

Justice S.M.Soni

Former Judge, Gujarat High Court
Former Lokayukta, Gujarat State

27/06/12

To
The Hon'ble, The Chief Justice of India
Supreme Court
New Delhi.

**Sub: Submission of facts and quotes showing communal mind set of Hon'ble
Mr Justice Aftab Alam-Transfer of all matters related to Gujarat before
any other bench.**

My Lords,

I retired as a puisne Judge of the High Court of Gujarat, on December 9th, 1998. I was appointed as **Lokayukta** of the State of Gujarat on 25th November, 1998, fifteen days before my retirement, after securing permission of His Excellency President of India. I retired as Lokayukta on 24th November, 2003. Since then I am involved in social activities. I am a president of an NGO named "**Justice On Trial**", Ahmedabad, a National vice president of "**Rule of Law Society**", Allahabad (U.P) and a Chairperson of "**All India Legal Aid Forum**", New Delhi.

All these NGOs work for the protection of Human Rights, Weaker section of the society, Down trodden people of the society, irrespective of their religion, race, caste, creed, community and sex etc and to establish Supremacy of Law.

My Lord with your kind permission, I take liberty to place before your Lordship's the glaring incidence of defiance of the oath taken in Form No 4 of the third Schedule of the Constitution of India by my **Lord Mr Justice Aftab Aalam** by giving a lecture on the subject "**The Idea Of Secularism and Supreme Court Of India**" on 14th October 2009 at London.

Res: D-31, "Akash", Beside Chief Justice Bunglow, Vastrapur, Ahmedabad.
Pin-380015.Gujarat.Tel Nos. (079) 26851133, (079)26844294.(M) 098259 55797

From his above lecture at London, it can be inferred that:

A) The assertion by Mr Justice Alam that the case of a minority organisation, i.e The Islamic Academy of Education was referred to the larger bench so that the Court may not be bound by any of its earlier judgments and at the end of the judgment, " minority rights appears to be considerably restricted and ultimately Islamic Academy was relegated to back and a non minority private college came to fore", is a direct allegation against the integrity of the Apex Court in general and the Chief Justice of India in particular. From this assertion it can be concluded that he feels that the eleven judges bench was deliberately constituted to relegate and restrict minority Islamic Institutions This amounts to a gross misconduct on the part of a sitting Judge.

B) Mr Justice Alam feels that the money spent on the Hajj Subsidies is nothing as compared to millions spent on Hindu fairs etc. He has conveniently ignored that in big Hindu religious fairs and festivals where millions of people visit, money is spent by the Govt to maintain law and order only. Mr Justice Alam has conveniently ignored to mention in his lecture that even in minority big fairs like Ajmer Urs etc Govt similarly spent money to maintain law and order and sometimes to promote culture and tourism. His opinion shows his communal mind set in favour of a particular religion.

C) Mr Justice Alam's sarcastic assertion that "Amdist all this a majority of Indians honestly believe that they live in a secular country expresses his wilful belief that India is not a secular country. His views are against the basic tenets of the Constitution.

D) The oblique criticism of various judgments of Supreme Court on number of occasions by Mr Justice Alam, that **too on foreign soil**, amounts to contempt of court, lowering the dignity of the Apex Court.

E) From entire text of his Lecture, a feeling is conveyed that Indian Laws treats two Indians i.e Hindus and Muslims differently and he is working as a crusader of minority rights. This is highly inappropriate for a sitting Judge that too of the Hon'ble Supreme Court.

I deem it appropriate to draw your Lordship's kind attention to the article published few judgments and orders passed by Mr. Justice Alam which would highlight the concern expressed by me in this communication.

Important Quotes of Mr justice Aftab Alam's lecture given on the subject "The Idea of Secularism and Supreme Court of India" on 14th October, 2009 at London are given below:

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

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

"For every Muslim going for Hajj, the Government of India spends, from the taxpayes money a substantial amount as air fair subsidy. In government of India budget for the year 2009-10 a sum of Rs 632 crores (apprtly 100 million Euro) is allocated as Hajj subsidy. Kumbh Mela or the Fair of Nectar Pot takes place four times every twelve years when millions of Hindu Pilgrims congregate to take the holy dip in the river on a single day. The next fair is to take place in 2010 in Haridwar where the Ganges comes downs into the plains. The State of Utrakhand would spend an estimated amount of Rs 500 crores (approximately 80 million Euors) for organizing the Mela. Besides the Kumbh there would be atleast a dozen purely religious festivals where direct Government is spending runs into billions of rupees.

Amidst all this a majority of Indians honestly believe that they live in a secular country. And they feel quite comfortable in that thought.”
(page-13)

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

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

“To sum up, for about forty to forty five years the Supreme Court held that though the Constitution did not permit community specific political rights, it recognized community specific social rights. But in the last fifteen years the court seems to have come to the view that under the constitution there cannot be any community specific rights, either political or social”.(page-20)

“The four decisions, commonly referred to collectively as the “Hindutva Decisions” are highly significant and among them the most important one is in the case of Manohar Joshi. In his election speeches Manohar Joshi, the winning candidate had said that The First Hindu State will be established in Maharashtra”, one of the States Of India. The Court, studiously avoiding any reference to the Seven-judge bench decision in Bommai, set-aside the decision of High

Court and restored the appellant’s election observing that “a mere statement that the first Hindu State will be established in Maharashtra is by itself not an appeal for votes on the ground of his religion but the expression, at best, of such a hope.

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

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

“The court also arrogated to itself the right to decide whether or not a certain practice was essential to a religion, of course with reference to authoritative sources and texts relating to that religion. Later on in Durgah committee case the court held that Articles 25 and 26 were intended to protect existing rights and they did not confer any new rights. In the Durgah committee case the Court took a step further and held that religious practices might have sprung from superstitious beliefs that are “extraneous and unessential assertions” to the religion. Such practices would naturally have no immunity against state intervention”(Page-21)

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

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

“Ho’ble Justice Alam in his lecture finally concluded:

“In India Minority groups are as hierarchical as the larger Indian society. It is pointed out that social surveys show that an over protection of community specific rights was of very little, if hardly any, use to the weaker sections within the minority groups. But on the other hand a complete denial of community based rights evokes within the minority groups the fear of being subsumed by the majority and that is a source of social tension on a greater scale. Therefore, issues of minority rights perhaps need to be addressed afresh having regard to these concerns and in light of the experience of the past sixty years”. Copy Enclosed As Annexure-1.

With this backdrop I further submit as under.

1. Mr Justice Aftab Alam has taken an oath "that I will duly and faithfully, and to the best of my ability, knowledge and Judgment, perform the duties of my office without fear or favour, affection or ill-will and that I will uphold the constitution and Laws".

2. My Lordship will agree that the Judges are equally, faithfully and rather more- scrupulously required to follow the oath taken in letter and spirit and also to bear in mind while discharging judicial functions that they even inadvertently does not defy/deny the Fundamental Rights particularly mentioned in Articles 14, 15 and 21 of our Constitution, of the Citizens, in particular the litigants before them.

3. Under the fundamental principle of administration of justice, Judges are bound by their oath and required to do justice only according to the Constitution and Laws. Utmost care has to be taken that not only their decisions but discussions in open court are not tainted with their personal belief if it is contrary to the law.

4. The judicial system as envisaged by the constitution makers places The Supreme Court at the helm of the Indian Judiciary, reposing the highest faith in this institution. It is the last bastion of hope for the common man. Whilst the citizens turn a blind eye to the minor aberration in the lower judiciary, when it comes to the Hon'ble Supreme Court and its judges, exemplary standards are expected. The Apex court not just set precedents binding all the courts all over the country but also leads by conduct. The justice expected to be dispensed, is beyond ideologies, communal preferences and personal beliefs. Justice must not just be done but also appear to be done.

5. It is also clear that the views be it personal, judicial, social are reflected in the articles written or submitted by a judge. The relevant excerpts from the article "**The Idea Of Secularism And Supreme Court Of India**" written by **His Lordship Mr justice Aftab Alam** discloses his lordship's mindset. If the mindset of his Lordship Justice Alam is one as disclosed in this article, it is difficult to suppress views and ideas emerging in heart. They are always advertently or inadvertently spelled out.

6. The recent developments, in so far as the state of Gujarat is concerned, has compelled me to bring to your lordships' kind attention, a growing feeling of prejudice, an attitude of bias against the state. This fact is a subject matter of free discussions not only amongst the members of Bar in Supreme Court but also in other Bar associations. India today is proud to boast of pluralistic societies and

the problems faced in each State amongst communities and societies, remain the same. These are challenges which the Executive, Legislature and the Judiciary and in particular the Judiciary need to address. However, often, whilst reading articles published by the judges of the Hon'ble Supreme Court and the judgments delivered by them, an apparent bias is visible in favour of one community against another. Such perceived bias hits at the heart of secularism and a feeling of fair play and justice.

7. My Lord, with your kind permission I crave/take liberty to address this letter to Your Lordship with a fervent hope that the angst I am expressing on behalf of so many others who share the similar beliefs, will be addressed by your Lordship appropriately, in the interest of justice. It is palpably visible that almost every politically sensitive matters relating to Gujarat is coming before the Bench where one of the Judge is Hon'ble Mr Justice Aftab Alam and every judgment delivered by him irrespective of the wrong-doings, whether by individual officers, N.G.Os., person accused or the authorities, is repeatedly and consistently found in favour of Minority community. Irrespective of the extent of wrong committed, Mr Justice Alam in other matters, it is felt to adapt different yard sticks feels to suggest bias. Even the disparaging remarks made in the open court reveal an apparent bias.

8. It appears, the pre- conceived beliefs with which concerned court functions is one of the victimization of the minority community. Whilst in a certain case that may be so, however it is highly unwarranted for Justice Mr Alam to repeatedly and consistently harbour this mis-apprehension in so far as all actions of State of Gujarat are concerned and protect members of the said community irrespective of the wrong-doings or the gravity of the charges. Your Lordship may agree with me that, personal preferences and ideologies cannot be permitted to dominate dispensation of justice. This appears to be a violation of oath under the constitution of India as taken by Mr Justice Aftab Alam

9. It is with great pains, that I bring it to your Lordship's kind notice that the general feeling carried amongst legal fraternity and amongst the people at large in Gujarat is that Gujarat is being targeted by Mr Justice Alam with a single mandate of siding minority community irrespective of theirs being wrong. This apprehension hits at the heart of the justice.

10. Mr. Rais Khan Pathan approached the NGO "JUSTICE ON TRIAL" headed by me, voicing a strong apprehension that looking to the observations and remarks made by Mr Justice Alam in the open Court, even without the matter having been opened, clearly demonstrated his bias in favour of Ms Teesta

Setalvad., As a colleague of Ms. Setalvad he was privy to the manner in which the Affidavits were made to be filed by her, for and on behalf of the riot victims. Having given up his job, Mr Rais Khan Pathan saw no reason to further involve himself in the matter till allegations were leveled against him for fabricating affidavits. With documentary evidence he approached the trial courts. On account of his having spoken up against her, he is considered as an Anti- Muslim, working against the community and regularly started getting threats to his life. This fact has also been reported to all the concerned authorities.

Copy of Affidavit dated 15/03/12 of Shri Rais Khan Pathan addressed to your Lordships in which he has clearly expressed his apprehension about the manner in which his two cases are dealt with by Hon'ble Mr Justice Alam, is enclosed as Annexure 2.

Copy of Affidavit dated 22/10/11 of Shri Rais Khan Pathan addressed to Hon'ble Chief Justice Mumbai High Court in which he has narrated the threats received by him after filing an Affidavit for retrial of Best Bakery case, is enclosed as Annexure 3.

Copy of Complaint dated 24/10/11 to the Police Commissioner Ahmedabad regarding threats to his life are enclosed as Annexure 4.

Few examples of his orders/observations:

11. A PIL was filed in the Supreme Court by lyrists Mr Javed Akhtar about fake encounters in Gujarat. Mr Justice Alam on 01/03/12 appointed Mr Justice H.S.Bedi after Mr justice M.B.Shah declined to head and monitor investigation of the cases of the alleged fake encounters in Gujarat between 2000 to 2006. Mr Javed Akhtar is an ordinary resident of Mumbai, where number of encounters (majority of victims were Muslims, yet no grievance) have taken place. His field for social work, if at all, is, it is not Gujarat in any case. Hence in my view he has no locus for any wrongs, if at all, in Gujarat. Still his PIL is entertained and very unprecedented order is passed.
12. An SLP(Crl) No 5275-5276/2011 titled Teesta.A.Setalvad V/S State Of Gujarat was listed on 21/02/12 in the Court of Mr Justice Alam. As per news reports Mr Justice Alam even without hearing the matter made following observations:

“This is hundred percent spurious case to victimize the petitioner (Setalvad). This type of case does not credit to the State of Gujarat in anyway”. Mr Justice Alam told the senior advocate of State of Gujarat Mr Pradeep Ghosh “you advise your client not to proceed with this type of case. You should show some responsibility and tell the government not to proceed with this case”.

In this case nine accused were arrested and sent to jail. During investigation five accused persons had given statements under section 164 of CrPC before the Magistrate against Ms Setalvad. Even a witness Shri Rahul Singh who is a Senior Journalist has also named/blamed Ms Setalvad for this crime. Still Mr Justice Alam choose to lashed out the State of Gujarat, Why and how and on what material on record without hearing the concerned parties, above conclusion is reached? What is the value of statement under section 164 of CrPC? How the statements U/S 164 of Cr.P.C. are ignored at this stage? What is the impact of such approach on charges of section 120 B of IPC?

13. As per news reports, in very famous **Sohrabuddin encounter** case, even after CBI concluded the investigation and filed the charge sheet and supplementary charge sheet, Mr Justice Alam kept the writ petition pending as part heard even after the learned brother Judge opined categorically that in view of the settled position no further monitoring is permissible.

14. Whilst I appreciate the Zeal and courage of Ms Teesta Setalvad for the rights of minorities, but this does not absolve her from due process of law when her own companions allege wrong doings against her. Just as allegations against others merits inquiry, allegations against her too, merit an inquiry. Whether her zeal and courage entitles her to commit wrong to be ignored? This creates an impression of her being above the law and the feeling is created that the same is recognised by the Apex Court.

15. The Hon'ble Supreme Court exists for the people of India and targeting certain section of its people, as a crusader for the minorities, does not present the Hon'ble Supreme Court in a good light. Your Lordships are the master of roster and I earnestly request My Lord, to kindly look into the matter and save the independence of Judiciary.

In the light of above observations of Mr justice Alam which clearly indicates his mindset towards a particular community, I request your Lordships:

(a) To look into the matter,

(b) To take a re-look at the Constitution of the Benches and in the interest of justice, if deemed appropriate, transfer all the matters related to Gujarat before any other Bench, from the bench where in one of the Judges is Mr justice Alam where such apprehension would not defeat the cause of justice.

or

(c) (i) Treat this letter as PIL and stay the further hearing of such criminal matters till the final disposal of the PIL and,

(iii) Direct the Registry not to place the criminal matters of Gujarat before a Bench where one of the judges is Mr Justice Aftab Alam.

With warm regards,

Yours Sincerely



(Justice S.M.SONI)

Annexure: 1) Copy of "Idea of secularism and the Supreme Court of India" by Justice Alam on 14th, October, 2009 at London.

2) Copy of affidavits dated 15/03/12 by Shri Raiskhan Azizkhan Pathan addressed to Your Lordship along with its annexures.

3) Copy of affidavit dated 22/10/11 of Sri Rais khan AzizKhan Pathan addressed to Hon'ble Chief Justice of Maharashtra HC.

4) Copy of complaint dated 24/10/11 by Shri Raiskhan Azizkhan Pathan to the commissioner of Police, Ahmedabad.