

SUPREME COURT OF INDIA

Mohd. Haroon

Vs.

Union of India

(P.Sathasivam CJI., Ranjana Prakash Desai and Ranjan Gogoi JJ.)

26.03.2014

JUDGMENT

P.SATHASIVAM, CJI.

1. These writ petitions and other connected matters relate to the riots that broke out on the fateful day of 07.09.2013. The riots erupted in and around District Muzaffarnagar, Uttar Pradesh as a result of communal tension prevailing in the city, which wrecked lives of a large number of people who fled from their homes out of anxiety and fear.

2. It is asserted in these petitions that the communal riot erupted in Muzaffarnagar, Shamli and its adjoining rural areas after a Mahapanchayat which was organized by the Jat community at Nagla Mandaur, 20 kms away from Muzaffarnagar city on 07.09.2013. In the said Mahapanchayat, over 1.5 lakh persons from Uttar Pradesh, Haryana and Delhi participated to oppose the incident which was occurred on 27.08.2013 in Kawal village under Jansath Tehsil of Muzaffarnagar because of which violence broke out between two communities and three youths were killed from both sides in the wake of a trivial incident which had occurred earlier and the whole incident was given a communal colour to incite passion.

3. It is the claim of the petitioners herein that the local administration instead of enforcing the law allowed the congregation not only to take place, negligently and perhaps with certain amount of complicity, but also failed to monitor its proceedings. It is asserted in the petitions that since 27.08.2013 more than 200 Muslims have been brutally killed and around 500 are still missing in the spurt of the incident in 50

villages of the Jat community dominated areas where the Muslim community is in minority. It is the stand of the petitioners that in the remote villages more than 40,000 persons have migrated under threat and have been forcibly asked to move out of the village otherwise they would be killed. It is further alleged that many thousand persons including infants, children, women and elderly are without food and shelter in various villages, and no facilities are being made available by the administration. Besides this, huge illegal and unauthorized arms and ammunitions have been recovered in and around Muzaffarnagar. It is also pointed out that the displaced persons of all communities are compelled to live in shelter camps where adequate arrangements are becoming the problem of survival.

4. Consequently, several writ petitions, under Article 32 of the Constitution, were filed by various individuals/Supreme Court Bar Association/NGOs seeking for an inclusive protection for each victim whose fundamental rights have been infringed in the said riot by praying for numerous rehabilitative, protective and preventive measures to be adhered to by both the State and the Central Government.

5. There are various contra-allegations about the actual occurrence and reasons attributed to the cause by different community people. It is relevant to point out that an association representing Jat community has also approached this Court highlighting their stand. It is stated that on the pressure of the other group, innocent persons are being picked up and are being incorporated in the FIR without conducting any inquiry and they are being arrested for none of their faults. Thus, it is the stand of the petitioners in this petition that the State has failed in its duty to ensure the security in the area.

6. It is also pointed out that the State Government transferred the Jat community officers alone from the districts of Muzaffarnagar and Shamli to other parts of the State. It is their claim that in order to remove the apprehension from the minds of the Jat community people, it is desirable either to entrust the investigation to the CBI or to constitute SIT comprising persons from outside the State of Uttar Pradesh. They also predominantly prayed for registration of FIRs against all culprits including powerful persons.

7. Similar petitions were also filed in the High Court of Allahabad. In view of the similarity of the issues involved in these petitions, viz., reasons for such violence,

rehabilitation measures, compensation for the loss of lives and properties, action against offenders/culprits, all the matters pertaining to the said incidents filed in the High Court of Allahabad were directed to be transferred to this Court by order dated 19.09.2013.

Writ Petition pertaining to Rape Cases

8. Serious allegations have been made against the State Police for not providing adequate security to women which resulted in several rapes being committed during the said communal violence. The petition also highlights the inaction on the part of State Police against the real culprits and the indifferent attitude towards the victim's rehabilitation and security.

9. Rape victims (Seven) filed Writ Petition (Criminal) No. 11 of 2014 for protection of their right to life under Article 21. All the petitioners belong to the minority community who were brutally gang raped and sexually assaulted by men belonging to the other communities during the communal violence in Muzzafarnagar and adjacent districts. It is the assertion of the petitioners in this petition that their homes were destroyed and they were rendered homeless with no roof over their heads, they lost their earnings and it has become difficult for them to take care of their children and themselves.

10. It is further pleaded that due to the stigma attached to the victims of sexual violence, the agony of gang rape and looming fear of future assault, the petitioners were unable to promptly report the crime of gang rape committed against them. It is the stand of the petitioners that they had been displaced from their villages, namely, village Fugana and village Lakh, hence, they could not go to the police station to lodge the complaint of gang rape. It was further submitted that in these circumstances, the delay on the part of the petitioners in lodging FIR is reasonable and does not, in any way, impact on the veracity of their complaints of gang rape.

11. It is further stated by the petitioners that after registration of FIR under Section 154 of the Code of Criminal Procedure, 1973, (in short 'the Code') and recording of statements under Section 161, the law prescribes that under Section 164(5A) of the Code, for all sexual offences including crime of rape, the police shall have the statement of the woman against whom the offence has been committed recorded

before a Judicial Magistrate as soon as the commission of offence is brought to the notice of the police. It is stated that even though Petitioner Nos. 1, 3, 4, 5 and 6 had lodged the FIRs in September, 2013 and Petitioner No. 2 had lodged the FIR in early October, 2013, the police deliberately and with mala fide intention dragged the investigation. Their statements under Section 164(5A) of the Code were recorded as late as in December, 2013 after the delay of almost three months.

12. It is also highlighted that Section 164A of the Code provides for medical examination of the rape victim and casts a statutory duty upon the police to send the woman making the complaint of rape to a registered medical practitioner within twenty four hours from the time of receiving information regarding the commission of such an offence. In the case of the petitioners, in direct contravention of this legal provision, the police knowingly delayed their medical examination. The petitioners are all married women having children, hence, their medical examination almost 20-40 days after the incidents of gang rape is unlikely to provide any perpetrated evidence. It is further pointed out that the petitioners were gang raped on 08.09.2013 whereas the medical examination was conducted between 29.09.2013-18.10.2013.

13. In the case of Petitioner No.7, in spite of specific information, there is no reason as to why FIR was not registered. It was only during the hearing before this Court, on 13.02.2014, when the counsel for Petitioner No.7 handed over the copy of the complaint to the counsel for the State, an FIR was registered on 18.02.2014

14. Further, it is the grievance of the petitioners that FIRs of all the petitioners were registered under Section 376D of the Indian Penal Code, 1860 (in short 'the IPC') a specific provision relating to gang rape. Though Section 376(2)(g) of the IPC is squarely applicable to the crimes of gang rape that have been committed against the petitioners during the communal violence in September, 2013, the police has specifically omitted to include Section 376(2)(g) of the IPC in order to dilute the case of the petitioners and to exclude the legal presumption that the law raises through Section 114A of the Indian Evidence Act, 1872 in favour of the petitioners. Therefore, the petitioners submitted that biased and motivated investigation by the police is clear and manifest and done with the sole purpose of shielding the accused.

15. It is further submitted that though Petitioner Nos. 1-6 named total 22 men as accused in six FIRs, only in February 2014, one accused, namely, Vedpal, who was

named in FIR No. 120 of 2013 was arrested. Even after lapse of four and a half months, 21 named as accused by the petitioners of the heinous crime of gang rape during communal violence roam free. Neither those persons were arrested nor any proceedings have been initiated under Section 83 of the Code. The petitioners claimed in the petition that the accused are roaming free and enjoying the support of dominant community, Khap Panchayat, political parties and besides because of their closeness, they are also intimidating the victims. Thus, it is the stand of the petitioners that unless the police give protection to the victims and witnesses, it would be impossible for them to depose against the persons involved in the gang rape.

16. The petitioners have also disputed the claim of the State in disbursing compensation. It was asserted that they were not paid compensation much less the adequate compensation. Further, a prayer was made for transfer of cases of gang rape outside the State of U.P. in the larger interest of the society and in order to ensure fair investigation, prosecution and trial of the cases relating to Petitioner Nos. 1 to 7. Finally, they asserted in the petition that if the investigation is not transferred to SIT comprising the officers of integrity from the States other than U.P., there cannot be justice for sexual violence suffered by them due to inaction on the part of the State of U.P.

Details Regarding Petitions:

17. On the whole, the following writ petitions/intervention applications/special leave petition pertaining to the aforesaid incidents, have been filed in this Court:

(a) Writ Petition (Crl.) Nos. 155, 158, 165, 170, 171, 179, 181 196, 206 of 2013 and Writ Petition (Crl.) No. 11 of 2014

(b) Crl. M.P. Nos. 19442, 20245, 20247, 26156, 24202, 26705, of 2013 in Writ Petition (Crl.) No. 155 of 2013 and Crl. M.P. Nos. 1516-1518 of 2014 in Writ Petition (Crl.) No. 155 of 2013, Crl. M.P. No. 19878 of 2013 in Writ Petition (Crl.) No. 165 of 2013, Crl. M.P. Nos.19971, 20460 of 2013 in Writ Petition (Crl.) No. 158 of 2013, Crl. M.P. Nos. 1523 of 2014, 2965- 2966 of 2014 in Writ Petition (Crl.) No. 170 of 2013, Crl. M.P. No. 23077 of 2013 in Writ Petition (Crl.) No. 171 of 2013, Crl. M.P. Nos. 24192 of 2013 in Writ Petition (Crl.) No.179 of 2013, Crl. M.P. No. 1124 of 2014 in Writ Petition (Crl.) No.

179 of 2013, Crl. M.P. No. 1895 of 2014 in Writ Petition (Crl.) No. 11 of 2014 and Crl. M.P. No.....of 2014 in Writ Petition (Crl.) No. 155 of 2013

(c) Contempt Petition (Crl.) No.....of 2014 (D1372) in Writ Petition (Crl.) No. 155 of 2013

(d) Special Leave Petition (Civil) No. 35402 of 2013

18. Apart from the above matters, we were also called upon to deal with the following cases from the High Court of Allahabad:

(a) Transferred Case (Civil) Nos. 123, 124 and 125 of 2013

(b) Transfer Petition (Civil) Nos. 1750, 1825, 1826, 1827, 1828, 1829, 1830 of 2013

Reliefs and Directions:

19. The reliefs and directions sought for in these matters are broadly classified as follows:

(a) Firstly, to direct the Union of India/Ministry of Home Affairs and State Government to provide adequate security forces to take all necessary measures to stop the genocide and to prevent further communal violence.

(b) Secondly, to order a CBI Inquiry into the whole incident.

(c) Thirdly, to constitute Special Investigation Team (SIT) headed by impartial experts of criminal investigation from the States other than Uttar Pradesh to investigate the incidents having taken place from 27.08.2013 to 08.09.2013 in Muzaffarnagar and adjoining districts.

(d) Fourthly, to ensure proper and adequate rehabilitation of the victims whose houses have been burnt, properties got damaged and to provide immediate temporary shelters/transit camps, food and clothing.

(e) Fifthly, to issue direction to lodge FIR against all persons including the government officials who are responsible for failure to maintain the law and order within time.

(f) Sixthly, to direct to pay ex-gratia relief of Rs. 25,00,000/- each to the kin of the deceased and Rs. 5,00,000/- each to the injured from the Prime Minister's Relief Fund as well as from the corpus of the State of Uttar Pradesh.

(g) Seventhly, to direct the State Government to take stern action against the persons responsible for rape and other heinous offences and also to provide rehabilitation of the victims and

(h) Lastly, to appoint an independent Commission apart from the one constituted by the State Government for impartial inquiry into the incidents and submit a report for prevention of such incidents in future and rehabilitation measures for victims.

20. The prayers sought for by the petitioners in the aforesaid petitions are all in one way or other seeking for enforcement of fundamental rights guaranteed under the Constitution and it is the Constitutional obligation of this Court to intervene and admonish such violation of human rights and issue appropriate orders for rehabilitation while simultaneously issuing directions to ensure that no recurrence of this nature is witnessed by this country in times to come.

Interim monitoring orders issued by this Court:

21. On 12.09.2013, this Court, on going through various allegations levelled in the petitions, took on board the Writ Petition (Crl.) No. 155 of 2013 and the connected matters for examining the issues. Even at the preliminary hearing, Mr. Ravi P. Mehrotra, then standing counsel, accepted notice on behalf of the State of U.P. and its officers. After hearing the arguments of Mr. Gopal Subramaniam and Mr. M.N. Krishnamani, learned senior counsel for the petitioners as well as Dr. Rajeev Dhawan, then learned senior counsel for the State of U.P., this Court issued the following directions:

“On going through various allegations levelled in the writ petitions, we are inclined to examine the matter. At present, we direct the State of U.P. in

association with the Central Government to take immediate steps and take charge of all persons, who are stranded without food and water and set up relief camps providing all required assistance. It is also directed to ensure that all stranded are taken to places of safety and are given minimum amenities of food and water and to make adequate arrangements for their stay, till rehabilitation and restoration takes place in their respective places. It is further directed to provide necessary medical treatment to all wounded and needy persons and also while lifting them to hospitals, either at Meerut or Roorkee, if required hospitals at Delhi or any other suitable places.

The State of U.P., as well as the Central Government, is directed to file the compliance reports by their senior officers on the next date of hearing.

Learned counsel for the parties are permitted to file additional documents.

List on Monday (16.09.2013) at 2.00 p.m.”

22. Again, when this batch of cases was listed on 19.09.2013, after hearing counsel for the petitioners as well as the respondent-State, this Court, in the interest of justice and in view of the fact that this Court is monitoring the entire incident, directed that all cases pending on the file of the High Court at Allahabad be transferred to this Court and further made it clear that if there is any grievance pertaining to the aforesaid incident, they are free to approach this Court for necessary relief/directions. Further, this Court issued the following directions: “...Though, Mr. Gopal Subramaniam, learned senior counsel appearing on behalf of the petitioners in W.P.(Crl.) No. 155 of 2013 after taking us through the compliance report/affidavits filed by Respondent Nos. 1 and 2 submitted that the steps taken by the said respondents are inadequate, however, it cannot be claimed that they have not taken effective steps. However, on going through the details mentioned in the respective affidavits as well as the reply filed by the petitioners, we direct both the respondents viz., Union of India and State of U.P. to provide the required assistance/facilities as directed in our order dated 12.09.2013.

During the course of hearing, learned Attorney General apart from reiterating the stand taken in their affidavit assured this Court that the Government of India is fully committed to provide all required financial assistance as well as security

measures for the immediate and permanent relief to the stranded and affected persons.

Dr. Rajeev Dhawan, learned senior counsel appearing for the State of U.P., after taking us through the various steps taken by them also assured this Court that apart from the steps taken by the State, they are taking further steps for providing food, water, shelter and medicines to all those affected persons. He also assured us that the State Government is taking effective steps for peaceful resettlement of those stranded persons. The above statement of both the respondents are hereby recorded.

In order to ascertain the further development and the steps taken by both the respondents, we adjourn the matter till next Thursday, i.e., 26th September, 2013. Respondent Nos. 1 & 2 are directed to file further report on that day.

The petitioners as well as others who are aware of more details about the sufferings of the people concerned are permitted to hand over all the details to the standing counsel for the State of U.P.”

23. On 20.09.2013, at the request of learned senior counsel for the State of U.P., this Court, in continuation of order dated 19.09.2013 passed in the W.P. (CrI.) No. 155 of 2013 etc., directed to transfer W.P.No. 8289(MB) of 2013 (PIL) and W.P.No. 8643(MB) of 2013 (PIL) pending on the file of Lucknow Bench to this Court. When these matters came on 26.09.2013, after hearing all the parties, this Court issued notice on the transferred cases as well as the criminal miscellaneous petitions for intervention and direction (CrI.M.P. Nos. 20245 of 2013, 20247 of 2013 and 20460 of 2013) and in Writ Petition (CrI.) Nos. 165 of 2013 and 171 of 2013. This Court further directed the respondents to file separate response on the steps taken for the welfare of the victims and for their safe return to their homes and also directed to furnish the details regarding criminal cases registered against the persons involved in the incident.

24. On 17.10.2013, after hearing all the parties including the State, this Court passed the following directions:

“Pursuant to our earlier direction, the State of U.P. has filed fourth, fifth and sixth reports in the form of an affidavit highlighting the steps taken by it. In

addition to the same, the State has also filed a chart containing the existing camps and persons residing there.

On behalf of the Union of India, learned Attorney General has submitted a report containing various communications from the Central and the State Government in the form of an affidavit in Court. The same is taken on record.

W.P.(CrI.) No. 181 of 2013 is taken on Board.

Exemption from filing O.T. in W.P.(CrI.) No. 170 of 2013 is allowed.

Issue notice in the W.P.(CrI.)No. 181 of 2013 filed by ANHAD and W.P.(CrI.)No. 170 of 2013 filed by Citizens for Justice and Peace & Ors.

After hearing all the counsel at the request of Mr. Rajeev Dhawan, learned senior counsel, appearing for the State of U.P., we intend to give sufficient time to respond the fresh writ petitions, the writ petitions as well as various applications in which we have issued notice on the last hearing date. We direct the State to file a detailed response in regard to all the matters mentioning the steps taken up to 17th November, 2013 and the future course of action to maintain peace and communal harmony positively by 18th November, 2013.

Counsel for the petitioners are directed to serve notice on all the unserved respondents in the meanwhile.

List all these matters for hearing on 21st November, 2013 at 2.00 p.m.”

25. On 21.10.2013, while granting stay of further proceedings in C.M. Writ Petition No. 53891 of 2013 entitled Pankaj Kumar and Ors. vs. State of U.P. and Ors. pending in the High Court of Judicature at Allahabad, this Court issued the following directions:

“It is made clear that any grievance pertaining to the incident that took place on 27th August, 2013 at Muzaffarnagar and nearby places aggrieved persons are to approach only to this Court for necessary relief/directions.”

26. On 21.11.2013, again, after hearing all the parties, this Court passed the following order:

“The State of U.P. has so far filed nine Reports with reference to the incident highlighting the steps taken and the follow up action.

During the course of the hearing, it was brought to our notice the proceeding No. 118/six-P.C.V.C. – 13-15(20) 2013, dated 26th October, 2013 which was issued by Mr. D.S. Sharma, Secretary, Government of Uttar Pradesh, to the Commissioner, Saharanpur Commissionery, Saharanpur.

Learned counsel appearing for the petitioners point out that the direction issued for rehabilitation of a particular community (Muslim families) alone are unacceptable.

When this was pointed out to Dr. Rajeev Dhawan, learned senior counsel appearing for the State of U.P., he readily agreed for recalling the said communication and also made a statement that the concerned authority will reissue proper proceedings taking care of all the affected persons involved in the incident.

It is also brought to our notice that even on the date of filing of Eighth Report on 18th November, 2013, 5024 persons are still residing in the camps arranged by the State. Though, learned senior counsel for the State has pointed out that as on date the number of persons in the camps are likely to be lesser, taking note of the fact that sizeable number of persons are still in the camps and considering the climatic conditions during winter months, we direct the State Government to provide necessary assistance/materials to all the affected persons residing in these camps.

The State of U.P. is directed to file its response in Writ Petition (Crl.) No. 179 of 2013, in Writ Petition (Crl.)No.171 of 2013, in Writ Petition (Crl.)No. 181 of 2013, in Writ Petition (Crl.)No.196 of 2013, in Writ Petition (Crl.)No. 206 of 2013, S.L.P.(c) No. 35402 of 2013 as well as Crl.M.P. No.....filed in Writ Petition (Crl.)Nos. 171 of 2013 and 179 of 2013, positively on the next date of hearing.

With regard to the compensation for tractors, sugarcane crops, tube-wells and other agricultural products, learned senior counsel for the State, has readily agreed that if proper application/representation is made to the District Magistrate of the concerned district, the same shall be considered.

The affidavit filed by the Union of India dated 21st November, 2013, is taken on record.

List these matters on 12th December, 2013, at 2.00 p.m. In the meantime, the petitioners are directed to take effective steps to serve the unserved respondents in all the matters.”

27. On 12.12.2013, again, after hearing all the parties including the counsel for the State, this Court made the following directions:

“On behalf of the State of U.P., a consolidated compilation of documents and the Status Report have been filed in Writ Petition (Crl.) No. 155 of 2013 and connected matters. The same is taken on record.

In the Writ Petition (Crl.)No. 155 of 2013, the petitioners have filed Crl. Misc. Petition No. 26156 of 2013 praying for certain directions. In the said application based on the news report, the petitioners have asked not only direction to the respondents/State of U.P. but also for implementation of our earlier orders. The information which is mentioned in para 8 is as follows:

Para 8

“That recently various electronic news agencies like India TV and IBN Channel has reported between 02.12.2013 to 07.12.2013 in special coverage giving the images of the peoples struggling for their lives in cold in open sky in which more sufferer are the small children who were succumbed to death as they could not bear the cold temperature of the season. It has been reported that more than 50 children died on account of cold as their parents who are riot victims is having no means to protect their children. It is very unfortunate for the country like India that the whole country is unable to save even the small children who

were dying on account of their no fault. The death of various children which had also been reported in various newspapers.”

In W.P.(Crl.) No. 181 of 2013, the petitioners based on another newspaper’s report as well as investigation by themselves furnished various details about deaths in camps.

In both these petitions, it is the grievance of the petitioners that in spite of our earlier directions, the State Government has not fully implemented all directions in providing necessary help and assistance to the inmates of the camps particularly to the children, aged persons and all affected persons. In view of the same, we direct the State Government to ascertain the correct position and file a detailed report on the next date of hearing.

In the meanwhile, the State Government is directed to look into the serious averments in para 8 in Crl.M.P. No. 26156 of 2013 (which we have extracted above) and take necessary steps and provide required remedial assistance at once. Dr. Rajiv Dhawan, learned senior counsel appearing for the State of U.P. assures this Court that necessary steps will be provided by tomorrow, i.e., 13th December, 2013 onwards. The above statement is hereby recorded.

Taking note of the cold conditions in the forthcoming months, we hereby further direct the State Administration particularly the district concerned to provide necessary materials including medical facilities for the inmates particularly children in the camps as well as all those affected due to riots.

During the course of hearing, counsel appearing on behalf of various petitioners/organizations raised certain complaints/grievances about the steps so far taken by the State Administration. The respective counsel are permitted to hand over those details to the standing counsel for the State of U.P. by tomorrow, i.e., 13th December, 2013. The State of directed to take remedial steps at once and file their response on the next date of hearing.

Post all the matters for final disposal on 21st January, 2014 at 10.30 a.m. as item one.

In the meantime, parties are permitted to complete their pleadings.”

28. Finally, on 20.02.2014, after hearing elaborate arguments of Mr. Uday U. Lalit, learned senior counsel for the State and Ms. Kamini Jaiswal, learned counsel for the rape victims, this Court reserved the judgment in these matters.

Compliance Reports:

29. The given petitions were heard over 5 months commencing from 12.09.2013 and ending on 20.02.2014. In this interim period, this Court issued numerous directions for monitoring the situation at the place of incidence. It is pointed out by learned counsel appearing for various parties that because of various directions of this Court, the State Government initiated active investigation, relief measures, both in the camps as well as in shelter homes and provided more provisions for food, clothes and medicines etc., which is highlighted in the eleven Compliance Reports filed before this Court over the period of time.

30. From the reports filed by the State Government, we culled out the following information, which will throw light on the rehabilitative and preventive measures adopted by the Central and the State Government.

1. Arrangements for Relief camps

A total number of 58 camps were made functional, of which, 41 such camps were established in District Muzaffarnagar and 17 camps in District Shamli.

In District Muzaffarnagar, the camps were established in different villages of two Tehsils, viz., Tehsil Sadar and Tehsil Budhana. After survey of these camps by the District Administration, it was found that most of the displaced families were living in Madarsas, private ghar (houses) and other buildings. Remaining people had taken refuge at open places by erecting tents.

After the survey, 30 relief camps were identified in Tehsil Budhana area and 11 relief camps in Tehsil Sadar area and a District Level Officer was deputed as a Nodal Officer for each camp. In addition to this, one police officer was also designated for each camp. Detailed guidelines and instructions were issued to

the concerned officers for ensuring efficient and effective running of these camps.

A Purchase and Supply Committee, comprising of District Supply Officer, Deputy Regional Marketing Officer, Sachiv Mandi Samiti, ARTO, Joint Commissioner (Commercial Tax), General Manager of District Industries Centre and General Manager of Parag Dairy was formed to purchase and supply foodgrains and other articles of daily use to the families living in camps. After getting daily assessment of their requirements through Nodal Officers, foodgrains and other goods were supplied by trucks and other small vehicles to the camps.

The families going back from certain camps during the month of December 2013 were provided ration material for a period of 15 days so as to facilitate their resettlement and rehabilitation. An amount of Rs.152.95 lacs was spent on the foodgrains and other essential commodities provided in the camps and afterwards in the District Muzaffarnagar. In addition to this, Rs. 61.44 lacs were spent on arrangements for auxiliary items. In this manner, a total amount of Rs.214.39 lacs has been spent on the items supplied and the arrangements made in the District Muzaffarnagar.

Similar arrangements were made in District Shamli. In District Shamli also two Tehsils, viz., Tehsil Shamli and Tehsil Kairana were affected. Six relief camps in Tehsil Shamli and 11 camps in Tehsil Kairana had been identified. Foodgrains and other essential commodities worth Rs. 32.39 lacs and milk worth Rs.53.10 lacs have been provided in the camps and to the families going back from the camps for resettlement and rehabilitation. In addition to that, Rs.27.65 lacs have been spent on other arrangements. Thus, a total amount of Rs.113.04 lacs has been spent on the items supplied and the arrangements made for the camps.

District Baghpat has also reported an expenditure of Rs.1.85 lacs for supplying foodgrains and other essential items for the people who had gone to the camps and have now been rehabilitated in their villages.

All 41 camps in District Muzaffarnagar have been closed and 2 camps and 4

satellite camps are in operation in District Shamli. A total number of 2618 persons are living in these camps. The relief operations on the same scale are being continued in these camps. The State Government has given directions to run the remaining camps and to take all necessary measures for providing foodgrains, milk, other essential commodities, medical facilities and materials required for shelter from cold etc. as long as the people are living in such camps.

2. Medical facilities to the injured and those living in the camps

Medical ambulances with all modern facilities were deployed for all the camps. Medical and paramedical staff was deployed at all the camps to regularly conduct medical checkup in the camps. According to the data provided by the Chief Medical Officer, Muzaffarnagar, the medical teams conducted cumulative medical check-up of 21,555 persons in the camps. It was ensured that if any person in the camp was found seriously ill he was shifted immediately to the District Hospital using ambulance and if required he was referred to the Medical Centre at Delhi and Meerut.

A sum of Rs.6.38 lacs in Muzaffarnagar and Rs.14.90 lacs in Shamli was spent towards treatment of the persons injured in the incidents. For better and specialized treatment, 21 injured persons were referred to higher medical facilities at Meerut and New Delhi. Instructions were issued by the State Government that the treatment of persons who got injured during incidents of violence is to be done free of cost. One such person who went for his treatment to private facility has been paid Rs.2.5 lacs from the Chief Minister's Discretionary Fund.

In District Shamli too, similar arrangements were made by the District Administration. According to the data provided by the C.M.O., the medical teams conducted cumulative medical check-up of 23,243 persons in the camps.

Female doctors and ANMs were deployed to the extent possible for taking care of the women especially the pregnant and lactating mothers. 303 pregnant women were identified and 44 of them were shifted to Community Health Centres (CHC), Primary Health Centres (PHC) or the District Hospital for safe

deliveries in the district of Muzaffarnagar. Additional nutrition was provided under the ICDS by the Anganwadi workers to all those children who were below the age of 6 years and living in the camps.

Chlorine tablets and ORS packets were distributed on regular basis. More than 64000 chlorine tablets and nearly 7750 ORS packets were distributed in the two districts. In addition to this, routine immunization activity was also carried out in the camps. 573 children in Muzaffarnagar and 1107 children in Shamli were vaccinated during this period.

In compliance with the directions given by this Court, separate teams were constituted and deployed for special care of all those living in the camps especially women and children. For the camp at Loi Village in Muzaffarnagar, one general physician, one pediatrician for the treatment of children, one ANM/staff nurse, one para medical staff and ambulance was put on duty. The camp was closed on 31.12.2013 by rehabilitating all the families. Till then, 3114 cumulative patients were treated in the camps of which 509 were children, 65 children were vaccinated, 515 chlorine tablets and 154 ORS packets were distributed. It has been ensured that all those pregnant women, who were living in the camp before its closure would be taken to PHC Budhana or District Female Hospital for their deliveries.

Similarly, 3 doctors, 3 pharmacists, 3 ANMs, 2 ward boys, 2 drivers with ambulances, 1 LA, 1 OTA and 1 STLS have been deployed for 4 camps in operation at Malakpur, Khurgan, Sunaiti and Bibipur Hatia. 153 patients including 59 children have been treated in these camps.

The persons, who have been shifted to different villages for rehabilitation, are being tracked and being provided medical facilities at their places of stay. In Muzaffarnagar, 168 pregnant women and 4946 children have been examined and 860 children were treated for various ailments. 114 children were vaccinated. In Shamli, 328 children from total 1128 patients have been examined during last week in the camps.

3. Arrangement of Sanitation and Drinking Water

In order to ensure proper sanitation and cleanliness, five sweepers were deployed for each camp. It was ensured that the sweepers remained deployed till the camps were in place. Keeping in view the large number of women and children in the camps, mobile toilets were placed near the camps. In order to avoid epidemic, spray of pesticides and other chemicals was ensured. To kill mosquitoes, fogging was carried out near relief camp at Jaula.

Safe and clean drinking water was also supplied through piped water supply schemes, permanent tubewells installed at the camp sites, India Marked-II hand pumps and water tankers from the urban local bodies situated near the camps. Chlorine tablets were distributed in all the camps as has been described in the paragraph above.

4. Arrangement of Tent, Dari and Bedsheets etc.

Though most of the camps were situated in pucca buildings like Madaras and Schools, makeshift tents were also erected in 15 camps to provide shed and shelter. The displaced families could not bring any item of daily use with them, hence, two steel plates, two steel glasses, one medium size dari, two bed sheets, one bucket, one mug, one towel, milk powder, biscuit packets were provided to each and every family in the camps. Clothes to women and children were also distributed in camps. In addition to that, two toilet soaps, two washing soaps, one tooth paste and kerosene oil etc. were provided to the families living in the camps. The approximate value of abovementioned goods has crossed Rs. 1 crore. 104 quintals of fire wood was supplied in the camps through the Divisional Forest Officer. Another 54 quintals of firewood was supplied through District Supply Officer for its use as fuel. Apart from this, 48 gas cylinders were provided in the camps.

5. Arrangement of fodder for cattle

A large number of villagers fled from their houses out of fear leaving behind their cattle and animals. These animals were taken care of by the people from the community. The Animal Husbandry Department was directed to provide fodder to such cattle with the help of voluntary organizations. Identification of such villages and cattle was done and fodder was made available. So far, 568.30

quintals of wheat-hay has been distributed. Teams of Veterinary Doctors have treated 301 cattle so identified.

6. Financial Assistance by Government of Uttar Pradesh to the wounded and the families of deceased persons

According to letter No. 1027k/chh-sa.ni.pr.-13/15(14)2013 dated 10.09.2013 and Government Order No. F.A.-2-367/Ten-92-100(30)D/92-Home Police, Section-12 dated 21.12.1992, financial assistance to the families of deceased and injured persons is to be given at the following rates:

1. In case of death - Rs. 10,00,000 per death
2. In case of serious injury - Rs.50,000 per person
3. In case of simple injury - Rs. 20,000 per person

District Muzaffarnagar

32 persons belonging to this District have died in various incidents of violence that took place on or after 07.09.2013. Of these deceased persons, two dead bodies are still unidentified. Three persons were killed in clashes on 27.08.2013 in village Kawal, Tehsil Jansath. One news channel reporter named Rajesh Verma died on 07.09.2013 in communal violence in Muzaffarnagar city. Financial assistance of Rs. 15 lacs was announced for his family. Thus, a total sum of Rs. 3.35 crores has been provided to the families of 33 persons. In addition to that, a total sum of Rs. 7.50 lacs was provided to 15 persons injured seriously. One person succumbed to his injuries and his family has been paid additional amount of Rs. 9.5 lacs. Thus, 34 families of deceased persons have been paid Rs.3.45 crores and the remaining 14 seriously injured persons were paid Rs.7 lacs. A sum of Rs.5.40 lacs has been distributed to 27 persons with simple injuries.

District Shamli

15 persons belonging to this District died in the incident on or after 07.09.2013.

Of these, 13 persons died in incidents that took place in Muzaffarnagar and 2 persons died in the incidents within the District on or after 07.09.2013. One person was killed in another clash that had occurred on 03.09.2013 in the District. A total sum of Rs.1.60 crore has been provided to the families of all the 16 deceased persons. For the injured persons, a total sum of Rs.4.5 lacs has been provided to 9 seriously injured persons and a sum of Rs.3.20 lacs to 16 persons with simple injuries.

District Saharanpur

Three persons belonging to this District died in the incidents on or after 07.09.2013, of which one died in Muzaffarnagar and 2 died within the District. A sum of Rs. 30 lacs has been provided to all the 3 families. Moreover, a total sum of Rs. 20 lacs has been provided to 4 persons injured seriously.

Apart from these 3 Districts, as mentioned above, under the Saharanpur Division, 9 persons who were killed, belonged to the three districts of the Meerut Division. According to the report received from these Districts, Rs. 50 lacs were paid to 5 families in District Meerut, Rs. 30 lacs to 3 families in Baghpat and Rs. 10 lacs to 1 family in District Hapur. One seriously injured person succumbed to his injuries in Meerut and his family has been paid additional financial assistance of Rs. 9.5 lacs. Thus, all the 10 families of the deceased persons have been provided ex gratia relief of Rs. 1 crore. In addition to this, 4 seriously injured persons in District Baghpat have been paid Rs. 2 lacs. Remaining 2 seriously injured persons in District Meerut have been paid an amount of Rs. 1 lac. 4 persons with simple injuries in Baghpat have been paid Rs.0.8 lacs. District Hapur has reported no injured person.

In addition to the above, the State Government has sanctioned pension to the eligible 63 injured persons at the rate of Rs.400/- per month under the Rani Laxmi Bai Pension Scheme under special circumstances.

Thus, the Government of Uttar Pradesh has paid Rs.6.35 crores to the families of 63 deceased persons, Rs.16.50 lacs to 33 seriously injured persons, Rs.9.80 lacs to 49 persons with simple injuries and pension to 63 injured persons.

7. Financial Assistance by Government of India to the wounded and the families of deceased persons

Government of India has also sanctioned ex-gratia relief from the Prime Minister's Relief Fund at the rate of Rs.2 lacs per family for the dependents or legal heirs of the deceased and at the rate of Rs. 50000 for the seriously injured persons. Rs. 15 lacs have been sanctioned to the family of Sri Rajesh Verma, the Journalist, who was killed in the city on 07.09.2013.

32 families in Muzaffarnagar, 16 families in Shamli, 3 families in Saharanpur, 5 families in Meerut, 3 families in Baghpat and 1 family in Hapur have been paid Rs.120 lacs. Rs. 10 lacs have been paid to the family of Late Sri Rajesh Verma. Rs. 16.50 lacs have been paid to 33 seriously injured persons. Two cases, in which the injured persons have died, have been forwarded for further assistance of Rs.1.50 lac per family.

Thus, Rs.146.50 lacs have been distributed to the injured persons and the legal heirs of the deceased persons from the funds made available by the Government of India.

8. Employment to the dependents of the deceased persons

The State Government decided to give employment to one member of the family of the deceased persons according to his or her qualification. Total 58 persons belonging to 6 Districts died in the incidents on or after 07.09.2013 and 5 persons died in the incidents that had taken place before that. A proposal was made for employment of dependents of 61 persons killed in the incidents as 2 dead bodies remained unidentified. 2 persons had died from the same family and one person killed was a Government employee and his dependent will be considered as per "Dying in Harness" rules. Thus, the proposal was sanctioned by the Government for remaining 59 persons and all of them have been given employment.

Two new proposals, which were sent to the State Government with regard to 2 seriously injured persons who succumbed to their injuries have been sanctioned and formalities are being completed to give them employment.

9. Confidence building measures

A detailed survey and analysis of the families displaced from different villages and living in camps was done. The villages from where displacement took place were divided into three categories:

(i) Villages where no violence took place.

(ii) Villages where no death was reported.

(iii) Villages where death was reported.

First of all, measures were taken to rehabilitate and return those people who fell in the first category. In this category, displacement had taken place just out of fear. Meetings with important and effective persons from both the communities were organized in which one community had assured the safety and security of the other. Peace Committees were constituted and their meetings were organized at the Block, Tehsil and District levels. Senior officers like District Magistrate, Superintendent of Police, ADM, ASP, SDM, Circle Officer and other functionaries from the Revenue and police departments participated along with the Village Pradhans and important public persons from all the communities. Teams of officers were sent from Districts of Meerut and Baghpat to convince and take the persons living in the camps who belonged to the villages of these districts.

At one stage, the total number of people staying in 58 camps in two districts had reached a figure of 50955 of which 27198 persons were in 41 camps at Muzaffarnagar and 23757 persons in 17 camps at Shamli. As a result of the efforts made by the administration in holding these meetings and providing one-time financial assistance for rehabilitation, all the persons living in the camps in Muzaffarnagar have returned either to their native villages or resettled elsewhere.

As far as District Shamli is concerned, 15 camps have been closed and 23757 persons living in the camps have either returned to their native village or to the

other places of their choice after getting one-time assistance of Rs. 5 lacs. Remaining 2 camps at Malakpur (990 persons remaining) and Barnawi (330 persons remaining) have split into 4 additional satellite camps established on the forest land, Gaon Sabha land or the Government land of villages Akbarpur Sunhaiti (297 persons), Khurgan (595 persons), Dabhedi Khurd (203 persons) and Bibipur Hatia (203 persons). Thus, 2618 persons are still living in 2 camps and 4 satellite camps in the District Shamli. Efforts are being made to convince them to go back to their villages or settle elsewhere.

To ensure the safety and building a feeling of confidence among those returning to the villages, para-military forces were deployed in those villages. Preventive action was also ensured under the provisions of the Code and effective legal action is being taken with respect to the FIRs lodged for the incidents of rioting. Notices were issued to 6616 persons in Muzaffarnagar and 1756 persons in Shamli under Section 107/111 of the Code. Out of these, 8372 persons in two districts, 5793 persons (4802 in Muzaffarnagar and 991 in Shamli) have been bound down under Section 107/116 of the Code. In addition to this, 356 persons in Muzaffarnagar and 239 persons in Shamli, thereby totaling 595 persons have been arrested in connection with various FIRs for incidents of violence, arson and looting etc.

Regarding safety of their lives and security of their properties, the State has brought to our notice that necessary forces have been deployed in all the areas in which the communal riots took place. The details furnished by the State show that at present, the following forces deployed for law and order duty:

|Addl. SP|Dy. SP |Insp. |S.I |HC |Const. |HG |PAC | |3 |11 |35 |238 |58 |1447 |400
|8 Coy. 2| | | | | | | | |PL. |

10. One time financial assistance to the families not returning to their villages

Families displaced from 6 villages in Muzaffarnagar, i.e., Fugana, Kutaba, Kutbi, Kakda, Mohammadpur Raisingh and Mundbhar and 3 villages in Shamli, i.e., Lisadh, Lank and Bahavadi have not agreed to return to their native villages even after confidence building measures and serious persuasion. Their decision was found to be justified largely based on the fear emanating from the

kind of incidents of murders and arson that had happened in these villages during the violence that broke out on 7th and 8th September, 2013. The State Government, vide its order dated 26.10.2013, has decided to give a lumpsum grant of Rs. 5 lacs per family for their resettlement and rehabilitation. According to the preliminary estimates of houses in these villages, an amount of Rs.90 crores has been sanctioned for 1800 families, Rs.43.15 crores to 863 families out of 901 such families in Muzaffarnagar and Rs.38.40 crores to 768 such families in Shamli have been paid under the one-time financial assistance for their rehabilitation. In addition to this, 13 families in Muzaffarnagar have been given part payment of Rs.2 lacs each incurring Rs.26 lacs. Thus, 1644 families have been paid till date and an amount of Rs.81.81 crores has been spent for their resettlement and rehabilitation.

11. Compensation for damage to movable and immovable property

Assessment was done for damage to the uninsured movable and immovable property during the riots. Efforts were made to assess the loss by a team of qualified persons in the presence of victims. Photography and videography was also done during the process.

According to the latest reports, an amount of Rs.124.06 lacs has been paid in 212 cases, out of 217 surveyed cases worth Rs.125 lacs. Similarly, in District Muzaffarnagar, 465 movable properties have been assessed at Rs.176.44 lacs and the claim of Rs.174.82 lacs has been settled for 459 properties. Hence, the claim of 671 properties out of 682 total damaged movable properties has already been settled and an amount of Rs.298.88 lacs has already been paid.

As per the order dated 26.10.2013 regarding one-time financial assistance to the families from 9 villages, the compensation for the damage to the immovable properties of these families is included in the one-time assistance. Therefore, the compensation for damage to immovable property has to be paid in the remaining villages only. Besides, the amount is to be paid in two equal instalments. All 24 cases identified in Shamli, all 6 cases identified in Baghpat and 55 out of 56 cases identified in Muzaffarnagar have been paid the first instalment of Rs.50.56 lacs. Thus, a total amount of Rs. 349.44 lacs has been paid as compensation for the loss of uninsured movable and immovable property loss in 3 districts.

Enhanced Compensation:

31. During the course of hearing, learned senior counsel and the Additional Advocate General of U.P. appearing for the State assured this Court that the Government would consider enhancing the amount of compensation to the victims of communal violence who had died and to the parents of the deceased children below 5 years of age.

32. It is brought to our notice that by G.O. dated 18.02.2014 issued by the Home Secretary, Government of U.P., it has been decided that the State Government would provide further compensation of Rs. 3 lakhs in addition to the compensation already provided to the relatives of the deceased and a compensation of Rs. 2 lakhs to the parents of the deceased children below 5 years of age who died in the relief camps.

33. In addition to the same, the State has also highlighted other reliefs that have been given to the riot victims for damage of immovable properties. The chart placed before us shows the names of the persons, father's name, type of property, type of damage, value of the property, name of the village, district and the actual amount paid to those persons. The said chart also shows that in this category, 181 persons received various amounts depending on the value of the property lost. Likewise, the State has also placed details regarding financial assistance to injured persons due to communal violence. The chart furnished shows that about 53 persons from Muzaffarnagar, Shamli, Saharanpur and Baghpat were benefitted. It also contains the name of the injured persons, their family details and their full address as well as the compensation received from the State Government. The State has also placed particulars regarding the beneficiaries of Rani Lakshmbai Pension Yojana relating to persons who sustained injuries both simple as well as grievous in communal violence. The chart also shows the name and details of their family, age, full particulars and the amount paid for the period September 2013 to March 2014.

Phase of Investigation:

34. Apart from the rehabilitative and preventive measures, certain concerns were also raised by the petitioners in regard to the inefficient investigation by State Police and lapse of procedural laws which leads to gross violation of rights of victims.

35. Regarding the stand of the petitioners that many false accused were shown as culprits, the State has filed a detailed note wherein it is stated that a total number of 566 cases are being investigated by the Special Investigation Cell (SIC). It was submitted that during investigation, it was observed that many cases were false and many persons have been wrongly named in FIRs. The investigating officers found sufficient ground and evidence for their innocence. The State has pointed out that names of all such persons, viz., 549 persons, have been removed. Till now, 48 registered cases have been found false and the same were either expunged or removed. Names of 69 persons in murder cases have been found false and their names have been removed from the accused list. In addition to the above information, the State has furnished a list of accused found false which contains 516 persons from Hindu community and 33 from Muslim, i.e., a total number of 549 persons. The State has also furnished a list of expunged cases and the persons who were wrongly included. Here again, the State has mentioned the names and addresses of those persons, crime number, police station, offences under various enactments and districts.

36. It is further seen from the information furnished by the State that at present SIC is investigating a total number of 566 cases registered during the communal violence in Muzaffarnagar and adjoining districts of Shamli, Baghpat, Saharanpur and Meerut. Out of 566 cases, 533 cases are of Muzaffarnagar, 27 of Shamli and 2 each of Baghpat, Saharanpur and Meerut. Of these 566 cases, 59 cases are of murder and rest are of arson, dacoity, grievous injury and of miscellaneous type. Six cases of rape have also been registered. All rape cases are of Village Fugana, Police Station Fugana, Muzaffarnagar. In all these cases, 6403 people were named and 253 came to light. Of these, 549 accused were found false. It was also observed that many persons were named in more than one case and a calculation of all these revealed that 3803 persons were named. Till date, 984 persons have been declared accused in investigated cases. Rest of the cases are under investigation. 337 accused have been arrested and 61 persons have surrendered before the Court. 374 Non-Bailable Warrants, 195 warrants under Section 82 of the Code and 3 kurki (attachment) warrants of Section 83 of the Code have been issued. Charge-sheet has been filed against 238 accused and Closure Reports have been given against 102 persons.

Constitution of the SIC:

37. About the constitution of SIC and the method of investigation, the State has

highlighted:

“Special investigation cell was constituted in the month of September after the communal violence in the district Muzaffarnagar and adjoining district to investigate the cases registered during communal violence. As the task was very daunting because most of the complainant had fled from their villages and had taken refuge in various relief camps and in their relatives. The first task was to locate the complainants and witnesses. This hardeous task was accomplished after taking the list of persons staying in camps and getting their mobile numbers. Thereafter, inquiring from one person to another complainants and witnesses were approached and their statements were recorded. This obviously delayed investigation to some extent, but once the complainants and witnesses were traced, investigation took pace and very soon investigation of all the cases will be completed.

During investigation, SIC used scientific mode of investigation. Some of the methods which were used are as follows:

1. A large number of persons were named in various cases registered. To confirm the authenticity of complaint and accused person, location of both complainant and accused persons were collected through their mobile numbers. Mobile no. of various persons were analysed. Call details were also applied to work out unknown cases.

2. In the village Lisad of PS Fughana death of 13 persons were reported. The body of 11 persons out of 13 were not recovered and no traces of their body were found. SIC took the help of Forensic Science Laboratory, Lucknow to find the traces of their death. FSL used scientific methods to collect sign of some blood. Even though 20 days have passed after the claim of death, FSL was successful in finding sign of some blood by Benjamin test. The blood samples have been sent for examination. During investigation, some suspicious small pieces of bones were recovered, which has been sent for DNA and other scientific examination. In one another case, DNA samples have been sent to match of the claim of death.”

38. In support of the above stand, the State has also placed copies of various orders

passed by the SIC.

Arrest and follow-up action:

39. Regarding arrest and follow-up actions, the State has filed a list of arrested persons in communal violence in Muzaffarnagar and adjoining areas. The list shows the names of 308 arrested persons in the Districts of Muzaffarnagar and Shamli. Here again, the State has furnished the names and addresses of arrested accused, the date on which they were arrested, offences under various enactments, crime number, police station, nature of the offence, district, etc. The State has also indicated the religion of the accused just to show that actions were being taken irrespective of the caste, community or religion.

40. The State has also furnished a list of 50 persons who surrendered (31 belonging to Hindu community and 19 Muslim). Here again, the State has furnished the names and addresses of accused, date of surrender, offences involved, title of the crime, case number, police station and district etc.

41. In addition to the above particulars, the State has also furnished details about the action taken against accused persons in communal violence cases as on 08.02.2014. The chart contains the details of the number of the accused, number of crimes, details regarding action taken, types of offences, etc. The State also catalogued these details district-wise, viz., Muzaffarnagar, Shamli, Baghpat, Saharanpur and Meerut.

42. The State has also furnished the details regarding action being taken against political persons. The list contains total 22 persons in this category having their names and addresses, particulars regarding political party, post held, such as, Minister/MP/MLA, Crime number, police station, various offences and particulars regarding action taken, etc.

43. In addition to the above particulars, the State has also highlighted various difficulties faced by the District Police in making arrests. According to them, right from day one, the District Police has faced staunch opposition and strong protests in making arrests in riot cases. Many panchayats and dharnas have been organized to resist arrests. The accused from both the communities have found strong refuge in respective villages. In some cases, villagers have even attacked the police parties to

stop them from making arrest. In the note submitted to this Court, they highlighted some of the notable episodes that took place on 15.10.2013, 21.10.2013, 26.10.2013, 28.10.2013, 01.11.2013, 25.01.2014, 26.01.2014. According to the State, in those days, women folk of the particular community obstructed the police from entering their houses where the accused were hiding. Khap panchayats prevented the police from performing their duties. In spite of those protests and obstructions, the State has highlighted that the District Police has been persistent and diligent in making arrests of the accused persons in riot cases and so far 337 accused persons have been arrested and 61 accused persons have been forced to surrender. The raid teams from respective police stations are being sent regularly to make arrests. A dedicated surveillance team has been deployed with the Crime Branch to gather intelligence about the whereabouts of the accused persons of serious riot offences. Despite extreme adverse circumstances and strong protests from both communities, the police has made persistent attempts to effect the arrests of the accused people. The efforts made by the district police are:

- i) Continuous raids – Teams from various police stations led by senior police officers have been conducting raids for the accused on regular basis.
- ii) Gathering of information – To locate the accused, relevant information is being gathered, informers have been employed and people from the same villages have been identified who are willing to provide information about the accused people.
- iii) Surveillance and Crime Branch support – In making arrests, the district police have also sought support of surveillance teams and Crime Branch experts to gather information about accused to facilitate arrests.
- iv) Several meetings are being conducted in affected villages to generate confidence amongst the villagers and to ensure them that innocent people will not be harassed, to blunt their resistance about arrests.
- v) Meetings are also arranged between the two communities to restore faith and feeling of brotherhood. Such efforts are being made to alienate the actual accused people who are desperately trying to find support from their community.

vi) The police has also been seeking relevant and timely court orders and have been implementing court processes and attachment orders to mount pressure on the accused.

vii) Counseling efforts are being made so that the family members and supporters of the accused people can be convinced to offer arrests or surrender of accused persons before the Court.

viii) In some suitable cases, reward is also declared on the accused to mount pressure.

ix) A dedicated team of experienced police personnel for each accused is deployed to gather relevant information about his whereabouts, hiding places, refuse, and support base to effect arrests.

44. Regarding arms and ammunitions, recovery of AK47 cartridges, etc., particularly, in village Kirthal, Police Station Ramala, District Baghpat, the State has highlighted that:

“On 11/03/13 Ramala police was on law and order duty and was patrolling in village Kirthal PS Ramala. Irshad s/o Fakruddin, Shoaib s/o Munsab, Zahid s/o Iqbal, Basiruddin s/o Iqram all residents of village Kirthal PS Ramala mounted an unprovoked attack on the patrolling party with brickbats and caused obstruction in the discharge of duty. In this incident one constable 832 CP Vijay Kumar was grievously injured. In this connection, SHO Ramala Shri Rajender Singh registered a Case Crime Number 246/13 u/s 307, 353, 34 IPC against the above-mentioned four persons at PS Ramala. In the context of the above-mentioned incident, SHO Ramala Shri Rajendra Singh was engaged in checking and frisking of suspicious persons in village Kirthal. During this checking one Rojuddin s/o Fakruddin r/o village Kirthal PS Ramala was arrested and one cmp 315 bore, 41 cartridges of AK 47 rifle, 14 cartridges of 9 mm pistol were recovered from his possession. In this connection, one case crime number 249/13 u/s 25 Arms Act was registered at PS Ramala.

The case crime number 246/13 u/s 307, 353, 34 IPC was investigated by SI Shri Vijendra Sing Panwar, all the four named accused were arrested, one cmp 315

bore with cartridge, one licenced gun with cartridges were recovered and, finally, charge-sheet number 123/13 dated 19/10/13 was submitted to the concerned court against all the four named accused.

Similarly, the case crime number 249/13 u/s 25 Arms Act was duly investigated by SI Shri Subhash Chand. During the investigation the arrested person Rojuddin told the IO that the AK 47 and 9mm cartridges belonged to his brother Iqbal who had been discharged from BSF on poor health ground. On coming to light his brother Iqbal s/o Fakruddin was interrogated by the IO but no progress was made because Iqbal denied that the recovered cartridges belonged to him and no other independent incriminating evidence could be collected during investigation against him.

On completion of investigation, charge-sheet number 120/13 was submitted to the concerned Court on 12/10/13. The matter was investigated by SI Shri Subhash Chand. On completion of investigation, charge-sheet number 120/13 dated 12/10/13 has been submitted to the concerned court.

During the investigation all the four named accused were arrested and sent to jail. One cmp with one cartridge 315 bore, one licensed gun with cartridge were recovered from them. When adequated evidence was collected against the accused, charge-sheet number 123/13 dated 19/10/13 was submitted to the concerned court.”

45. In respect of allegations relating to Crime No. 148/13 under Sections 147, 148, 149 and 396 IPC, PS Fughana, Muzaffarnagar, it is stated:

“The above case was registered by Dilsad s/o Sakeel r/o Vill. Bahawadi P/s Fughana that on 8.09.13 his father was forcibly taken away by named persons and was killed. The case was investigated by Insp. Matadin Verma. When Inquest report and post mortem report was sought, no record of Inquest and Postmortem was found either in Police Station or in CMO office. The statement of complainant was recorded. He said that he had identified the chhared body of his father and buried in the graveyard. After going through records of police station, it was found that one post-mortem report was extra attached in the FIR of case crime no. 143/13 of P/s Fughana which was related to the incident of

village Lak and no claimant of that post-mortem existed neither anyone had claimed that somebody is missing from village. Thus, it was assumed that since there was great commotion after the riots and more than 13 corpses were brought to PS, some mistake might have occurred in writing the place of incident in inquest report. So, the post mortem report was attached to the case no. 148/13. But, there was one anomaly that the age in Postmortem report of deceased was 25 years, but the age of deceased in Cr. No. 148/13 was more than 45 years. But, fortunately since the post-mortem report attached was of an unknown body, its tooth, hair and other parts of the body were preserved for DNA analysis. The complainant has not turned up in spite of repeated request both in written and personal by the investigating officer for providing blood samples necessary for the test.”

46. In the case of Crime No. 403/13, Police Station Jansath, Muzaffarnagar, the State has informed this Court that:

“On 27-08-13, Sachin s/o Bisan Singh and Gaurav S/o Ravindra Singh both resident of Malikpura p/s Jansath were killed in village Kawal P/s Jansath. In this regard, above case was registered against 6 persons. Out of six named persons, 2 were arrested and 3 surrendered before the court. Chargesheet no. 185/13 dated 24-11-13 has been filed against 5 accused. Investigation against one person is going on.”

47. In the case of Crime No. 404/13, Police Station Jansath, Muzaffarnagar, the State has informed this Court that:

“On 27-08-13, Sahnawaj s/o Salim r/o Kawal was killed in village Kawal. In this regard, the above case was registered in which 8 persons were named including Sachin and Gaurav who were killed in the village Kawal. During investigation, it was found that no person of the name Yogendra s/o Prahlad r/o Malikpura (who was named accused) exists in Malikpura. One another person Nitin s/o Ravinder whose name was later on given through affidavit by witnesses had died six months before the incident. Till now against rest six persons, no evidence of their involvement in crime has been found.”

48. Regarding allegations, viz., communal bias, the State, while denying all those

allegations, furnished a list of arrested persons in communal violence in Muzaffarnagar and adjoining districts. Here again, it is furnished that the number of total arrested persons are 334, out of which, 256 belonged to Hindu community and 78 belonged to Muslim community. In addition to the same, they also furnished the names and addresses of the arrested accused, date of arrest, offences involved, case number, police station and district etc. In addition to the same, they also furnished present status of cases under investigation, community-wise and district-wise. It also shows the total registered cases in the districts of Muzaffarnagar, Shamli, Baghpat, Saharanpur, Meerut in the police stations as 316, from the camps 250, number of cases registered by Muslims 492, number of cases registered by Hindus 40, cases registered by the police 34, true cases found till date 518, number of named persons in those cases 6144, among those persons 5597 belonged to Hindu community and 547 belonged to Muslim community, number of persons against whom evidence found 984, etc.

Follow-up action in Rape/Molestation Cases:

49. Coming to the allegations relating to rape and inaction on the part of the police in apprehending the accused as well as for protection of the victims, the State has filed an Action Taken Report. In that report, it was mentioned that in CC No. 179 of 2013, Police Station Fugana, out of 5 accused, they arrested only one and in respect of remaining 4, non-bailable warrants were issued and steps were taken for declaring them as absconders under Section 82 of the Code. Insofar as CC No. 300 of 2013, Police Station Fugana is concerned, 6 persons were arrayed as accused but none was arrested so far and non-bailable warrants and proceedings under Section 82 of the Code are pending against all of them. As regards CC No. 360 of 2013, Police Station Fugana, out of 12 accused persons, none was arrested. Similarly, in CC No. 361 of 2013, Police Station Fugana, two persons were shown as accused. Here again, none of them was arrested.

50. Insofar as rape case pertaining to CC No. 300 of 2013, the State has furnished the following details:

Date of incident – 08.09.2013

Date of reporting – 26.09.2013

Offences - under Sections 395, 397, 376D, 153A, 436 IPC

Police Station – Fugana, Muzaffarnagar

Place of Incident – Village Fugana

Date of medical examination – 29.09.2013

Date of the statement under Section 161 Cr.PC – 25.10.2013

Date of statement under Section 164 Cr.PC – 09.12.2013

51. In the said case, an FIR was lodged stating that six named cuprits committed the above crime. As regards progress of the case, it is stated:

“The first investigation was taken by SI Esam Singh of P/s Fughana and it was transferred to Insp. Dharmपाल Singh of SIC. As there was no Lady Police Officer in SIC, the investigation was taken by Insp. Mala Yadav of SIC on 18.10.13. Statement under 161 CrPC was recorded on 25.10.13 as earlier attempt to contact victim could not be made as she had gone to Delhi with her husband. On 08.11.13 scene of crime was visited along with the victim. In her 161 Cr.PC statement and in FIR there was some contradiction as in FIR she has said that six person has raped her but in 161 Crpc statement she said that only 4 person raped her and she does not know rest of the person. Further her call details did not match 161 statement. Her statement had to be verified and contradiction needed proper justification. Therefore, the investigating officer had to investigate the case cautiously. Later on statement of other witnesses were recorded. Statement under 164 Crpc was recorded on 09.12.13. After 164 Crpc statement some other statement had to be taken. Requisition of arrest was sent to the police station on 02.01.14 and NBW was taken against all six accused. Warrant under 82 Crpc has been taken against all the accused. Raids were conducted to arrest the accused on 04.01.14, 05.01.14, 20.01.14. Further raids are going on to arrest the accused.”

52. As regards rape case pertaining to CC No. 360 of 2013, the State has furnished the

following details:

Date of incident – 08.09.2013

Date of reporting – 01.10.2013

Offences - under Sections 147, 148, 149, 452, 352, 376D IPC

Police Station – Fugana, Muzaffarnagar

Place of Incident – Village Fugana

Date of medical examination – 18.10.2013

Date of the statement under Section 161 Cr.PC – 25.10.2013

Date of statement under Section 164 Cr.PC – 11.12.2013

53. In the said case, an FIR was lodged stating that 16 named cuprits committed the above crime. As regards progress of the case, it is stated:

“The investigation was started by SI R.S. Bhagaur of P/S Fughana on 09.10.13. It was taken by Insp. Mala Yadav of SIC on 18.10.13. The statement under 161 Crpc was recorded on 25.10.13 as the victim had gone to Delhi. The statement under 161 Crpc and FIR were contradictory as no. of persons accused of rape differed from FIR. Therefore, her statement had to be verified cautiously. Place of incident was visited on 08.10.13 as she was not available on other date. Statement under 164 Crpc was recorded on 11.12.13. Call details of mob. No. did not match with the incident. Further statement of other witnesses has to be taken to corroborate the incident as according to FIR her husband, Father in law, brother in law and mother in law all were present at the time of incident. After collecting all evidence requisition of arrest was given on 18.01.14 to local police station. NBW was taken and sent on 23.01.14 and warrant under 82 Crpc was taken on 27.01.14. Raids were conducted on 18.01.14, 19.01.14 and on other dates in spite of strong resistance from local villagers.”

54. Regarding rape case pertaining to CC No. 179 of 2013, the State has furnished the following details:

Date of incident – 08.09.2013

Date of reporting – 22.09.2013

Offences - under Sections 395, 342, 436, 153A, 506, 376D IPC

Police Station – Fugana, Muzaffarnagar

Place of Incident – Village Fugana

Date of medical examination – 29.09.2013

Date of the statement under Section 161 Cr.PC – 24.10.2013

Date of statement under Section 164 Cr.PC – 09.12.2013

55. In the said case, FIR was lodged against 5 named culprits. As regards progress of the case, it is stated:

“The case was registered on 22.09.13 at P/S Fughana Muzaffarnagar by the victim. The investigation was initially started by SI Anil Kumar Jayant of SIC on 30.09.2013 since at that time there was no Lady Police Officer attached to the SIC. Medical of the victim was done on 29.10.2013 by the local police. The investigation of the case was taken over by Lady Police Officer Inspector Mala Yadav on 18.10.13. On 24.10.13 statement under 161 Crpc was recorded as earlier attempts on 21.10.13 and 23.10.13 to record her statement could not be made as the victim had gone to Delhi. On 8.11.13 the scene of the crime was inspected. Earlier attempt to contact her failed as she has gone to some relations. In her statement name of other witnesses also appeared but they could not be contacted. Call details of victim was also taken to verify the statement given by her son and the victim. The statement of victim differed from FIR as in FIR it was written that the culprits came from roof of the House but in her statement she said that they caught her on the road. She could not even identify

the scene of crime. Besides this there were some contradictions in her statement which needed proper verification as she had stated that her domestic animals were stolen but it was found during investigation that she has taken her domestic animals back from one inhabitants of vill. Fughana. The clothes worn by her on the date of the incident could not be recovered as she said that she had thrown it. Her 164 Crpc statement was registered on 09.12.13. The earlier attempts to register her statement u/s 164 Crpc could not succeed because she was not available even though Safina was sent to her under section 160 Crpc. In her 164 Crpc statement she accused all the 5 named person of committing the crime. The statements of other witnesses were also recorded. Therefore, it took some time to ensure that innocent persons may not become culprit and proper sufficient evidence is collected to prosecute the offenders and all contradiction should have proper and reasonable justification. Requisition of arrest under 55 Crpc against all 05 culprit was issued on 18-01-14. NBW was issued against accused on 20.01.14. On 24.01.14 one accused Vedpal was arrested. On 27.01.14 Warrant under 82 Crpc was taken. Meanwhile attempts to arrest the accused was made on 18.01.14, 19.01.14 and even after 27.01.14, though under severe protest from villagers. Further raids are being made to arrest the accused. No case of arson was found.”

56. It is seen from the above particulars that a total number of six cases of rape were registered at the police station Fugana of District Muzaffarnagar. The cases were registered after more than 20 days from the date of incident. According to the State, investigation in all the six cases is almost complete. After taking the statement of victims under Section 161 of the Code, scene of crime has been visited by the investigating officer along with other officers. Medical examination of all the victims has been done and statements of all the victims have been recorded under Section 164 of the Code. It is further seen that although 41 persons were named in all the six cases, investigation and the statement of victims under Section 164 of the Code refers only to 22 persons. Only one accused had been arrested in the case of C.C. No. 179 of 2013 and proclamation under Section 82 of the Code has been issued against rest of the 21 accused persons. It is also seen that raids are being conducted by local police to arrest the remaining accused.

57. The particulars furnished further show that a total seven cases of molestation were registered during the communal violence. After investigation and recording the

statement of complainant and the so-called victims, it was found that there was no case of molestation. Charges of molestation in all the seven cases were found false. Out of seven cases, in five cases, other charges of dacoity and injury were also found false as the complainants denied occurrence of any such incident. In rest of the three cases, act of dacoity was claimed by the complainant. Orders of arrest in Crl. No. 299 of 2013 have been given against five persons. In Crl. No. 254 of 2013, complainant stated involvement of 19 out of 22 named persons of committing dacoity and arson. Four fresh names were also given. Investigation is going on to find out the authenticity of involvement of accused person in this case. Similarly, in Crl. No. 312 of 2013, complainant had named 14 persons but in statement under Section 161 of the Code, denied the charges of molestation. The scene of crime showed arson in the house. Though the complainant has not mentioned any act of arson in the house, the investigating officer has added the relevant Section in his investigation. Investigation is going on to find the involvement of four named persons.

58. In addition to the same, the State has also filed details of molestation cases, such as number of persons involved, offences, police station, summary of FIRs, progress of the case, etc.

59. Regarding the allegation that in the relief camp rape has been committed, based on the information, Case No. 537 of 2013 under Sections 376(g) and 506 IPC has been registered against Sachin and Sushil and the investigation of the same has been initiated by Kawarpal Singh Inspector in charge. During the investigation, both alleged accused Sachin and Sushil have been arrested and sent to the jail on 03.11.2013. Both the accused are in jail. In the investigation, proper and sufficient evidence have been found against both the accused and charge-sheet No. 73 of 2013 dated 08.12.2013 has been presented to the court concerned.

60. Apart from the above particulars, the State has also placed the actual statement of rape victims made under Section 164 of the Code before the court concerned. We have also perused the same.

61. With regard to various allegations raised in Writ Petition (Criminal) No.11 of 2014 relating to the rape victims, a request for recording fresh statement under Section 164 of the Code was made. Responding to this, the State has informed that the statement made by Petitioner No. 4 under Section 164 of the Code had not supported her version

in FIR No. 141 of 2013 and Case Crime No. 296 of 2013. During the course of arguments, learned senior counsel for the State agreed to record the statement of Petitioner No.4 before a lady Magistrate if the petitioner is willing to appear. It is clarified by the State that pursuant to the above statement, the I.O. concerned got in touch with Petitioner No.4 on 17.02.2014 and explained the circumstances to her for making a fresh statement under Section 164 of the Code to a lady Magistrate. However, according to the respondent-State, Petitioner No.4 declined to make a fresh statement under Section 164 of the Code before the lady Magistrate as requested. In addition to the same, counsel for the State has also brought to our notice the statement of Petitioner No.4 and video proceedings which are available with the State for perusal as and when desired by this Court.

62. Regarding the lack of security cover to the rape victims, on behalf of the State, it is brought to our notice that the State of U.P. has provided security cover to all the rape victims, except Petitioner No.4 in whose case Final Report has been filed. It is also brought to our notice that Petitioner No.1 and her husband had been provided security earlier. It is also stated that all the rape victims refused security cover being provided by a lady constable and on seeing the sensitivity of the matter, the State has provided them with one male and one female security personnel. As per the materials placed, the following are the details of the security personnel provided to the petitioners:

S.No.	Petitioner No.	Particulars
1.	Petitioner No.1	Gunner Constable No. 304 armed police Ravi Kumar/Lady Constable No. 890 Nisha
2.	Petitioner No.2	Gunner Constable No. 238 armed police Anil Kumar/Lady Constable No. 1195 Anjula
3.	Petitioner No.3	Gunner Constable No. 313 armed police Narendra Kumar /Lady Constable No. 157 Kashtina
4.	Petitioner No.5	Gunner Constable No. 55 armed police Arun Kumar/Lady Constable No. 1991 Savita
5.	Petitioner No.6	Gunner Constable No. 319 armed police Vineet Kumar/Lady Constable No. 1302 Meenakshi
6.	Petitioner No.7	Gunner Constable No. 232 armed police Ravish/Lady Constable No. 1023 Bharti

63. Regarding non-registration of FIR on the complaint sent by Petitioner No.7, the State has informed this Court that FIR No. 18 of 2014 being Case Crime No. 37 of 2014 under Sections 376D and 506 of the IPC at Police Station Fugana stands

registered even on 18.02.2014. It is also brought to our notice that the following accused persons, viz., Kuldeep, Maheshveer and Sikandar have been made accused in the said case crime and investigation had already been commenced. As on date, Petitioner No. 7 has also been provided with one male and one female security personnel.

64. In respect of arrest of accused persons in cases related to the offence of rape, the State has highlighted that so far 50 teams of police personnel have been constituted. Each team is led by a Sub-Inspector and has 2-3 constables. Each team has been allotted 3-4 accused and has been given a specific time frame to affect these arrests since during the raids, it has been found that the accused persons are not staying in their native villages. These teams will track the location and have a focussed strategy of arresting targeted persons. In addition to the same, it is highlighted that two companies of the State Paramilitary Force have been earmarked for assisting these arresting squads. Additional SP, Crime, Muzaffarnagar has been made in-charge of arrest operations. It is also assured to this Court that despite resistance to arrests, police has successfully conducted raids on the houses and probable places of hiding in villages on regular basis.

Action taken in murder and other offences:

65. Regarding murders which occasioned during the violence, the State has filed a compilation containing list of named accused who were found false in murder cases. The particulars furnished by them show that about 70 persons (54 Hindus and 16 Muslims) were shown as accused and after investigation it was found that they were falsely implicated. In the Action Taken Report dated 08.02.2014, under the caption "murder cases", the State has furnished information that in Muzaffarnagar, Shamli, Bagpat, Saharanpur, Meerut, 857 persons were implicated and after investigation they identified the total true accused as 337, out of which 94 persons were arrested, 14 surrendered, 6 reported dead and non-bailable warrants are pending against 198, Section 82 proceedings pending against 119, Section 83 proceedings pending against 3 and 6 persons were detained under the National Security Act. The details furnished further show that a total of 59 cases are being investigated by SIC. In these cases, 741 persons were named and 116 persons were brought to light. Of these, evidence has been found against 337 persons. Requisition of arrest has been sent against 289 accused. 94 accused have been arrested and 14 have surrendered before the Court. 6 accused died during investigation. Non-bailable warrants against 193 accused have

been issued and action under Section 82 of the Code has been taken against 116 accused. Action under Section 83 of the Code has been taken against 3 accused. Charge-sheet was filed against 55 accused. 70 persons were found false. Cases against 450 persons named/brought to light are under investigation.

66. In addition to the same, the State has also furnished details showing the names of the accused found true in murder cases. It shows that a total number of 322 accused were found true, which consists of 286 from Hindu community and 36 from Muslim community. The chart also shows the names and residential particulars, crime number, police station, other details about action against those accused. The State also filed list of surrendered accused in murder cases which comes to total 13 persons (4 from Hindu community and 9 from Muslim community), all from Muzaffarnagar district. The chart also shows the names and residential particulars, case number, police station, offences under various enactments, date of surrender, etc.

Cancellation of Bail:

67. Regarding cancellation of bail orders, on hearing the counsel for the petitioners, this Court sought details of cancellation of bail and action undertaken by the State with regard to those accused who have been granted bail either by the Court of Magistrate or Sessions Court. In response to the same, the State has furnished that against 26 accused persons, the State has moved for cancellation of bail before the Court of Sessions. In addition to the same, the State has also placed a chart showing the details of cases in which the State has moved before the Court of Sessions. The details furnished show that in 26 cases in which the accused persons were charged with various offences under IPC read with Criminal Amendment Act, though court concerned has granted bail, the State has moved an application for cancellation of the same. The State Authorities are directed to pursue the same effectively. It is also brought to our notice that in another set of petitions where the accused persons have been granted bail by the competent court, the State has already given approval to file application for cancellation of bail before the High Court and the Government counsel has been instructed that necessary action may be taken for moving such applications. The details of moving applications for cancellation of bail against 57 accused persons to be filed before the High Court are furnished before this Court for our perusal. The Government counsel has also brought to our notice such government orders instructing for moving such applications for cancellation. During the course of hearing, the

counsel for the State has also brought to our notice Government Order dated 09.01.2014 for cancellation of the bail of Azad and others in Case Crime No. 415 of 2013.

68. During the course of hearing, various counsel appearing for the petitioners submitted that bail has been granted to some accused persons as the State had not strongly opposed their bail applications. By drawing our attention to certain documents placed before us, the counsel for the State has pointed out that the Additional Public Prosecutor had opposed the grant of bail then and there.

69. Regarding action taken against persons belonging to various political parties, it is highlighted that the State Government has taken strict action against all the accused persons irrespective of their political affiliation. Learned counsel for the State has pointed out that even the State Government invoked the provisions of National Security Act wherever required. It is pointed out that the provisions of National Security Act were invoked against 11 persons. Mr. Sangeet Som, MLA, BJP and Mr. Suresh Rana, MLA, BJP were amongst those 11 persons. The chart produced by the State for our consideration shows that against 11 persons hailing from Districts Muzaffarnagar, Shamli and Baghpat detention under National Security Act was claimed and the appropriate Board approved five detention orders and disapproved 6.

70. In addition to the same, the State of U.P. has moved application for cancellation of bail in relation to Mr. Kadir Rana, M.P. BSP, Mr. Suresh Rana, MLA, BJP, Mr. Kunwar Bhartendu, MLA, BJP and Mr. Shyam Lal. The State has also assured that against Mr. Sangeet Som, MLA BJP an application for cancellation of bail will be moved by the State of UP before the Allahabad High Court. It is also brought to our notice that against Mr. Sangeet Som, a case Crime No. 888/13 under Sections 153A, 420, 120B and 66AE of the IT Act read with 7th Criminal Law Amendment Act was lodged in which it was alleged that the accused had uploaded a false and inflammatory video clipping intended to incite communal violence in the State. In this regard, it is submitted that the said clipping was uploaded on the social website-Facebook which has its server in the US. It is submitted that the request for providing the details of the IP address of the computer which has been used to upload the said video is being made to the said company following the provisions of Section 166A of the Code. Letter dated 26.11.2013, written by the Under Secretary, Government of India to the Home Department, State of U.P. is also placed before us.

Follow-up action initiated for Missing Persons:

71. With regard to the allegations regarding missing persons, the State has placed materials to show that there were total 24 reported missing persons, out of which 3 have been traced and have returned to their houses and 2 dead bodies have been found. Remaining 19 persons are still missing and the State administration has assured that necessary steps have been taken for the same. If any person is declared dead in terms of Registration of Births and Deaths Act, 1969 and the Indian Evidence Act, the State will consider for paying compensation to the kith and kin of their families.

Whether investigation by SIT/CBI is required:

72. Regarding the claim for transfer of investigation to specialized agency like the Central Bureau of Investigation (CBI) or Special Investigation Team (SIT) or transfer of trial outside the State of U.P., it is useful to refer the principles enunciated by this Court in various decisions:-

73. In *Common Cause, A Registered Society vs. Union of India and Others*, (1999) 6 SCC 667, while considering the scope and ambit of a criminal case being tried or to direct an investigation by the CBI, a three-Judge Bench of this Court held as under:-

“174. The other direction, namely, the direction to CBI to investigate “any other offence” is wholly erroneous and cannot be sustained. Obviously, direction for investigation can be given only if an offence is, prima facie, found to have been committed or a person’s involvement is prima facie established, but a direction to CBI to investigate whether any person has committed an offence or not cannot be legally given. Such a direction would be contrary to the concept and philosophy of “LIFE” and “LIBERTY” guaranteed to a person under Article 21 of the Constitution. This direction is in complete negation of various decisions of this Court in which the concept of “LIFE” has been explained in a manner which has infused “LIFE” into the letters of Article 21.”

74. In *Secretary, Minor Irrigation & Rural Engineering Services, U.P. and Others vs. Sahngoo Ram Arya and Another*, (2002) 5 SCC 521, again, considering the power of the High Court under Article 226 to direct an inquiry by the CBI, this Court held thus:

“5. While none can dispute the power of the High Court under Article 226 to direct an inquiry by CBI, the said power can be exercised only in cases where there is sufficient material to come to a prima facie conclusion that there is a need for such inquiry. It is not sufficient to have such material in the pleadings. On the contrary, there is a need for the High Court on consideration of such pleadings to come to the conclusion that the material before it is sufficient to direct such an inquiry by CBI. This is a requirement which is clearly deducible from the judgment of this Court in the case of Common Cause.

75. In *State of West Bengal and Others vs. Committee for Protection of Democratic Rights, West Bengal and Others*, (2010) 3 SCC 571, a Constitution Bench of this Court while considering direction of High Court under Article 226 or this Court under Article 32, directing the CBI to investigate cognizable offence in a State without the consent of the State Government, explained its scope and permissibility. Among various reasons, the direction in para 70 is relevant which is as under:

70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.”

76. With these principles, let us test whether the case on hand, particularly, at this juncture is required to be entrusted to CBI or SIT to be formed with personnel from other States.

77. Almost all the petitioners, either victims, NGOs, persons hailing from that region, prayed for an independent investigation of the entire incident relating to communal violence and the subsequent action either by the Special Investigation Team (SIT) consisting of officers from outside U.P. or by the independent Agency like CBI. We have already referred and adverted to the grievance of various group of persons, organizations as well as the stand taken by the Union of India and specific stand taken by the State of Uttar Pradesh including having taken appropriate action against the culprits, rehabilitation measures for the victims, compensation for the loss of properties, both movable and immovable, for injuries, both simple and grievous, and fatal cases. The State has also highlighted the steps taken in respect of rape victims due to the communal violence and rehabilitation measures for those victims. In addition to the same, the State has also highlighted the cases filed against the persons concerned irrespective of their political affiliations, cases filed against political persons, either MLA/MPs and the status as on date.

78. It is not in dispute that subsequent to the incident that took place on 07.09.2013 and afterwards, in and around Muzaffarnagar, a large number of persons, particularly, villagers from within and neighbouring districts, fled from their homes out of fear and took shelter in relief camps in various villages of two districts of Muzaffarnagar and Shamli. It is also seen that total 58 camps were made functional of which 41 camps were established in the district Muzaffarnagar and 17 in the district Shamli.

79. The incidents of communal disturbance flared up sometimes on flimsy grounds blaming one community to other. Whatever may be, after the Mahapanchayat that took place on 07.09.2013, certain incidents such as eve teasing of other community girls followed by murders had taken place. Further, inasmuch as thousands of people gathered at a particular place in order to take revenge or retaliate, it is expected by the State intelligence agencies to apprise the State Government and the District Administration in particular, to prevent such communal violence. Though the Central Government even on day one informed this Court through the Attorney General for India that all necessary help, both financially and for maintaining law and order, had been provided to the State, there is no authoritative information to this Court whether

there was any advance intimation to the State about the communal violence. Likewise, though the State has enumerated several aspects in the form of eleven compliance reports, there is no information to this Court whether the District Administration was sounded about the proposed action between the two communities. Had the Central and State intelligence agencies smelt these problems in advance and alerted the District Administration, the unfortunate incidents could have been prevented. Thus, we prima facie hold the State government responsible for being negligent at the initial stage in not anticipating the communal violence and for taking necessary steps for its prevention.

80. At this juncture, viz., after a period of six months, whether an agency other than the State is to be directed to investigate and take appropriate steps. We have already noted various circumstances under which the court can entrust investigation to agency other than the State such as SIT or CBI. We have to keep in mind, as observed by the Constitution Bench referred to supra, that no inflexible guidelines can be laid down to decide whether or not such power should be exercised. However, this Court reiterated that such order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the State police. In other words, this extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility or instill confidence in investigation or where such an order may be necessary for doing complete justice in enforcing the fundamental rights. Apart from this, immediately after the occurrence, Writ Petition (Crl.) No. 155 of 2013 came to be filed in this Court even in the first week of September, 2013. Pursuant to the same, this Court, after taking note of the importance of the issues, viz., many people lost their lives and properties, sufferings of both communities and children, issued various directions to the State and the Central Government. We have already extracted those orders in the earlier part of our judgment.

81. It is relevant to note that based on various orders of this Court, even after the incident, the State itself has constituted a Special Investigation Cell (SIC). It is also brought to our notice that a total of 566 cases are being investigated by the SIC and after noting that many cases were false and many persons were wrongly named in the FIRs, 549 names have been removed. A total of 48 registered cases have been found false and have been removed from the records. It is also brought to our notice that names of 69 persons in murder cases have been found false and those names have also

been removed from the array of parties. The details furnished by the State also show that after constitution of the SIC in September, it inquired about all those persons who had fled from their villages and had taken refuge in various relief camps and noted their problems by taking list of such persons staying in camps and getting their mobile numbers. The SIC also recorded the statements of the complainants and witnesses. We have already referred to the total number of arrested persons in communal violence in Muzaffarnagar and adjoining areas, list of total surrendered accused in the investigated cases, number of persons against whom action was taken due to communal violence, details regarding political persons, difficulties faced by the District Police in making arrests, details regarding recovery of AK-47 and 9 MM cartridges in village Kirthal P.S. Ramola, District Baghpat. They also placed the details about the steps taken in respect of case Crime No. 148 of 2013 (Fagana, Muzaffarnagar) and 403/2013 (Janath, Muzaffarnagar). In the list of persons, SIC also noted community-wise affiliation of their political parties etc.

82. In respect of cases of rape, the State has assured this Court that they are taking effective steps to apprehend all the accused and in providing security cover to the rape victims. 50 teams of police personnel have been constituted in order to arrest the accused persons in rape and other cases. The State has also filed details and progress of rape and molestation cases, statement of rape victims under Section 164 of the Code etc.

83. We have already noted that action had been taken against 11 persons under the provisions of the National Security Act as well as persons belonging to various political parties. The State has also furnished the details regarding 24 missing persons out of which 3 have been traced and is taking effective steps for tracing the remaining missing persons.

84. In respect of murder cases, the State has filed a separate chart showing the list of accused persons, verification of persons concerned who were involved, list of surrendered accused in murder cases as well as various other steps for apprehending the remaining accused. The State has also highlighted that through their public prosecutors/ counsel, it is taking effective steps for cancellation of bail in those heinous crimes in which persons involved have secured bail.

85. In the light of various steps taken by the State, facts and figures, statistics

supported by materials coupled with the various principles enunciated in the decisions referred above, we are of the view that there is no need to either constitute SIT or entrust the investigation to the CBI at this juncture. However, we are conscious of the fact that more effective and stringent measures are to be taken by the State administration for which we are issuing several directions hereunder.

Victim Compensation in Rape Cases:

86. As a long term measure to curb such crimes, a large societal change is required via education and awareness. The Government will have to formulate and implement policies in order to uplift the socio-economic conditions of women, sensitization of police and other concerned parties towards the need for gender equality and it must be done with focus in areas where statistically there is higher percentage of crimes against women.

87. No compensation can be adequate nor can it be of any respite for the victims but as the State has failed in protecting such serious violation of fundamental rights, the State is duty bound to provide compensation, which may help in victims' rehabilitation. The humiliation or the reputation that is snuffed out cannot be recompensed but then monetary compensation will at least provide some solace.

88. In 2009, a new Section 357A was introduced in the Code which casts a responsibility on the State Governments to formulate Schemes for compensation to the victims of crime in coordination with the Central Government whereas, previously, Section 357 ruled the field which was not mandatory in nature and only the offender can be directed to pay compensation to the victim under this Section. Under the new Section 357A, the onus is put on the District Legal Service Authority or State Legal Service Authority to determine the quantum of compensation in each case. However, no rigid formula can be evolved as to have a uniform amount, it should vary in facts and circumstances of each case. Nevertheless, the obligation of the State does not extinguish on payment of compensation, rehabilitation of victim is also of paramount importance. The mental trauma that the victim suffers due to the commission of such heinous crime, rehabilitation becomes a must in each and every case.

89. Considering the facts and circumstances of these cases, we are of the view that the victims in the given case should be paid a compensation of Rs. 5 lakhs each for

rehabilitation by the State Government. We, accordingly, direct the State Government to make payment of Rs. 5 lakhs, in addition to various other benefits, within 4 weeks from today. Further, we also wish to clarify that, according to Section 357B, the compensation payable by the State Government under Section 357A shall be in addition to the payment of fine to the victim under Section 326A or Section 376D of the IPC.

Directions relating to rape cases:

90. We have already noted various steps taken by the State in respect of rape cases. In addition to the same, in the light of the apprehensions/grievance expressed by the learned counsel for the petitioner in W.P. (Crl.) No. 11 of 2014, we issue the following directions:

- 1) The SIC is directed to arrest and produce before the Court all the persons concerned in respect of petitioners in W.P. (Crl.) No. 11 of 2014 as well as other affected victims within a time-bound manner. They are also directed to record the statement of the victims under Section 164 of the Code before a lady Magistrate even if they had made a statement, if they desire to make additional statement, the same may be recorded as requested.
- 2) The security cover provided to rape victims as furnished before this Court shall continue till they desire or completion of the trial whichever is later.
- 3) The victims of rape who are parties in W.P. (Crl.) No. 11 of 2014 as well as other rape victims are to be paid compensation of Rs. 5 lakhs each, in addition to various other benefits, by the State Government within a period of 4 weeks from today.
- 4) The State is also directed to provide other financial assistance as well as any other scheme applicable to them for their betterment and to continue their normal avocation.

Directions regarding other offences including murder:

- 1) Sincere efforts shall be made to apprehend all the accused irrespective of

political affiliation and produce them before the appropriate court.

2) The particulars furnished by the State in respect of criminal action taken against political persons shall be continued by placing acceptable materials before the court concerned.

3) The reason given by the State Police that whenever efforts were made to arrest the persons involved, women folk of their village form a human chain and block the police in execution of their work is unacceptable and untenable. If there is reliable material against a person irrespective of the community or religion, the police have to take sincere efforts in arresting those persons and produce them before the court concerned. There shall not be any let up and upon failure on the part of the police, action will be taken against the officers concerned. The victims or aggrieved persons are free to move such application before the jurisdictional court.

4) In respect of recovery of AK-47, 9 mm cartridges in village Kirthal, the police have to identify the persons concerned and proceed against them under the provisions of IPC and Arms Act.

5) In respect of Case Crime No. 148/2013, P.S. Fugana, Case Crime No. 403/2013, 404/2013 P.S. Jansath, more efforts must be taken for apprehending all the genuine accused and to produce them before the court for further action.

6) The investigating authorities should eschew communal bias and proceed against all the offenders irrespective of their caste, community and religion.

7) In the case of murders, the police must take sincere efforts to identify and arrest the real culprits within a time-bound manner preferably within a period of two months and report the same before the jurisdictional court concerned.

8) In heinous crimes, including murder cases, if any of the real accused was granted bail, as assured before this Court, the District Administration has to take effective steps for cancellation of their bail in appropriate cases.

9) As assured before this Court, the persons concerned in the higher level to

follow the letters issued to various government counsel/police officers/I.O. for apprehending the real accused and re-arresting the released persons by getting appropriate orders from the court concerned.

10) The authorities concerned should continue to take effective steps to locate the missing persons.

Financial Assistance/Rehabilitation measures:

1) Children who died in the violence as well as in the camps due to cold weather conditions shall be compensated to their parents as that of others.

2) The State is directed to identify the left out injured persons (simple/grievous), next kin of the deceased who died in the communal violence and settle the compensation agreed to before this Court (Rs. 10,00,000 + Rs. 3,00,000 + Rs. 2,00,000 = Total Rs. 15,00,000). It is also directed to settle compensation for the damages caused to movable/immovable properties of the person concerned due to the violence if they have not already received the same. Any of the victims referred above such as rape victims and the family members of the deceased who died in the violence, if they have not received any amount so far, they are permitted to make proper application to the local/district authority concerned within a period of one month from today. If any such application is made, the authorities concerned are directed to verify and after satisfaction settle the eligible amounts within a period of one month thereafter. The District Administration is also directed to implement Rani Lakshmbai Pension Yojana to eligible persons and consider the case of persons who were left out or who have not made any such application till this date. Any of the victims, if need arise, may also approach the District Legal Services Authority and the DLSAs are directed to provide necessary help to the victims in the light of various directions referred above.

3) For any reason, after receipt of Rs. 5 lakhs those who want to settle to other places than the place of occurrence after change of mind and in order to join their relatives and friends in the village/place where they lived at the time of violence, are permitted to resettle, in that event, the State is directed not to recover the amount already paid. However, the State is free to ascertain the

genuineness of those persons concerned in their effort to resettle in the same place. The District Administration has to make all endeavours for their peaceful return to the same place in order to continue the same avocation along with their relatives and friends.

4) The officers who have grievance about their transfer on vindictive ground from the district concerned to far away places are free to make a representation to the competent authority within a period of one month from today. If any such representation is made and if the same is acceptable, the competent authority is directed to take a fresh decision.

5) Adequate compensation should be paid to the farmers who lost their source of livelihood, namely, tractors, cattles, sugarcane crops etc. In this category, the farmers who were yet to get compensation for the same are permitted to make a representation within one month from today supported by materials to the local/district administration. If any such representation is made, the same shall be considered and disposed off within a period of one month thereafter.

91. Finally, we reiterate that it is the responsibility of the State Administration in association with the intelligence agencies of both State and Centre to prevent such recurrence of communal violence in any part of the State. It is made clear that the officers responsible for maintaining law and order, if found negligent, should be brought under the ambit of law irrespective of their status. It is important that the relief, as enumerated above, not only be provided to all needy families irrespective of their religion but it should also be provided to only genuinely affected families.

92. With the above directions, we dispose of all the matters including the intervention applications. However, the affected persons, if they come across any impediment in implementing the above directions, are permitted to highlight their grievance by filing application before this Court in the above matters after a period of two months from today. It is made clear that only after exhaustion of efforts with the District authorities concerned, they are permitted to file such application in the above disposed off matters. In those cases which have not been transferred to this Court and are still pending before the High Court of Allahabad, the parties are free to move the High Court for disposal of the same in accordance with the above directions.