavi produced the persons wanted in the case. N. Parmar, the Investigating Officer, had assured the family of the Maulavi's safety, and told them that he would be released the subsequent day. The Maulavi was, however, packed off to Vadodara where he was held in remand for five days. His son, Amin, was not allowed to see him even to deliver medicines. Maulavi Umerji, we were told, suffered from acute blood pressure problem, and his safety was largely dependant on the timely intake of medicines. It was only after the intervention of the SP (City Police), Narasinha Kumar, that Amin was initially allowed to give medicines to his father. The police, however, have not allowed the family to continue the supply of medicines. Subsequently, despite repeated pleas that the medicines cost Rs.1800 per month, the jail authorities have insisted that the family send a money order of Rs.400 per month to them to buy the prescribed medicines. The Maulavi had also been refused the right to use a walking stick on which he is dependent for his mobility. Before this, magisterial permission was required to get home cooked food sanctioned for the Maulavi.

While in remand the Maulavi was reportedly denied food for a week and physically assaulted by the I.O. The latter, we were told, had constructed a statement on behalf of the Maulavi that he received Rs.1,45,000 from a person (name was not disclosed in

the declared statement) who in turn had sourced it from hawala. This statement allegedly running into 22 pages, also mentioned that Rs.1500 per month was being given to the families of the accused. Both Madari kaka and Amin told us that Behera's mother had received a sum of Rs.1000 from the police on 5 February, after Behera's 'confession' had been recorded in the magistrate's court. A day after, the police barged into the Maulavi's house, broke open the cupboard (despite his family's attempt to hand over the keys and requests for not breaking the lock) and confiscated a lot of money and jewellery. A complaint was lodged with the Sessions Court but no action was taken. The IG, A.K. Bhargava, made a public statement asserting that nothing was taken from the Maulavi's home or the relief camp office that was ransacked the day after Maulavi's arrest.

It may be noted that on 2 August 2003 Maulavi Umerji's bail plea was rejected by a Division Bench of the Gujarat High Court. The High Court order upheld the POTA Court's 7 July 2003 order denying him bail.

BOX THREE

A DEATH IN CUSTODY

On April 30, 2003, Fakhruddin Yusuf Sheikh, an undertrial in Godhra train burning case died in the Ahmedabad Civil Hospital reportedly due to a cardiac arrest. Forty-six year old Fakruddin Yusuf Shaikh, booked under POTA, was arrested on February 27, 2002 and was in judicial custody in Sabarmati Central Jail since March 14, 2002.

Controversy surrounded the news of the death with allegations that some jail inmates harassed him earlier. Additional DG (Jails) H R Gehlot, however, denied the allegations. According to Gehlot, Sheikh had first complained of breathlessness around 11.15 pm on Monday after which he was found to have low blood pressure. Twenty minutes later, he was taken to the Ahmedabad Civil Hospital. X-ray reports showed an increase in his heart size and fluid accumulation in the lungs. He was treated and sent back to the Sabarmati jail hospital on Tuesday where the doctor checked him around 9.30 a.m. and found his condition improving. By 10.40 pm he again complained of breathlessness and gasping. Sheikh was rushed to the Civil Hospital and died five minutes after midnight, as per the official reports.

The Special POTA court has sought a detailed report relating to Sheikh's death. Special judge Sonia Gokani directed the chief medical officer of the Civil Hospital and the jail superintendent to file a detailed report. The order was passed after Sheikh's wife Amina, filed an application expressing apprehension that his death could have been caused by negligence. Her apprehensions were based on his complaint to her when she met him shortly before his death (after our team had met her in Rehmatnagar, Godhra) of denial of medical treatment in jail.

Since Fakruddin's arrest, his wife Amina and 6 children have been struggling to make ends meet. Amina's single unanswerable query to the team was -'When will he get bail?' His death spells the end of all hope for them. Our concern is that such cases are likely to recur after the imposition of POTA. Incidentally, a few days before Fakruddin died, on 17 April 2003, the Special POTA Court in Ahmedabad rejected bail applications of 56 accused. POTA involves long-drawn detention and stringent bail conditions, with the implication that ill treatment of the accused in custody, denial of

medical facilities, and other forms of torture, which are part of detention conditions will also be accentuated and suffered over a prolonged period.

BOX FOUR

UN-CANNY TRANSFORMATION

The changing dimensions and colours of the can- and the case

Main charge-sheet filed on 22 May, 2002	Several accused admitted that they carried 5 litre yellow cans (containing kerosene/petrol) of Dhara and Kiran (oil) brands to the station. They later hid the cans in the bushes and the well, which were found by the SIT with their help. Some cans still contained some kerosene when the SIT found them. The only hard evidence for setting fire to the coach therefore is some 5 litre cans recovered by the police. All eye-witnesses stated that the petrol was thrown from outside.
FSL report submitted in May 2002	According to FSL report, 60 litres of petrol were used to burn the coach S6. The report stated that the petrol was thrown from inside and not outside the coach
Second charge-sheet submitted in September 2002	The second charge-sheet contained the testimony of 'eyewitness' Ajay Baria. According to his statement three 20-litre black cans of petrol (amounting to 60 litres) were transported to the coach S6 and thrown inside the coach, exactly as the FSL report stated.
'Confession' of Jabir bin Yamin Behra	On February 5, 2003, Jabir bin Yamin Behra, one of the accused arrested, 'confessed' his guilt and also testified to a 'conspiracy' to burn the train, spearheaded by Maulana Umarji. This was however not borne out by any other piece of evidence thus far collected.

Arrest of Maulana Umarji	On February 6, 2003, Maulana Umarji was arrested based on Behra's 'confession'. He is depicted as a 'mastermind' who along with a small group 'planned' the train-burning.
Re-imposition of POTA	On February 19, 2003, POTA was re-imposed on all the accused in the case. At present` the number of thus accused stands at 125. All were accused of criminal conspiracy, and committing a 'terrorist act'.
Fourth charge-sheet submitted in March 2003	Once POTA was imposed, the third charge-sheet, on cue, 'proves' conspiracy, and prior planning before the incident. Amongst the testimonies included in this charge-sheet, a petrol pump attendant attested to the 'fact' that 140 litres of petrol in 7 containers (20 litres each) was purchased on 26 February 2002, (the evening before the incident) by some of the accused.

Conclusion

Towards the end of June 2003 a Sessions Court in Vadodara delivered its judgement in the Best Bakery case. Fourteen persons were burnt alive in the Bakery in the course of the violence against Muslims in Gujarat that began in the wake of the Godhra train burning. The Court acquitted all accused in the case, the majority of the prosecution witnesses having turned hostile, and chided the police for having caught the wrong persons. On the other hand, 131 persons accused in the Godhra train burning case, have been charged under POTA, a law that is fast coming to be seen as synonymous to conviction. The discrimination and injustice that is written in the law is not lost on the people who suffer under its regime. The Muslim community in Godhra has come to realize that the injustice woven in the law is not inadvertently so. It is conscious and deliberate, so that the state, can pick and choose, and selectively apply or withhold its application, on the criterion of political expediency. The application, suspension and reapplication of POTA on the accused in the infamous 'dabba case' has brought home, this fact more pugnaciously than ever before.

The effects of POTA are being felt in various measures by all Muslims of Godhra. The majority of the accused in the train-burning case have been under prolonged imprisonment as fresh charges continue to be brought against them. The application of POTA to the case has made their release on bail or otherwise, impossible. Most accused are poor Ghanchi Muslims whose families have been impoverished by the long absence of the men who were in most cases the only working members. The middle class, silenced and subdued, has been made to realize the fragility of the security that their class location gave them.

In such conditions illegalities committed by the state go unnoticed and undetected, and even when they are noticed they are not contested. Thus the accused in the Godhra train burning case, do not know and cannot protest against their illegal detentions and torture, nor object to police tactics of random and punitive arrests. The sword of POTA hanging on their own heads has, subsequently silenced those who could raise a voice. While the days immediately following the arrests were repressive for the general atmosphere that obtained in Gujarat and the specific situation in Godhra itself, Modi's election in December 2002, has seen a resurgence in the aggressive stand of the Hindu right. The local Bajrang Dal leader and MLA in Godhra declared that Signal Falia will be flattened and turned into a cricket ground. The application of POTA, an undemocratic law, has confirmed the process of the isolation and elimination of the minority community. As seen from its operation in Godhra, POTA emerges as a legalised form of annihilation of minority communities.

In a fundamental sense the use of POTA in the Godhra train burning case has meant continuation of the state-abetted genocide of Muslims that started over a year and a half ago in Gujarat . The genocide started with the physical elimination of Muslims in the state, brutal violence directed at men, women and children, from late February till April 2002 approximately. The state offered little relief to the victims, who had to rely on their own resources and that of their community's. This was accompanied by the forcibly brought about economic dislocation of Muslims, destruction of means of livelihood, accompanied by economic and social boycott of Muslims in the aftermath of the post Godhra carnage. A third form of continuation of the genocide was the consistent denial of justice to Muslims in the courts of law, as case after case where Hindus accused of massacres got acquitted, often for 'lack of evidence', the collection of which is the work of investigation agencies. Finally the impact of the imposition of POTA in the Godhra case has been that the law has taken into its sweep those sections that had earlier escaped physical violence, displacement and economic destruction. It has thereby ensured the withdrawal of all public activity of this section, pushing them into inactivity and passivity, spinning around them a web of insecurity and making them aliens in their own country, a 'suspect' community. The generation of this atmosphere of terror among the Muslims has brought about the final cruel blow- cessation of even the community based relief that the thousands of victims of post Godhra carnage were able to get. This is not an 'unplanned' consequence of POTA, but the intended purpose of such 'political' and extraordinary laws. TADA [Terrorist and Disruptive Activities (Prevention) Act, 1985], the earlier avatar of POTA, was allowed to lapse in 1995 amidst widespread allegations of its targeted use against religious minorities, including Muslims of Gujarat. POTA came with a 'safeguard' against this 'abuse' - the section in TADA that pertained to acts 'adversely affecting harmony amongst different sections of the people' - was removed from the ambit of 'terrorist activities' in POTA. The use of POTA in Gujarat against Muslims as is evident in the present case (and subsequent cases in the state) has shown how this legal

safeguard is totally meaningless. Abuse is written into such laws that give disproportionate and arbitrary powers to the executive to selectively apply the law. By making the task of adjudication dependent on the will of the politically dominant groups, these laws are anti-people and fundamentally undemocratic. It is not, therefore, incidental or inadvertent that POTA is being used against Muslims in Gujarat. It is rather, deliberate, intentional and politically determined. The application of POTA in the train burning case reveals how the very use of this law acquires frightening significance, especially since it has rendered an entire community suspect, isolated and alienated in their own country.

PUDR Demands:

- (a) That the Godhra Sabarmati train burning case be tried under the ordinary law of the land.
- (b) The investigation of the case should be taken away from the State Police and handed over to an independent body like the CBI.
- (c) That the trial be shifted to a court outside Gujarat.
- (d) That the Gujarat Government be held responsible for not pre-empting a situation that was evidently building up in an around Godhra.
- (e) That the Gujarat Government be held responsible for the tragedy that occurred in Godhra, for the terrible loss of life, dislocation and destitution that has been suffered by people who lost family and friends when the train was burnt in Godhra and in the police action afterwards.