

CENTRAL INFORMATION COMMISSION

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Central Information Commissioner

CIC/SH/A/2016/001055

Hemanta Panda v. PIO, M/o Culture

RTI	:	23.11.2015
FAO	:	Nil
Second Appeal	:	21.04.2016
Hearing	:	09.02.2017
Appellant	:	present
Public authority	:	Jayaprabha Ravindran, Mr KC Jena, Md Hasan
Decided on	:	16.02.2017

If I am to die by the bullet of a mad man, I must do so smiling. There must be no anger within me. God must be in my heart and on my lips.

— Mohandas K. Gandhi, 28 January 1948, two days prior to his assassination.

FACTS:

1. The appellant filed RTI application seeking copy of FIR No 68/48 dated 30.1.1948, copy of final charge sheet issued by the Delhi Police, and copy of order to execute the accused Mr. Nathuram Godse in case of assassination of Father of Nation Mohandas Karamchand Gandhi. He also appealed to FAA on 26.12.2015. Response of PIO and FAA is not on record. Dissatisfied, the appellant approached this Commission.

Decision :

2. The appellant claimed that he is a researcher and interested in studying the records pertaining to the assassination of Mahatma Gandhi. None can deny the public interest in this historic event ending the life of father of a nation.

3. The CPIO, Ms. Jayaprabha Ravindran stated that the appellant was asked to inspect the files at National Archives of India, New Delhi. As per the Commission's order No. CIC/SH/A/14/001112 dated 3.6.2016, the appellant was provided copy of the charge sheet and FIR of Gandhi's Assassination case.

4. The appellant stated that he inspected the records and obtained certain certified copies of the case documents. He complained that he could not find two important documents, final Charge sheet issued by the Delhi Police and order of execution of Mr. Nathuram Godse. The appellant stated that the record shows three persons accused of assassination of Gandhi – Mr. Gangadhar Dahawate, Mr. Surya Dev Sharma and Mr. Gangadhar Yadav were absconding, but nothing to show whether any efforts were made to apprehend them or whether the criminal case against them was closed, if so why? He wanted to see the record containing the details about efforts of Delhi Police to apprehend these three accused persons and reasons for not arresting them and stated that other two accused Mr. Dattatreya Parchure and Mr. Shankar Kistaiya were acquitted during appeal. The appellant submitted to the Commission that he wanted the copies of the concerned documents.

5. The CPIO of ASI stated that their office's function is to receive the records as sent for archives and they were unable to say anything whether any important document like final charge sheet was missing or what happened to records showing efforts of the police to arrest three accused or state reasons how and when two others were acquitted. She said that they can only receive and protect the records but cannot give any opinion on the same.

6. As per earlier records of the Commission's order CIC/SH/A/14/001112 dated 3.6.2016, it was found out that the Tuglaq Road, Delhi Police Station had informed that the original FIR No. 68/1948 under section 302, IPC regarding the assassination of Mahatma Gandhi has been deposited in the National Archives of India, who also possessed the original of the charge sheet, whereas Delhi Police informed the Commission earlier that they had only the photocopy of the FIR.

7. The perusal of records and contentions led the Commission to infer that the respondent authority could not say anything about the final charge sheet or other details as sought by the appellant. They should have at least transferred the RTI request to the concerned authorities.

8. The CPIO, Ms. Jayaprabha Ravindran represented to the Commission that they were under heavy pressure of RTI requests pertaining to files of Mahatma Gandhi, Netaji Subhash Chandra Bose and Vallabh Bhai Patel. She stated that frequent reference under RTI was causing difficulties in protecting the records. However, the records pertaining to accession of 600 princely states to India

under leadership of Sardar Vallabh Bhai Patel and the records pertaining to Netaji Subhash Chandra Bose were made available in the digitized form and accessible in the National Virtual Library Institute and National Science Centre. She also said that most of the records available in archives can be accessed through its portal Abhilekh patal. She also informed that Prime Minister Narendra Modi has released several documents of Netaji Subhash Chandra Bose on 24.01.2016.

9. Three important information related issues were raised by the appellant.

- a) Were three accused absconding? What efforts were made to arrest them?
- b) What are reasons for acquitting other two accused in appeal?
- c) Whether copy of final charge-sheet in Gandhi Murder and order of execution of Accused number one, Nathuram V Godse case are missing from the record? If so what action was taken to trace them back?

10. After hearing the contentions of both the parties, perusing the record available and whatever documents could be accessed in the research done by the legal consultants and interns office of this Commission [IC(SA)], visit to NAI and perusal of files in 25 CDs, following points emerged.

- a) There is no comprehensive record of Gandhi files compiled at one place on assassination of Gandhi.
- b) There is no response to the question about apprehension of missing of two important records as alleged by the Appellant.
- c) The National Archives of India is not having all files on Gandhi Assassination with them, and they cannot say anything about it as they are merely recipients of records given by others.

11. Dr Sanjay Garg, Deputy Director of NAI has explained this Commissioner that when National Capital was shifted from Calcutta (Kolkata) to New Delhi in 1911, Imperial Records Department (IRD) shifted to the present building in 1926, which was constructed as part of main buildings of the new capital such as Rastrapathi Bhawan, Parliament, North and South Blocks. After independence, the IRD was rechristened as National Archives of India. For the first time, records were thrown open for bona fide research in 1939 and by 1947 all pre 1902 records were available for consultation. A Conservation Research Laboratory (CRL) was established in 1940 to conduct researches into problems relating to conservation. Training in Archives Keeping was introduced in 1941

and in 1944, a scheme of Post War Re-organisation of Archives offices in India was laid down by the Indian Historical Records Commission. In 1947, the Departmental Journal **the Indian Archives** came into existence which contains research papers on source material of modern Indian history, conservation of documents, records-management, reprographics, archival awareness and all other allied aspects of functional archives.

12. The Commissioner visited the NAI, the section exclusively arranged for Bapu, wherein all documents and books relating to Gandhi are placed. It also has more than 11000 pages of Mahatma Gandhi Murder Trial records from FIR registered in Tughlack Road Police Station New Delhi to Final Judgment in East Punjab High Court at Shimla. As the records are old enough, difficult to be handled, the NAI has rightly digitized it and made accessible in CD form. The CPIO told that people interested in are free to visit the NAI without even applying for under RTI Act, read from the original files and also gain access to these CDs and they can even purchase the CDs containing all murder trial records. They print out from CDs and provide copies, without disturbing the original records. The CPIO stated that they could get these records from the Delhi High Court after formally requesting them to provide. According to her the appellant visited the NAI and obtained hundreds of pages under RTI Act, including 120 pages of the written statement of Nathuram Godse. Nothing stops him from visiting again to obtain any other set of papers, if he desires. On the direction of the Commission, the NAI furnished the CDs of the documents to the Commission. Following details were culled out from the available records of Mahatma Gandhi Murder Case:

13. The Accused are:

1. Nathuram V. Godse
2. Narayan D. Apte
3. Vishnu R. Karkare
4. Madanlal K. Pahwa
5. Shankar Kistayya
6. Gopal V. Godse
7. Vinayak D. Savarkar
8. Dattatraya S. Parchure
9. Gangadhar S. Dandawate
10. Gangadhar Jadhav
11. Suryadeo Sharma
12. Accused Digamber R Badge turned approver

14. **Special Court:** A Special Court was constituted under notification No. 54/1/48-Political, Government of India, Ministry of Home Affairs, dated 4-5-48, u/ss 10 and 11 of the Bombay Public Security Measures Act, 1947, as extended to the Province of Delhi, and the case was made over to the Court for trial, under notification No. 54/1/48-Political, Government of India, Ministry of Home Affairs, dated 13-5-48.

15. **The Judge:** Mr. Atma Charan, Esq., I.C.S. was appointed Special judge. The Court held its sittings in a hall on the upper storey of a building in the Red Fort.

16. **Red Fort declared Prison:** Nathuram V. Godse, Narayan D. Apte, Vishnu R. Karkare, Digambar R. Badge, Madanlal K. Pahwa, Shankar Kistayya, Gopal V. Godse and Vinayak D. Savarkar, who were present at Bombay, and Dattatraya S. Parchure, who was then at Gwalior, were all brought to Delhi before the commencement of the trial, and were lodged in the Red Fort in a specially selected area, which was declared to be a 'prison' under notification No. 54/6/48-Political, Government of India, Ministry of Home Affairs, dated 15-5-48.

17. **Prosecution:** The charge-sheet against the accused was submitted to the Court on 27-5-1948. A summary of the main prosecution evidence was furnished to the defence by the prosecution before the commencement of the trial before the Court. Digambar R. Badge was tendered a pardon on 21-6-1948. The prosecution filed the sanction of the District Magistrate, dated 18-5-1948, u/s 29 of the Indian Arms Act, the sanction of the Central Government, dated 26-5-1948, u/s 7 of the Explosive Substances Act and the sanction of the Central Government, dated 18-6-1948, u/s 188 of the Cr.P.C., on 22-6-1948. The charges were then read out and explained to the accused. The accused pleaded 'not guilty' and pleaded to be tried.

18. **Prosecutor and defence:** Mr. C.K.Daphtary, Advocate-General of Bombay, appeared as Chief Public Prosecutor, and was assisted by Messers. N.K. Petigara, M.G. Vyavaharkar, J.C. Shah and Jwala Prasad. Savarkar was represented by Messers. L.B. Bhopatkar, Jumnadas Mehta, Ganpat Rai, K.L. Bhopatkar, B. Banerji, J.P. Mitter and N.P. Aiyer

19. **Complete recording of evidence:** Although u/s 13(2) of the Bombay Public Security Measures Act extended to the Province of Delhi only a memorandum of the substance of the evidence was required to be recorded by

the court, but at the request of all the accused and their counsel and with the approval of the counsel for the prosecution, a complete record of the evidence was maintained in English for the convenience of all concerned.

20. **The Witnesses:** The recording of the prosecution evidence began on 24-6-1948 and continued till 6-11-1948. The prosecution produced in all 149 witnesses, and their evidence consists of 720 pages. The prosecution brought on the record of the case 404 documentary exhibits and 80 material exhibits.

21. **Statement of accused:** The recording of the statements of the accused began on 8-11-1948, and continued till 22-11-1948, and their statements consist of 106 pages. All the accused except Shankar Kistayya filed written statements and their written statements consists of 297 pages. The defence through the prosecution witnesses brought on the record of the case 119 documentary exhibits. The accused were asked whether they meant to adduce evidence in defence. All of them declined to adduce any evidence either in rebuttal of the prosecution evidence or in support of the allegations made by them.

22. **Judgment and Penalties:** The hearing of the arguments began on 1-12-48 and continued till 30-12-48. Judgement was pronounced on February 10, 1949. Nathuram Godse and Narayan Apte were sentenced to be hanged. Vishnu Karkare, Madanlal Pahwa, Gopal Godse, Shankar Kistaiya and Dr. Parchure were to suffer, inter alia, transportation for life. Vinayak Savarkar was acquitted. Digamber Badge was granted pardon and set free for having deposed against his co-accused.

23. **Appeals:** All the seven convicts submitted appeals through the jail authorities to the Punjab High Court. Formerly the High Court functioned at Lahore. Nathuram V Godse preferred appeal against his conviction for conspiracy and other charges and not against the death sentence. Criminal Appeals Nos. 66 to 72 of 1949 Punjab High Court, (then at) Simla. Some significant record of the Mahatma Gandhi Murder Case was included in Printed Volume I and II of the case documents in Punjab High Court.

24. **Judgment in Appeal:** The accused were put on trial at Peterhoff, Shimla, which housed the Punjab High Court at Simla. Vinayak Savarkar was acquitted and set free due to lack of evidence. The appellant and other sources

stated that two accused namely Dattatraya Parchure, and Shankar Kistaiya were acquitted. As per the records available, Shankar Kistaiya and Dattatraya Parchure were sentenced to transportation for life. However, Bombay High Court in Gopal Vinayak Godse vs The Union of India and Ors, decided on 6 August, 1969, AIR 1971 Bom 56, (1970) mentioned that: "In appeal, the Punjab High Court acquitted two more -- Dr. Parchure and Shankar Kistayya. The conviction and sentence of the five others was confirmed. Nathuram had appealed against his conviction on the charge of conspiracy only. He neither challenged his conviction for murder nor the sentence of death passed on him. The statement made by him in Trial Court under Section 342 of the Code of Criminal Procedure was proscribed by the Government of India...Nathuram and Apte were executed in the Ambala Jail on the 15th November, 1949. Gopal Godse and another accused called Karkare were transferred from the Ambala Jail to Nasik Road Central Prison in Maharashtra on the 19th May, 1950. Gopal Godse was thereafter transferred to the Aurangabad Central Prison. Gopal Godse filed several petitions in the Supreme Court praying that he be directed to be released. He was sentenced by the Trial Court on 10-2-1949 and his contention was that taking into consideration the remissions earned by him he was entitled to be released. He was eventually released from jail on 13th October, 1964, during the pendency of one of such petitions, in which he was directed to be produced before the Supreme Court on the 19th October, 1964. He was arrested again on the 25th November, 1964 under the Defence of India Act. He was released from detention on the 30th November, 1965".

25. The records pertaining to charge-sheet show that three accused were absconding as pointed out by the appellant. But the NAI cannot give any opinion or information about why they were not arrested etc. Appellant sought copy of 'final chargesheet'. The records did not show any thing like primary or final, but there is one chargesheet and documents containing framing of charges by the Court, which are inspected by the appellant. NAI did not possess any of the Jail records hence they could not provide a copy of order of execution of Nathuram Godse and another accused.

26. Mr. Abhishek Saha Hindustan Times, August 15, 2015 in his article an analytical article on the politics of an assassination, "who killed Gandhi and why" wrote:

"Extensive research by Larry Collins and Dominique Lapierre for their book "Freedom at Midnight" detailed how exactly the conspiracy to kill Gandhi was hatched. ...The book, published to critical acclaim in 1975, laid bare facts which prove that Gandhi's assassination was the outcome of a larger conspiracy by Hindu fundamentalists to eliminate Gandhi from the political scene. Collins and Lapierre made full use of the access they had to critical police and intelligence records and even interviewed people who played key roles in the conspiracy, such as Nathuram's brother Gopal Godse, Vishnu Karkare (who assisted Apte in hatching the plan) and Madanlal Pahwa, who unsuccessfully attempted to kill Gandhi ten days before he was shot dead."

27. The assassination related issues were discussed in Constituent Assembly and also Parliament, a decade after assassination. From the Constituent Assembly of India, following statements were quoted:

"Is it true that on the day of the bomb blast during the search of the room at Marina Hotel clothes were found bearing the initials N.V.G. – Nathuram Vinayak Godse -? On the basis of which the police went to Bombay and requested the Bombay police to look for this person, the Bombay police assured the Delhi police to do the needful and asked them to return, but did nothing. Is it true that the Bombay Police failed in tracing Nathuram Vinayak Godse? — *Balkrishna Sharma, during the debate on murder of Mahatma Gandhi in the Constituent Assembly of India.*

To comment on matters under investigation is both difficult and unwarranted. I can only say that after the arrest and interrogation of the bomber, an officer of Delhi police went to Bombay and briefed the C.I.D. in Bombay. After the briefing, it was decided that some people should be arrested but to arrest them immediately would lead to the other conspirators going underground. So the Delhi police and Bombay C.I.D. decided to defer the arrests for some time to enable them to uncover the conspiracy and all who were involved in it. It is true that the police were on a look out for them but all of them were not in Bombay, — *Sardar Patel, during the debate on murder of Mahatma Gandhi in the Constituent Assembly of India.*"

28. **Celebrations on release of assassins:** From Interview with K Ketkar which was available with Centre of South Asian Studies of University of Cambridge, and book "Gandhi the forgotten Mahatma" by Jagdishchandra Jain following incidents were reported:

"On November 12, 1964, a religious programme was organised in Pune, to celebrate the release of the Gopal Godse, Madanlal Pahwa, Vishnu Karkare from jail after the expiry of their sentences. Dr. G. V. Ketkar, grandson of Bal Gangadhar Tilak, ("Interview: K. Ketkar". University of Cambridge, Centre of South Asian Studies. Retrieved 29 August 2009) former editor of *Kesari* and then editor of *Tarun Bharat*, who presided over the function, revealed six months before the actual event, that Nathuram Godse disclosed his ideas to kill Gandhi

and was opposed by Ketkar. Ketkar said that he passed the information to Balukaka Kanitkar who conveyed it to the then Chief Minister of Bombay State, B. G. Kher. The Indian Express in its issue of November 14, 1964, commented adversely on Ketkar's conduct that Ketkar's fore-knowledge of the assassination of Gandhi added to the mystery of the circumstances preceding to the assassination. Ketkar was arrested. A public furore ensued both outside and inside the Maharashtra Legislative Assembly and both houses of the Indian parliament. There was a suggestion that there had been a deliberate dereliction of duty on the part of people in high authority, who failed to act responsibly even though they had information that could have prevented Gandhi's shooting. Under pressure of 29 members of parliament and public opinion, the then-Union home minister, Gulzarilal Nanda, appointed Gopal Swarup Pathak, M. P. and a senior advocate of the Supreme Court of India, in charge of inquiry of conspiracy to murder Gandhi. Since both Kanitkar and Kher were deceased, the central government intended on conducting a thorough inquiry with the help of old records in consultation with the government of Maharashtra, Pathak was given three months to conduct his inquiry. But as Pathak was appointed a central minister and then governor of Mysore state, the commission of inquiry was reconstituted and Jevanlal Kapur a retired judge of the Supreme Court of India was appointed to conduct the inquiry. [Jain, Jagdishchandra (1987). *Gandhi the forgotten Mahatma*. New Delhi: Mittal Publications. ISBN 81-7099-037-8]"

29. **Parliament Agitated:** Parliament was agitated about this incident and the then Home Minister Guljari Lal Nanda has responded to the feelings of the members of Rajya Sabha, relevant excerpts as follows:

“THE MINISTER OF HOME AFFAIRS (SHRI GULZARILAL NANDA):

Sir, following the recent release of the three convicts of the Mahatma Gandhi Murder Case, certain reports have appeared in the Press which have caused intense pain and resentment. According to these reports, which have subsequently been confirmed by the State Government, a meeting was organised at Poona on November 12, 1964 to felicitate two of the convicts-Gopal Godse and Vishnu Karkare on their release. Presiding over the meeting, Shri Ketkar, Editor of Tarun Bharat, claimed that he had known of the intention of Nathuram Godse to assassinate Mahatma Gandhi and had conveyed this information to the late Shri B.G. Kher, the then Chief Minister of Bombay, through Balukaka Kanetkar. He is further reported to have said that he had made an attempt to dissuade Nathuram Godse from carrying out his intention. Shri Ketkar repeated the statement substantially at another meeting held on November 15, 1964 at Poona to mark the death anniversary of the assassin of Mahatma Gandhi. As both Balukaka Kanetkar and Shri Kher are now no more, it has not been possible immediately to verify Shri Ketkar's claim of having communicated his knowledge of the intention to assassinate Gandhiji to Shri Kher. Government are marking a thorough inquiry into the matter with the help of old records, and in consultation with the Government of Maharashtra.

Whatever the truth or otherwise of this matter, the fact that the death anniversary of the assassin of one of the greatest men of all times, whose memory is highly venerated and cherished not only in this country but throughout the world, should be observed and that the other ex-convicts should be felicitated

on their release at a public function has come as a profound shock to the Government and the people of this country. It is amazing that an act so revolting to human decency and the highest values cherished by this ancient land since the dawn of time should hold an appeal even to an infinitesimal section of our people.

SHRI A.D. MANI: The last sentence was this. As Mr. Ketkar said these things, Mr. Gopal Godse asked him not to speak "more about it". Sir, I should like to ask the Home Minister and the Leader of the House, who is an eminent Judge, whether under law the conspiracy to kill Gandhiji ended with the murder trial of Godse or the conspiracy is a continuing conspiracy. If some persons had known more about it, that fact should be ascertained from them by the Government. It is not a question of making an enquiry through the Government of Bombay. The persons said that he knew about the murder plan. I would like to ask the Home Minister whether any attempt has been made by the Government of India to ask Mr. Ketkar to give all those details he knows.

SHRI GULZARILAL NANDA: As you like, Sir. So far as this particular question is concerned, it is a matter not of my opinion, but what the proper legal course and possibilities would be and I understand that it should be possible to take action against a person for having been an accessory before the act. In that sense possibly the conspiracy would not have terminated at that point. But in this case how exactly that has a bearing on the situation, I am not able to say immediately. We are in touch with the Maharashtra Government. So far as now ascertained, the position is that this gentlemen claims, of course, knowledge, but also that he had tried to dissuade this person and further that he had tried to prevent such a thing happening by giving an early intimation to some persons who could have done something about it.

SHRI GULZARILAL NANDA: From what we have known from both press reports and the other information that we have obtained, it is obvious that what occurred there at that reception can only be called in the nature of an atrocious manifestation of an ugly mentality bordering on insanity and I cannot characterise it in terms less severe. Now, what has to be done about it? What Government can do is merely one part. I see that there is report that Mr. Naik, the Chief Minister, told pressmen here yesterday that the State Government would take necessary action against those who had recently arranged a public reception at Poona to felicitate Gopal Godse and Vishnu Karkare on their release from prison, etc.

So, it appears that the Maharashtra Government is considering this question.

The other part of the question was about the dangers, the hazards that it creates. I think the best answer to that certainly is an awakened community, sensitive to all these happenings and therefore, creating a widespread feeling against such manifestation. That social awakening is really the best and most adequate answer for this. Whether anything in the nature of a legal action is possible or not I cannot say, but we are in touch with the Maharashtra Government. We have not received any communication from them, which the Hon. Member referred to, but we shall certainly be in touch with that Government, and any information or help or advice that that Government seeks from us certainly we shall be prepared to give.

About the other thing which was brought into this question, I think there may be some other occasion to answer that unless the idea of the Hon. Member is that there are instigations to violent activity which are associated with certain names. Wherever there is any violent activity, certainly we have to put it down or any effort or attempt or any kind of a feeling generated for that purpose.

SHRI CHANDRA SHEKHAR (UTTAR PRADESH): Mr. Vice-Chairman, with your permission I may read only a few lines of the report that appeared in the Indian Express of November 15th-

"Several of those present offered pooja to a photograph of Nathuram Godse hung decoratively in an outline of undi-vided India. Those who offered Pooja included Gopal Godse, Vishnu Karkare, both of whom were sentenced to life imprisonment and were released last month and a free lance journalist".

The report further says-

"Speakers on the occasion including Mr. N.G. Abhyankar, RSS leader, Mr. P.V. Davare and Mrs. Shantabai Gokhale said that Nathuram was a 'martyr'.

Mr. Abhyankar described Nathuram as a 'true follower of Bhawan Krishan and Chatrapati Shivaji'.

I am more concerned about that aspect of the question. It is not only that certain people held a reception for Godse but these people are guilty of a criminal offence for perpetuating a cult of violence, a cult of political assassination that Nathuram Godse represents. It is not a question of people getting awakened as the Hon. Home Minister has said. As it is a criminal offence under the present law of the land. why did not the Government move in the matter, whether it is the Maharashtra Government or the Union Government, to take action against those persons who are trying to glorify a person who is the symbol of political anarchy, who is the symbol of political shame. This is the supreme affront that the Indian nation can face that the assassin of the Father of the Nation is being glorified as a martyr and indirectly people are inciting that this cult of violence and political assassination should continue. It is a peculiar hint that the particular editor who is mentioned by the Home Minister sends in a report to say that the published reports of that speech are generally correct. This is a clear confession. I wonder why the Home Ministry here and the Government of Maharashtra did not move in the matter and arrest all those persons. Those persons who are preaching only for economic interest of poor people, are being dealt with under the Defence of India Rules. But these murderers who are preaching political assassination are going scot-free, and it is a very sorry affair that the Home Minister should say that the people should get awakened and boycott these people and not see eye to eye with them. May I know from the Home Minister what positive, immediate action he is contemplating? Why was no action taken? This is a criminal offence under the present law of the land.

SHRT GULZARILAL NANDA: If the Hon, Member had followed my earlier reply, he would have found an answer to the question that he has raised. I said that whatever has to be done in the matter, legal action or whatever it is, that is being considered by the Maharashtra Government, and there is no question of any kind of consideration being given to any person who is Culpable in this matter. I said that in addition it is the community which has to resist and to see to it that such things are not possible.

SHRI BHUPESH GUPTA: Sir, there are clearly two things with which we are concerned here: (1) disclosures about the plan to murder Mahatma Gandhi that were made at that particular meeting by Mr. Ketkar: (2) the organization of the reception itself. With regard to the first, I should like to make the following submission. I should like to know the position of the Government in the matter. At the time of the assassination of Gandhiji there was a feeling abroad that there had been some dereliction of duty somewhere, that he had not been given the protection which should have been given to him. Now this is a startling revelation after all that. A person publicly states that the intention to murder was

communicated to him and that he had also communicated the same through an intermediary to the then Chief Minister of the Bombay State, and this report he has owned up and Mr. Ketkar is there, others may not be there. Am I to understand that in view of the circumstances of the case and having regard to the grave misgivings that we had in 1948 when Gandhiji fell to the assassin's bullet, all that we have to do is to find out things from old records? Is it not a fit case for a very high-powered enquiry into the whole revelations that had been made in order to find out whether and what manner the information was received, the communication about the intention was received by Mr. Ketkar, what he did later on, to whom he went, and so on? I think that if it had been so much talked about at that time, the would-be murderer coming and talking to Mr. Ketkar, it is tantamount to an admission that the matter had been discussed in a conspiratorial manner amongst others also. What was the Bombay Government doing at that time? We would like to know whether the Bombay Government and the Central Government and the Central intelligence had any inkling or indication with regard to such things. This is very very important.

I think it is not enough for the Union Home Minister today, after the startling revelation that had been made by Mr. Ketkar, to say that the records will be looked into. The country would like to be assured of a thorough, searching enquiry into, the entire episode, the entire circumstances in order to find out whether there was a deliberate dereliction of duty on the part of some people, whether some people in high authority suppressed it after having got the news through Mr. Ketkar directly or indirectly. This is what I would like to know. Therefore, I would suggest here a high-powered enquiry into the whole matter.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA): You have made your point about a high-powered enquiry.

SHRI BHUPESH GUPTA: I cannot imagine this matter being treated in this manner, the manner in which the Central Government now wants to treat it. Our suspicions have been roused again, the country's suspicions have been roused again. I do not know whether Mr. Ketkar had been summoned here to make his disclosures or whether the Home Minister had sent emissaries to Mr. Ketkar to get statements from him as to what he knew at that time, what he did, and so on. Therefore, I charge the Government of India of not moving in this matter with the alertness and agility that are called for in a situation of this kind. Secondly, with regard to the reception, Mr. Naik's statement had been brought in. What Mr. Naik said is rather shocking. Mr. Naik made a statement. He said that it was not organised by any party but by only some individuals and asked, "Why blame the party for some individuals' action?" and so on.

Therefore, I think that this is a very serious matter, this holding of the meeting. Imagine Mahatma Gandhi is not just one person killed in India among persons killed. It is not the case of an ordinary assassin or a political assassin. Mahatma Gandhi was killed and the killers were these people. There are no two Mahatma Gandhis, there have not been two. And we cannot think of such monstrous killers and assassins as we say in this particular case, and this is how the Government of India is reacting to this matter. And the Hon. Minister says, the nation's conscience will be roused. Yes, the nation's conscience has been roused. But we should like to know what the nation is getting from the Government of India and the administration of the State Government which are financed by the nation. I should like to know whether they, after having failed to protect Mahatma Gandhi's life, are today going to allow these kinds of things. All these things have to be explained.

SHRI GULZARILAL NANDA: If the intensity of feelings on a subject is to be judged only by the pitch of one's voice, he may score over me but I cannot. I do

not have words to say. But personally, I can myself feel it. I think as if that scene or murder is being enacted before us again when I read about that meeting and the description of what had occurred there. But what is to be done? This question arose in some form even at the time of the trial. I have before me the judgment of the High Court. When this point was raised - not in the context of any information that this gentleman got or gave to anybody - it was then urged that some persons in authority in the Bombay Government then had not acted in time. This question was very thoroughly dealt with, examined, and the Court pronounced that all that was possible in those circumstances was done. Therefore, I am now taking the one point which the Hon. Member raised, as to what the Government then did. There are specific pronouncements on that subject. The Maharashtra Government and ourselves are in close contact about this. We have instituted, started, initiated a search into the records and everything possible, anything, any clue that could be obtained from it, will certainly be obtained and similarly, the Maharashtra Government are also engaged in this. Whatever it may lead to, whatever kind of enquiry is left to be pursued, well, that is going to be taken up. And as far as any action by the Maharashtra Government is concerned, as I said, Sir, we are awaiting the reply of the Maharashtra Government.

SHRI D. THENGARI (UTTAR PRADESH): On behalf of *the* Jana Sangh, I strongly condemn the statement of Mr. Ketkar and the functions held at Poona on the 12th and 15th of this month. The Jana Sangh would support every move of the Government of India when it deals firmly with all the culprits who believe in violence as a method of revolution, whether those culprits proceed from Poona or Telengana."

30. The above discussion in Rajyasabha shows the need for answering several doubts about assassination case. This discussion has rightly led to appoint Justice Jivanlal Kapur Commission of Inquiry into conspiracy to Murder Mahatma Gandhi with the following **terms of references:**

- a) Whether any persons, in particular Shri Gajanan Vishwanath Ketkar, of Poona, had prior information of the conspiracy of Nathuram Vinayak Godse and others to assassinate Mahatma Gandhi;
- b) Whether any of such persons had communicated the said information to any authorities of the Government of Bombay or of the Government of India; in particular whether the aforesaid Shri Ketkar had conveyed the said information to the late Bal Gangadhar Kher, the then Premier of Bombay, through the late Balukaka Kanetkar;
- c) If so, what action was taken by the Government of Bombay, in particular by the late Bala Gangadhar Kher, and the Government of India and by the officers of said Governments on the basis of the said information.

31. **The Report of Jivanlal Kapur Commission:** The JL Kapur Commission answered on first point as follows: If the word 'conspiracy' is read in its technical sense, then the only persons, who before the bomb was exploded at Birla House, had any knowledge of conspiracy were Professor Jain and his friends Angad Singh and Professor Yajnik and after the bomb was thrown Mr. G V Ketkar also had this information. The others cannot be said to have had any knowledge of Nathuram Godse whereas Mr G V Ketkar had that knowledge. As regards the

second question the Commission has found in the discussion in the chapter 'sub-nominee' G V Ketkar and Balukka Kanikar i.e., under the first term of reference (a) that Mr G V Ketkar whose name has been particularized in the first term of reference, did have, according to his own statement, knowledge of danger to the life of Mahatma Gandhi, knowledge that Nathuram Godse was determined to murder him and also the knowledge of conspiracy to murder Mahatma Gandhi in which besides Nathuram Godse, there were other participants eg Badge and Apte. The summary of findings on other terms can be found on pages 358 to 362, the JL Kapur Commission. J.L.Kapur's commission report is final government version on Mahathma Gandhi's assassination and the connected conspiracy issues. (The complete report has come in books in two parts.

Padmavathy, Z.Y. Himasagar; D.G. Hariprasath (2017). Mahathma Gandhi assassination: J.L. Kapur commission report. 1. Chennai - Tamil Nadu: Notion Press.Com. ISBN 9781946436344,, Padmavathy, Z.Y. Himasagar; D.G. Hariprasath (2017). Mahathma Gandhi assassination: J.L. Kapur commission report. 2. Chennai - Tamil Nadu: Notion Press.Com. ISBN 9781946436368.)

32. Author Jagdishchandra Jain, in his book 'Gandhi the forgotten Mahatma' summarized the work of JL Kapur as follows:

"Justice Jivanlal Kapur was appointed as a one-man Commission to conduct inquiry into the conspiracy to murder Gandhi on November 21, 1966 and was completed on September 30, 1969. It examined 101 witnesses, 407 documents were produced, by witnesses, and the governments of India and Maharashtra. It had 162 sittings and traveled to Mumbai, Delhi, Nagpur, Dharwad, Pune, Baroda and Chandigarh. Counsels for Governments of Maharashtra and India were R. S. Kotwal and B. B. Lal respectively, they argued their cases for 37 and 13 days respectively. G. V. Ketkar was the first witness to be examined. J. D. Nagarwala and Morarji Desai were the key witnesses who were examined for 15 and 7 days respectively. J. D. Nagarwala was the Deputy Commissioner of Police who was appointed as investigating officer on the murder case and Morarji Desai the Chief Minister of the then Bombay State. (Jain, Jagdishchandra (1987). *Gandhi the forgotten Mahatma*. New Delhi: Mittal Publications. ISBN 81-7099-037-8.)"

33. Noted historian Mr. A G Noorani, wrote in his article Savarkar and Gandhi, in the Hindu, daily newspaper, that the Kapur Commission was provided with evidence not produced in the court; especially the testimony of two of Savarkar's close aides - Appa Ramachandra Kasar, his bodyguard, and Gajanan Vishnu Damle, his secretary. The court had earlier exonerated Savarkar for want of corroborative evidence in support of the approver's confession. However, Justice

Kapur's findings are all too clear. He concluded: "All these facts taken together were destructive of any theory other than the conspiracy to murder by Savarkar and his group" (Noorani, A. G. (March 15–28, 2003). "Savarkar and Gandhi". The Hindu).

34. Open source websites like https://en.wikipedia.org/wiki/Assassination_of_Mahatma_Gandhi have given lots of information about Assassination of Gandhi. Quoting different sources like Noorani, A G (15–28 March 2003). "Savarkar and Gandhi". *FrontLine*. (The Hindu) and Rajesh Ramchandran *The Mastermind?* Outlook Magazine 6 September 2004, it was explained:

"Kapur commission also examined Savarkar's role in the assassination. Godse had claimed full responsibility for planning and carrying out the attack, in absence of an independent corroboration of the prosecution witness Digambar Badge's evidence implicating Savarkar directly, the court exonerated him citing insufficient evidence. According to Badge, on 17 January 1948, Nathuram Godse went to have a last *darshan* of Savarkar in Bombay before the assassination. While Badge and Shankar waited outside, Nathuram and Apte went in. On coming out Apte told Badge that Savarkar blessed them "*Yashasvi houn ya*" ("यशस्वी होऊन या" return victorious). Apte also said that Savarkar predicted that Gandhiji's 100 years were over and there was no doubt that the task would be successfully finished. However Badge's testimony was not accepted as it lacked independent corroboration. This was later corroborated by the testimony of two of Savarkar's close aides – Appa Ramachandra Kasar, his bodyguard, and Gajanan Vishnu Damle, his secretary, who had not testified in the original trial but later testified before the Justice Kapur commission set up in 1965. Kasar told the Kapur Commission that they visited him on or about 23 or 24 January, which was when they returned from Delhi after the bomb incident. Damle deposed that Godse and Apte saw Savarkar in the middle of January and sat with him (Savarkar) in his garden. Justice Kapur concluded: "All these facts taken together were destructive of any theory other than the conspiracy to murder by Savarkar and his group."

35. Supreme Court Advocate Mr. Anil Nauriya wrote in his article in the Hindu, on September 18, 2004:

"The Trial Court Record and the Kapur Commission of the Sixties indicate also that the Government had additional material. Morarji Desai, then Bombay's Home Minister, was asked in the trial by Savarkar's lawyer about his reasons for directing "a close watch on Savarkar's house and his movements" after the bomb incident 10 days before the murder. Desai countered: "Shall I give my reasons? It is for Savarkar to decide whether I should answer. I am prepared to give my reasons." Upon this, Savarkar's lawyer said: "I withdraw my question". [See J.C. Jain, *The Murder of Mahatma Gandhi: Prelude and Aftermath*, Chetana Ltd, Bombay, 1961, p. 104]. Savarkar personally gave an assurance to the Police Commissioner of Bombay on February 22, 1948 of non-participation in politics if "released on that condition." [For text see K.L. Gauba, *Assassination of Mahatma Gandhi*, Jaico, Bombay, 1969, pp 208-9] <http://www.thehindu.com/2004/09/18/stories/2004091803791000.htm> "

36. All these writings have raised several doubts about the assassination of Gandhi, conspiracy before it, earlier attempts on his life, absconding accused, acquittal of some accused, lapses in security, lack of further investigation even after new information was disclosed about conspiracy etc. Mahatma Gandhi who advocated Hindu-Muslim peace until his last breath, was victim of violent reaction against his policies. The people have right to information to clear the above doubts. This second appeal and above referred articles and books indicate the interest of the people to know about assassination and actions before and after it.

37. The Prime Minister has declassified 100 secret files pertaining to Netaji Subhash Chandra Bose in January 2016 and promised to release 25 declassified files every month. This is a significant step towards transparency about history of national heroes. Similarly, the Prime Minister needs to place the official documents, declassifying them if necessary, regarding Gandhi. There are huge repositories of books and papers on Gandhi's life by private and public authorities. Unfortunately, there is no official compilation record at one place about his death. The Government of India appointed a Judicial Commission under the chairmanship of Justice J L Kapur to inquire into the conspiracy angle and other aspects of Assassination of Gandhi. A copy of JL Kapur Report is available with Indian Law Institute, New Delhi. This has threads of treasure trove of information about Gandhi's death, which need to be probed and an archive could be built in NAI. As the JLK Commission's Report need to be submitted to Parliament, original documents could be collected from the Parliament authorities also. If the Ministry of Home Affairs could trace the entire record of JL Kapur Commission's hearings and depositions, documents, and file notings on the same, it will enrich collection.

<https://archive.org/details/JeevanlalKapoorCommissionReport>

38. The NAI should have consulted the Ministry of Home Affairs and the Supreme Court for securing all records of Gandhi Murder investigation, prosecution, detention in Jail and execution of the accused. The Police and Jail authorities can voluntarily provide all those records to the NAI. The police has a duty to explain what efforts were taken to arrest three absconding accused or why they could not be traced. The Ministry of Home Affairs has an onerous

responsibility to take up this task and place all of those records with the NCI for general access of the public.

39. Section 8(3) of RTI Act, 2005 says: (3) Subject to the provisions of clauses (a), (c) and (i) of sub-section (1), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under section 6 shall be provided to any person making a request under that section: Provided that where any question arises as to the date from which the said period of twenty years has to be computed, the decision of the Central Government shall be final, subject to the usual appeals provided for in this Act. The 20 year old information is subject only to exceptions on the ground of sovereignty, security/public order etc, breach of privilege of Parliament, cabinet papers. No other exception is applicable for this information. Except grounds under 8(1)(a) other grounds are irrelevant in this case. The statement of Nathuram Godse is part of court record which is in public domain, the case details were discussed in Parliament; several books were printed based on the 120 page statement of Nathuram Godse. On the 6th December, 1967, the Lt. Governor of Delhi issued a notification under Section 99-A of the Code of Criminal Procedure, in the following terms:--

DELHI ADMINISTRATION : DELHI NOTIFICATION Dated the 6th December, 1967.

No. F-292/67-C. Whereas the Lt. Governor, Delhi, is satisfied that the book entitled "Gandhi Hatya ani Mee" in Marathi by Gopal Godse, published by G. V. Behere, Asmita Prakashan 461/1 Sadashiv Peth, Tilak Road, Poona 2 and printed by M. H. Patwardhan at Sangam Press Private Ltd., 383, Narayan Peth, Poona-2, contains matter which promotes feelings of enmity and hatred between Hindus and Muslims in India and the publication of which is punishable under Section 153-A of the I.P.C. 1860 (Act XLV of 1860).

Now therefore, on the above stated grounds and in exercise of the powers conferred by Section 99-A of the Code of Criminal Procedure, 1898 (Act V of 1898), the Lt. Governor Delhi, hereby declares to be forfeited to Government every copy of the said book and all other documents containing copies, reprints and translation of or extracts from the said book.

By order, (Sd.) V.K. Seth, Under Secretary, (Home), Delhi Administration.

40. Gopal Godse, co-accused in Gandhi Assassination and brother of Nathuram Godse, whose 120 page statement is part of this book, challenged this forfeiture order in Bombay High Court. In Gopal Vinayak Godse vs The Union of India & Ors decided on 6 August, 1969 (AIR 1971 Bom 56) three-Judge Bench consisting of Mody, V Desai, Chandrachud, JJ studied the English version of Marathi book and analysed it in 174 paragraphs, before agreeing with the right of expression of the author of the book and explained:

243. We have analysed the contents of the book at some length in order to give a fair idea of (i) the theme of the book, (ii) the nature of the language generally used by the author --its drive and its power, (iii) the copious references made by the author to historical facts, to the abiding principles of Hindu philosophy and to mythological tales, (iv) the rather free use of similies, metaphors, innuendoes and the other figures of speech which not only give vitality to the author's prose but lend to it a sure beauty of form and (v) the moral of the story which the author, perhaps, wants his readers to draw or which the readers could draw for themselves after going through the book with a certain degree of care and concentration. The summary and analysis of the book given by us will also facilitate an assessment of what impact the book, as a whole would create on the minds of the readers.

244. We have considered the book in all its aspects but we find ourselves unable to agree that it contains matter which "promotes feelings of enmity and hatred between Hindus and Muslims in India." We are clearly of the view that it does not contain such matter, not certainly such matter "the publication of which is punishable under Section 153A of the Indian Penal Code." We are also satisfied, if it be relevant, that the book does not contain any matter which is calculated to bring about enmity or hatred between Hindus and Muslims in India. On a fair reading of the book, that is not the intention of the writer either, though we must hasten to add that the intention of the writer is not relevant if the writing is otherwise of a nature described in Section 153A.

....

246. The theme of the book is really not one only. The central conception which animates the book, and perhaps dominates it, is that Gandhiji's murder was not the act of a madman, that it was a political assassination and that the genesis of the murder was the policy persistently pursued by Gandhiji that Muslims must be appeased at all costs. The country was partitioned as a measure of concession to the Muslims and even after the holocaust which occurred in the wake of partition, Gandhiji pursued the policy of appeasing the Muslims, steadfastly. Pakistani tribesmen invaded Kashmir and therefore the Government of India decided to withhold the payment of cash-balances to Pakistan. Gandhiji however went on a fast on the 13th January 1948, partially to persuade the Government to pay the amount and he broke his fast on the 18th, after the Government had declared on the 16th that it had decided to honour its obligation to pay the sum of Rs. 55 Crores to Pakistan. Madanlal Pahva exploded a bomb in Gandhiji's prayer meeting on the 20th and Nathuram Godse assassinated Gandhiji on the 30th. The best part of the book deals with these facts and events, the theme being that Gandhiji was assassinated for political, not personal, motives by those who loved their motherland as much as anyone else did. The theme, in other words, is that Gandhiji's life is the price which was paid for the decision that the country be partitioned and the subsequent decision to pay the cash-balances to Pakistan in the face of its aggression on Kashmir.

247. Though this, undoubtedly, is the dominant note of the book, that is not its sole theme. Other subjects, wholly independent of the genesis of Gandhiji's murder, occupy a sizable portion of the book. One such subject is dealt with in the ninth chapter "The Days of Separation". It contains a moving account of the hardships which the author's wife, Sindhu, had to face in his absence. The theme is that the wife and children of persons concerned with an offence of national dimensions like the murder of Gandhiji have inevitably to suffer a sort of vicarious punishment.

248. Yet another theme dealt with in the book at some length is the partly purposeful, partly purposeless life of a convict in jail, the humane attitude of the jail officials, born of a sympathetic understanding of events that have led to the crime and the vindictive attitude of the Government to a particular class of prisoners.

249. Lastly, chapters 13 to 16 which cover one-fourth of the book, both in terms of the number of chapters and the number of pages, deal with an entirely unconnected theme--so unconnected that the learned Advocate General said that there was no objection to the publication of these chapters in a separate compilation. In those chapters, the author partly deals with the right of a convict sentenced to a term of life imprisonment to get remissions in his sentence according to jail regulations. He demonstrates how the remissions earned by him were denied to him, with the result that he had to remain in jail for over fifteen years. He also deals with a separate topic of some sociological importance--the problem of rehabilitation of a criminal, in society. Even after serving a long term of imprisonment, the fear which oppresses the mind of a convict is that the society will not take him back in its fold. The society does not--may not--accept the theory that the convict has atoned for his sins by serving out his term. This attitude poses serious problems and the author has touched some of them in the last four chapters. The author says towards the conclusion of his book that the publisher gave him a place in society, the publisher rehabilitated him in society. The purpose of releasing a prisoner is to rehabilitate him in society.

250. Later, we will consider some of the offending passages on which special stress was laid before us but it is important to know that this is what the book, as a whole, deals with. Its accent is not on the social relationship or the political association between Hindus and Muslims in India, nor does the book at all deal with any contemporary problem having communal ramifications. The setting of the book is the events that led to the division of the country, the thesis of the writer is that Gandhiji wrongly pursued the policy of appeasement and his conclusion is that this policy led to Gandhiji's murder. The book is thus an attempt to explain what is indisputably a historical fact by marshalling support from what are said to be clear facts of history. In assuming a fact to be a matter of undisputed history, the author may perhaps have overshot the limits of a historian but as we will indicate, we are satisfied that he has certainly not perverted history.

The ingenuity and imagination of a literary artist have on occasions been permitted a free play in the book but even there, the evidence of distortion is lacking. But most important of all is the necessity to be aware that the book does not purport to deal with, and it does not in fact touch, any contemporary problem of communal significance to Hindus or Muslims in India. Quite apart from the fact that the book deals with other themes also, even the theme of Gandhiji's assassination is dealt with as a matter of past history. We think that the claim of the publisher that "Gandhi-assassination is now a matter of history" and therefore an attempt is made in the book to ascertain the true reasons that led to that catastrophe is fairly justified. So is the claim of the author that he has striven to place before the public the reasons that led to Gandhiji's death, a death which was closely related to his philosophy of life. We are therefore unable to accept the argument of the learned Advocate General that the theme of the book is that Muslims are essentially aliens and Hindus must arm themselves to meet their unjust claims.

251. That is in so far as the theme of the book goes. In regard to the use of similies, metaphors, innuendoes, and the references to historical incidents,

mythology and Hindu philosophy their number is legion. We gave up keeping their count. But what do they really show? These figures of speech are used and these references are made in the context of the main theme that Gandhiji's policy of appeasement led to the creation of Pakistan, that he undertook a fast to compel the Government of India to pay the cash-balance of Rs. 55 Crores to Pakistan in the face of an aggression on Kashmir and that the Government conceded an unjust demand of Pakistan in order to save Gandhiji's life. That life was lost on the altar of appeasement. We will deal with some of the more important metaphors or innuendoes on which reliance is placed by the learned Advocate General but it is always important to bear in mind the context of a metaphor or a simile. A metaphor may mean volumes in one context but you cannot tear it from its Context so that you can speak volumes about it.

....

254. The last point of relevance is the moral, if any, of the story. We think the story has no moral, except perhaps that a policy of appeasement can never bring benefit to the country at large. One may perhaps attribute some such process of thinking to the author: 'Gandhiji appeased the Muslims and the country was partitioned. The partition brought in its wake tears and bloodshed. It also raised thorny questions and in solving them the same policy was pursued as for example, in paying the cash-balances to Pakistan. The last straw weighed and Gandhiji was murdered. Such are the consequences of the policy of appeasement.' We said that this 'perhaps' could be the moral of the story, because the author does not really want to draw any moral. He has emphasised, time and again, that he wanted to portray before the public the catastrophic event in its historical setting, so that the public may know why the event happened. He also says that if the people were told the genesis of the event, they might perhaps understand him better and accept him back in society. He, his wife and children can then rehabilitate themselves in society--a society which spurned him, which shunned them.

255. Applying these broad tests, the book read as a whole cannot be held to contain matter which promotes feelings of enmity and hatred between Hindus and Muslims in India. Partition of the country was an unparalleled event and unquestionably it brought untold sufferings to Hindus and Muslims alike. A large majority of passages, referred to in the order of forfeiture, contain an assessment of the facts and events which led to the partition, the miseries it caused and the supposed connection between it and the death of Gandhiji. We cannot tear those passages from their context.

256. Putting it very briefly, what the publisher says is that Gandhiji's murder was not committed by an insane or ignorant person that persons who were connected with the murder loved their mother country as deeply as anyone else did, and that the reason of the murder was the policy of appeasement adopted by Gandhiji in regard to the Muslims, which resulted in the partition of the country. The concluding five paragraphs of the preface to which a strong exception has been taken by the learned Advocate General show that the lament of the publisher is that a glorious country like India was divided in two parts solely as a result of cowardly statesmanship. The publisher says that Gandhiji and Nehru will be remembered, that Savarkar will be definitely remembered that Nathuram Godse may perhaps be faintly remembered but in different contexts. What is conveyed to the readers by this is, and this is the very thesis of the writer, that the assassin of Gandhiji did not commit the murder for any personal motives. He did so because he did not want the country to be partitioned and Gandhiji's policy of appeasement inevitably led to the division of the country. It

may perhaps be possible to read an insinuation in a part of the preface that Gandhiji will be remembered more as a person who was responsible for the partition of the country but such an insinuation cannot be reasonably construed as promoting enmity and hatred between Hindus and Muslims. When the publisher says that Savarkar will be remembered, what is being conveyed to the readers is that Savarkar who always stood for one and undivided India and who had strong differences with Gandhiji on the question of making concessions to Muslims will be remembered by those who lost their homes and hearths in the bloodshed which accompanied partition. Nathuram Godse, says the publisher, may perhaps be remembered and here what is being conveyed to the readers is that Nathuram stood for the integrity of the country and he might be remembered as a person who committed the murder of Gandhiji because his policy of appeasement led to the partition of the country.

258. It was urged by the learned Advocate General that the claim made by the publisher and the author that the book is a 'search for the truth' and that they were depicting history is wholly unfounded. That is the avowed object of the book, its real object according to the Advocate General being to condemn Gandhiji, thus to condemn everything that Gandhiji stood for and to glorify Nathuram and the other accused. It seems to us difficult to accept this argument. If the real object of the book must be considered, that object seems to us to be to emphasise that Gandhiji wrongly pursued the policy of appeasing the Muslims, that it was in pursuance of that policy that he compelled the Government of India to revoke its decision to withhold the payment of cash-balances to Pakistan and that this policy of appeasement was responsible for the incalculable miseries which the partition brought in its wake. The object of the book is not to pervert history and glorify Nathuram so as to promote feelings of enmity and hatred between Hindus and Muslims in India.

259. Since we are on this point, we might refer to the controversy raised before us as to whether the connection which the author seeks to establish between the fast which Gandhiji undertook and the payment of cash-balances to Pakistan is justified as a matter of history. The learned Advocate General urges that Gandhiji undertook his fast for different reasons altogether and therefore the author must be held to have perverted a historical fact for his own purposes. We are unable to agree. In the second chapter, the author has dealt with the question regarding the payment of cash-balances to Pakistan. He says at page 19 that the liability to pay the amount should not have raised any controversy normally, but the question regarding the payment of cash-balances became ultimately connected with the invasion of Kashmir by Pakistani tribesmen and the endorsement of that aggression by the Pakistan Government. At pages 20, 21 and 23 of the book the author has reproduced extracts from 'Indian Information' dated the 2nd of February 1948 from which it is clear that Sardar Vallabhabhai Patel and Mr. Shanmukham Chetti were clearly of the view that the cash-balances should not be paid unless the Kashmir affair was settled. In fact, the latter who was then the Finance Minister said that India would not be deterred from the right path by a campaign of "hectoring, bullying and scandalising" on the part of responsible ministers of a neighbouring country, meaning thereby Pakistan. The extract quoted from 'Indian Information' at page 23 shows that the Government declared in clear terms that the decision not to pay the cash-balances was being withdrawn and the financial agreement with Pakistan was being implemented immediately in view of the appeal made by Gandhiji to the nation. The Prime Minister also issued a notification in which it was stated that the decision to pay the cash balances was taken after a most careful thought and after consultation with Gandhiji.

260. If relying on this data, the author said that Gandhiji was responsible for persuading the Government of India to pay the cash-balances to Pakistan in the face of aggression on Kashmir, we do not think that one could conclude that historical facts have been perverted by the author to suit his own purpose. Our attention was drawn by Counsel on both sides to many a book touching the life of Gandhiji and one such book is 'Mahatma Gandhi, The Last Phase' by Pyarelal. The second volume of the book begins with the chapter 'The Shadow of Partition' and it deals in great details with the circumstances in which the partition of the country took place. In Chapter XXIII, 'Rock of Ages Cleft For Me', the author deals with the question of payment of cash-balances to Pakistan and the fast undertaken by Gandhiji. At page 699 of the book, the author refers to the decision of the Government of India to defer the payment of the amount to Pakistan. On the 6th January, 1948. Gandhiji discussed the question with Lord Mountbatten who was then the Governor General of India and the latter said that it would be a dishonourable act if the Indian Government retained the amount. Thereafter, some Maulanas of Delhi saw Gandhiji on the 11th of January and complained of the harassment to which Muslims were subjected by Hindus. In his prayer meeting of the 11th. Gandhiji made a reference to the talk he had with the Maulanas. In the prayer meeting of the 12th, Gandhiji announced his decision to fast unto death "unless the madness in Delhi ceased". The fast began on the 13th. At page 707 of the book Pyarelal says: "Some people had complained that the Mahatma had sympathy for the Muslims only and had undertaken the fast for their sake. Gandhiji answered that in a sense they were right. All his life he had stood, as everyone should stand, for minorities or those in need. Pakistan had resulted in depriving the Muslims of the Union of their pride and self-confidence. It hurt him to think that this should be so. It weakened the foundations of a State to have any class of people lose self-confidence. His fast was against the Muslims, too, in the sense that it should enable them to stand up to their Hindu and Shikh brethren."

261. At page 711 of the book Pyarelal says that within twenty-four hours of the commencement of the fast, the Cabinet of the Indian Union met on the lawns of Birla House round Gandhiji's fasting bed to consider afresh the issue of Pakistan's share of the cash-balances. On the 15th the Government of India announced its decision to pay the sum of rupees fifty-five crores immediately. Pyarelal says at page 719 that in regard to this decision of the Government of India Gandhiji said that the motive behind that decision "..... was my fast. It changed the whole outlook. Without the fast, they could not go beyond what the law permitted and required them to do....." At page 720 the author says that the revocation of the Cabinet decision in regard to the release of Pakistan's share of the cash-balances proved for Sardar Patel the proverbial last straw on the camel's back.

262. We have referred to the account given by Pyarelal at some length, because time and again it was argued before us that the petitioner has distorted history to suit his own purpose and that the account given by him of many a historical event like the crucial fast contains only half-truths. In our opinion. Pyarelal's book bears out the petitioner in a large measure and in any event, no charge can be made against him that in regard to the events surrounding the fast, history has been distorted by him. It is also necessary to remember that if the claim of an author that he is a historian is not fully borne out, one cannot infer from that alone that the author had an oblique intention in straying from the strict path of history. Much less can one infer that such an oblique intention was of the nature mentioned in Section 153A of the Indian Penal Code.

263. We will now consider a group of objectionable passages in which Nathuram, it is alleged, is purposefully glorified. These passages occur at pages 60, 62, 63,

64, 86, 87, 88, 89, 90, 154, 173, 203, 224, 225, 226, 228, 229 and 231. We have already reproduced everyone of these passages while giving an analysis of the contents of the book. These passages show that Nathuram was generally well received. Everyone in the country with whom Nathuram came into contact, from the Court which tried him to the convicts whom he met in the jail had sympathy for his cause and regard for him as a person. The author says that the Jail Authorities treated Nathuram with courtesy and consideration, that the Judges who tried him had a word of praise for him, that women belonging to respectable families who were present in the Court-room sobbed and wept, that they knitted sweaters for him imploring him to use them in the biting cold of Simla, that people were prepared to break the jail regulations in order to meet him, that his relatives who had gone to see him were not charged any fare by the Tongawallas and the boarding houses and that the passengers travelling in railways gave ready accommodation to those relatives when they came to know that they were on their way to meet Nathuram.

264. Three other passages might also be referred to in this connection, namely, those occurring at pages 52, 143 and 213. In those passages the author has expressed his sense of gratitude to Sardar Vallabhabhai Patel on account of whose courtesy he and the other accused who were convicted in the Gandhi-murder trial were placed in 'B' Class. These passages are objected to on the ground that the intention of the writer is to create an impression on the minds of his readers that even an inveterate Congressman like Sardar Patel had sympathy for the cause for which Nathuram stood.

265. Now in regard to the first group of these passages, it is necessary to mention that the instances which the author has cited are not shown to be imaginary and we see no reason why they should be dismissed as mere figments of the author's imagination. In fact, some of the more important references to how Nathuram was received, are borne out by what Mr. G.D. Khosla, who was one of the three Judges of the Punjab High Court which heard the appeal has said in his book "The murder of the Mahalma". At page 267 of the book he says: "The highlight of the appeal before us was the discourse delivered by Nathuram Godse in his defence." At page 273, it is stated that Nathuram had made full use of his talents during the trial and at the hearing of the appeal and that he made moving references to historical events and ended his peroration on a high note of emotion, reciting verses from Bhagwadgita. At page 274, the author says: "The audience was visibly and audibly moved. There was a deep silence when he ceased speaking. Many women were in tears and men were coughing and searching for their handkerchiefs. The silence was accentuated and made deeper by the sound of an occasional subdued sniff or a muffled cough. It seemed to me that I was taking part in some kind of melodrama or in a scene out of a Hollywood feature film. Once or twice I had interrupted Godse and pointed out the irrelevance of what he was saying, but my colleagues seemed inclined to hear him and the audience most certainly thought that Godse's performance was the only worthwhile part of the lengthy proceedings..... I haveno doubt that had the audience of that day been constituted into a jury and entrusted with the task of deciding Godse's appeal, they would have brought in a verdict of 'not guilty' by an overwhelming majority."

266. In regard to the three passages which contain references to Sardar Vallabhabhai Patel, it is clear both from Pyarelal's book and Maulana Abdul Kalam Azad's "India Wins Freedom" that Sardar Patel was stoutly opposed to the payment of cash-balances to Pakistan and he disliked the decision of Gandhiji to undertake a fast unto death. For example, at page 720, Volume II, Pyarelal says that the revocation of the Cabinet decision in regard to the release of Pakistan's

share of the cash-balances proved for Sardar Patel to be the proverbial last straw on the camel's back. At page 216 of his book, Maulana Azad says: "One thing which weighed heavily on Gandhiji's mind was the attitude of Sardar Patel..... Patel had not only failed to give protection to Muslims, but he lightheartedly dismissed any complaint made on this account." The author proceeds that after Gandhiji declared that he would go on fast, Sardar Patel complained that there was no reason for such a fast and that Gandhiji was acting as if he, that is, Sardar Patel was responsible for the murder of Muslims.

267. These extracts show that though Sardar Patel was trusted lieutenant of Gandhiji, differences had arisen between them in regard to matters connected with the partition of the country. It is not possible to say whether the inference that the accused were classified as 'B' Class prisoners owing to the courtesy shown by Sardar Patel is justified, but we see no clear reason to hold that it is necessarily untrue. Besides, if the convicts in the Gandhi-murder trial were classified as 'B' Class prisoners, one could not deduce that assuming that a person in the position of Sardar Patel was responsible for the concession, he in any sense felt that the act of Nathuram was praise-worthy. In fact, the author has said at several places in the book (see, for example, page 313) that the fact that Sardar Patel had made a political assessment of the act of Nathuram cannot mean that he sympathised with that act.

268. The argument of the learned Advocate General is that the object of the author in glorifying Nathuram is to show that he and Gandhiji were on the same pedestal, that in fact Nathuram was on a higher pedestal, that he was like Arjun fighting evil at the call of duty and that his doubts resolved and his mind became composed as Arjun's became after listening to the discourse of Srikrishna. Now, there is no question that the one thread which runs through the entire book is that Nathuram's act in assassinating Gandhiji should be dissociated from the motives which accompanied it and that though the act may be condemned, the motive could be praise-worthy. Nathuram, says the author, loved his motherland no less than anyone else and he committed the murder of Gandhiji out of that love. He thought that Gandhiji's policy of appeasement of Muslims had led to the partition of the country and had driven the Indian Government to give the other concessions to Pakistan after the division of the country.

269. We, however, think that the inference which the learned Advocate General wants us to draw is rather farfetched. The inference which is pressed upon us is that by demonstrating that the attack on Gandhiji was justified, what the author wants to convey is that the attack on Gandhiji is really an attack on all the things that Gandhiji stood for. It is for this purpose that, according to the learned Advocate General, Nathuram has been gradually built up by the author. In our opinion, such an inference would require a dissection far too meticulous to be within the reasonable bounds of a common reader. What a common reader would feel about the theme is that Nathuram committed the murder of Gandhiji, not out of any personal motives but because he felt that the country was partitioned on account of Gandhiji's policy of appeasement and the partition had caused untold sufferings.

270. The next group of passages to which reference must be made appear at pages 76, 117 and 129 of the book. The argument is that these passages contain matter by which the author intends to convey to his readers that Muslims are villains of the peace, that they are opposed to Indian unity and that they were also opposed to the freedom movement. Now, the passage at page 76 occurs in the fifth chapter "Nathuram 'O' Ram". The author says that the Muslims were sometimes indifferent to the movement for freedom and sometimes they were

even opposed to it. The view of the Rashtriya Swayamsevak Sangh was that Hindus should strive to be well-organised and powerful so that they would be able to meet the obstructive tactics of Muslims. Savarkar, says the author, had put this point of view epigrammatically by saying "if you come, with you.....". Now in this chapter the author has largely dealt with the early years of Nathuram, how he came into contact with Savarkar and how he was attracted by Savarkar's philosophy. There is no doubt that the author says that Muslims were opposed to India winning her freedom and that the Sangh was anxious to build up a powerful Hindu society so as to meet all obstacles in the way of freedom. We are unable, however, to take the view that such stray passages could promote feelings of enmity and hatred between Hindus and Muslims in India. As a matter of history, the view was widely held that some members of the Muslim League were opposed to the British quitting the country and handing it over in the charge of the majority community in India. We do not think that a reference to such a fact several years after India attained independence is capable of promoting feeling of enmity or hatred between the two communities.

271. The passage at page 117 refers to the evidence given by the approver. Badge, to the effect that in a meeting which had taken place in about 1946-47, Savarkar had stated: "The policy of the Congress is detrimental to the interests of Hindus, Muslims should be economically boycotted and if they committed an act of aggression, Hindus should prepare themselves to resist it. Hindus should therefore learn how to use the arms". After reproducing this portion from Badge's evidence, the author has stated that Savarkar denied that any such meeting had taken place but he added that even assuming that it had taken place, no exception could be taken to anything which he is alleged to have said in the meeting. We think that far more is being read in such passages than is intended by the author or than can be reasonably inferred by the readers. The context in which these extracts are reproduced in the eighth chapter has to be borne in mind and the context is that the author wants to establish that Savarkar was implicated in the trial wholly out of ulterior motives. There were deep-seated differences between the Congress and the Hindu Mahasabha and the author says that the Government thought that the murder of Gandhiji was a good opportunity for involving Savarkar in the charge of conspiracy- Badge's evidence must therefore be read in the context that the author wants to show to what extent the witness was persuaded to go in order to implicate Savarkar. A reproduction of what Badge stated in his evidence and how Savarkar answered it cannot in our opinion be read as something which is likely to inflame the communal passions.

272. In the passage which occurs at page 129 extracts are reproduced from an article which Savarkar wrote on the 27th of January, 1927. Savarkar had stated; "The truth is that the majority of Muslims do not consider India as their own country and the existence of Hindus therein pricks them like a thorn. This feeling is at the root of the conflict. Except for some sensible Muslims, the others appear to be anxious that like Turkey, Iran and Afghanistan, Hindustan should also become an Islam nation and if that happens, they would love the country as their own". Savarkar further stated that it was realised that Gandhiji was a Mahatma and therefore he was above party politics. But just as leaning towards one's own community is to be partial, leaning towards another community is also known by the name of partiality. The remedy for all this, according to the author, was to teach the Muslims to develop a national consciousness.

273. Now there is no doubt that like the passage at page 76, this extract from Savarkar's article contains a criticism of the attitude of Muslims towards India. It must however be remembered that what the author has reproduced is an extract from an article written by Savarkar in the year 1927 and if the entire chapter is

read as a whole, it would be clear that the extract is reproduced in order to explain the basic differences between the Congress on the one hand and the Hindu Mahasabha on the other. The author obviously wants to give a background of the differences which assumed a sharp form after Savarkar was released from jail in 1937. The author says that since 1937 Savarkar thought it necessary to undertake one more movement in addition to the freedom movement. He undertook the task of showing how wrong the policy of one-sided 'Ahimsa' was.

274. We have stated more than once that the book does not profess to deal with any contemporary problem touching the relations between Hindus and Muslims in India. The policy pursued by Gandhiji, the consequent division of the country and the countless miseries which were inflicted on the people are what the author wants to put before his readers. He of course puts something more before his readers and that is that Nathuram's act was not the act of an insane person, that the murder of Gandhiji was a political murder and that an assessment of Nathuram as an individual should be made apart from Nathuram as a murderer.

275. Reliance is then placed on passages occurring at pages 22, 24, 100 and 101 as showing that the Indian National Congress was consistently partial to Muslims under the leadership of Gandhiji and that the interests of the Hindus were totally sacrificed. We have already dealt with the passage at page 22 which refers to the decision of Gandhiji to undertake the fast after the Government of India had declared that the cash-balances would be withheld. The author says that the utterances of Gandhiji would show that his policy was that the Muslim nation and the Muslims should be appeased even if it caused detriment to Hindus. The passage at page 24 refers to the orders of security which were passed against the journals, Hindurashtra and Agrani, conducted by Nathuram and Apte. The author says that the under-current of the articles written by Nathuram and Apte was that Pakistan was after-all a Muslim nation and one could therefore understand the harassment of Hindus which was taking place there. But the harassment of Hindus in India was taken place because Hindus were opposed to Gandhiji's policy that the Muslims should be appeased at any cost. The passages at pages 100 and 101 refer to the attitude of the Indian Government. According to the author, the Government was aware that the country was heading for partition and that the Hindus might create obstacles in the creation of Pakistan. That is why orders of security were passed one after another against newspapers like Agrani. The author further says that Gandhiji was anxious to persuade everyone along with the Congressmen, that the policy Of appeasement was the best policy. The author then refers to the demonstration organized by Apte when Gandhiji was living in the sweepers' colony at Delhi. The author says that the object of the demonstration was to convey to Gandhiji that what belongs to Hindus should not be given to Muslims, that Muslims would not be satisfied with such concessions, that the country should not be partitioned, that lessons should be learnt from the slaughter of Hindus in Noakhali that one should not be cowed down by the threats given by Muslims and that if an appeal was made to younger people, they would be prepared to offer resistance by sacrificing their very lives.

276. It is really unnecessary to say the same thing over again in regard to everyone of these passages. We have given our anxious consideration to all these passages and it seems to us difficult, to take the view that they contain matter which would promote feelings of enmity and hatred between Hindus and Muslims in India. It is only necessary to emphasise that it must not be ignored that many a passage in the book says that the demand of Hindu Sabha was that what belongs to Hindus should not be taken away and gifted to the Muslims. The basic objection of the author is really to the creation of a separate State of Pakistan and in fact, the whole of the seventh chapter "Throw My Ashes Into The Indus" in

which passages at pages 100 and 101 occur contains an exposition of Apte's attitude in regard to the creation of a separate State of Pakistan. The author says that after it was clear that the sentence of death was to be executed, Nathuram and Apte were asked to express their final desire.

They said that their one desire was that their ashes should be immersed in the Indus. The account of the conversation between the author and Apte in regard to this matter shows the reasons why such a desire was expressed. The Indus which had become red by bloodshed was once a part of India and Nathuram and Apte desired that their ashes should be treasured so that they could be immersed in the Indus, if at any time in the future, the Indus again became a part of India. We are unable to appreciate that the observations made by the author in the context of this attitude can promote feelings of enmity and hatred between Hindus and Muslims in India. The chapter contains, if anything an exhortation that what once belonged to India, and had become a part of Pakistan, should be won back by India. The Muslims who are citizens of India are not likely to feel aggrieved by any such exhortation, because such a problem arising out of attempted resurrection of lost territory is political, not communal.

277. Our attention was then invited to passages at pp. 29, 57, 86, 91, 137, 171, 172, 203, 221, 224 and 225 of the book as showing that before and after the partition the Hindu community had to undergo great sufferings on account of the policy adopted by the Congress under the leadership of Gandhiji that the Muslims should be appeased at all costs. The passages at pages 20, 21, 101, 128, 129, 130, 131, 144 and 250 were relied upon as showing that the danger to India's security, unity and freedom still persists because of the creation and existence of Pakistan, as the Muslims in India are generally Pakistanis at heart, that the Government is still persisting in the policy of appeasing Muslims and that the Muslims exploit that policy. Lastly, reliance is placed on the passages occurring at pages 5, 78, 35, 48, 49, 57, 68, 50, 63, 80, 81, 82, 83, 89, 91, 148, 149, 156, 189, 220 and 221 as showing that a political assassination in such circumstances is justified and praise worthy and that even bloody action of revenge against Pakistan and against those who are Pakistanis at heart is justified and would be praiseworthy. It is said that the passages at pages 5 and 78 from out of the passages cited above justify the crime as of a high moral quality and worthy of emulation. To praise the motive of an act as it has been praised at page 78 is said to be an invitation to the common man to emulate the act.

278. We have read and re-read these passages but we are unable to share the view that they are objectionable on the ground stated in the order of forfeiture. The inferences which are sought to be drawn from the passages seem to us far-fetched. That in our opinion is not how the common reader will react to the passages. For example, if one turns to the passage at page 221 it is an extract from a letter which Nathuram wrote to his parents from the Ambala Jail immediately before he was executed on the 15th of November, 1949. He says that he was happy to know that they had decided not to go to Ambala to meet him and that he had taken the courage to write what was a last letter to them, not for the purpose of assuaging their grief. He says that Bhagwan Srikrishna, who had preached Geeta had killed an Aryan King like Shishupal with his Sudarshan Chakra, not on the battle field but at the place where the Rajasuya Yagna was performed. Who could say whether Shrikrishna had committed a sin or not? Both in war and otherwise he had killed many an egoistic and important person for the welfare of the world. He had also exhorted Arjun to kill his own kith and kin.

279. Now, passages like this have a bearing on the thesis of the writer that criminality attaching to the act of a murderer should be assessed apart from the motive behind the act and the meritoriousness otherwise of the individual who does the act. There is no doubt that Gandhiji's murder has been extolled and one cannot possibly appreciate it. But the question before us is not whether the book is bad for that reason. Our task is to see whether the glorification of Nathuram or the justification of his dastardly act can be said to be reasonably connected with the problem of Hindu-Muslim amity. We think not. We find ourselves wholly unable to take the view that the several passages on which the learned Advocate General relies are capable of promoting feelings of enmity and hatred between Hindus and Muslims in India. A passage here or a passage there, sentence here or a sentence there, a word similarly, may if strained and torn out of context supply inflammatory matter to a willing mind. But such a process is impermissible. We must read the book as a whole, we must not ignore the context of a passage and we must try and see what, reasonably, would be the reaction of the common reader. If the offending passages are considered in this light, the book shall have to be cleared of the charge levelled against it.

280. The Advocate General says that the language of the book will find an echo in many hearts, that the book inflames the feelings of Hindus against the Muslims by telling them that the Muslims are being pampered by the Government and that the over-all effect of the book on the common man will be that Gandhiji was a hard-hearted monster who was concerned with the good of Muslims only. Now it may be right that the book will find an echo in many hearts for its language is powerful and its scheme is purposeful. But, frankly, the total effect of the book would not be to inflame communal passions. It contains no appeal to those passions--no direct appeal certainly and the supposed veiled meaning is much too veiled for the common reader. What will linger in his mind after he keeps down the book is that the integrity of the country should not have been broken and that Gandhiji's policy of appeasement led to partition and the untold miseries which it brought in its wake. What will move the reader is the account of those miseries, and more so the account of the sufferings of the aged parents, the wife and the helpless children of the author.

281. Our attention was invited at great length to a part of the eighth chapter which deals with the political philosophy of Dr. Savarkar. It was urged that this chapter is a mere pretext for accusing Muslims of anti-Indian feelings and for spreading the philosophy of Savarkar. We have already dealt with the different passages occurring in this chapter, but it would be necessary to draw pointed attention to a passage which occurs at page 144 of the book. It reads thus: "The Government had decided to entrap the burning patriot that Savarkar was, with a thoroughly unrealistic pose. It looked as if the Government thought that a war had broken out between a Muslim nation and a Hindu nation, that the commander of the Muslim nation had been killed and that the Muslim nation, aflame with a revengeful feeling, that just as the Hindu nation had killed their commander so will they kill theirs, had vowed to entrap the commander of the Hindu nation," A great deal was said about this involved passage but we are unable to read it as containing matter which would promote feelings of enmity and hatred between Hindus and Muslims. The author gives his own reasons why Savarkar was implicated in the charge of conspiracy. It is in that context that he says that the Government was full of revenge towards Savarkar. Therefore, it took a wholly unrealistic attitude that a war, as it were, had broken out between a Muslim nation and a Hindu nation, that Gandhiji, the commander of the Muslim nation had been killed and that the Muslim nation, inspired by a feeling of revenge that just as the Hindu nation had killed their commander so will they kill theirs, had resolved to capture Savarkar, the commander of the Hindu nation. This really reflects on the attitude of the Government and we find it hard to accept that this

passage or such passages contain an appeal to communal sentiments. The emphasis in the passage is on the partial attitude adopted by the Government. The passage may therefore excite disrespect towards Government but that is a different thing altogether.

282. Finally, reliance was placed on the reproduction of quotations of Gandhiji and his assassin, on the back of the jacket of the book. It was urged that what the author wants to emphasise by holding the two quotations in sharp contrast, is that the lives of Gandhiji and Nathuram could be summed up in one sentence: "Gandhiji was the breaker of his word while Nathuram was the lover of his country who willingly laid down his life for it." This, in our opinion, has no relevance on the accusation that the book promotes communal enmity and hatred. The quotations are chosen to advance the thesis that Gandhiji's pledge that the country shall at no cost be partitioned was eventually broken in order to appease the Muslims and that Nathuram committed Gandhiji's murder not out of personal motives but for the reason that the partition which brought misery to so many was the result of Gandhiji's policy.

283. This finishes the assessment of the offending passages. True it is, that in passages which occur at pages 76, 117, 129, 144 and 221, the author has given a strong expression to his views. But these perhaps are the only passages, in a book of 320 pages, which reflect on the attitude of the Muslims. Besides, one must read them in their proper context and of that we have said enough.

284. It must be mentioned that the last four chapters of the book, which are as much a part of it as any other chapter are wholly unrelated to the attitude of Muslims to the attainment of freedom or the attitude of Gandhiji to the thorny questions of Hindu-Muslim amity. We would also like to draw attention to what the author has stated in his foreword, "The First Page". He says: "Neither Gandhiji nor Nathuram nor Apte is now alive. Death puts an end to all enmity and therefore if anyone had any grievance against Gandhiji during his lifetime, it would be improper to entertain any bitterness towards him after his death, I used to participate in the meetings of Gandhi Jayanti in the jail. I used even to organize such meetings. Today I do not feel embarrassed in saying this.....". In the eighth chapter on Savarkar, the author has stated at the top of page 130 that Savarkar, never desired that the Hindus should be given any higher rights than the Muslims. What Savarkar used to say was that the Hindus should not be deprived of their rights and those rights should not be conferred on others. At page 220 which occurs in the twelfth chapter "Journey in Darkness" the author says that Nathuram and Apte had a certain philosophy and they had become so one with that philosophy that they considered their own lives as insignificant before it. The author continues: Their philosophy may be right or wrong. This is not the place to decide that question. Nor would it be proper for me to express any opinion about it. I am after-all a convict in the episode relating to Gandhiji's assassination and howsoever I may try, my discussion of that subject cannot ever be impartial." At page 279 of the book which occurs in the chapter "Struggle for Survival", the author says that the attitude of the accused in the Gandhi trial was not that there was a foreign regime or that the Government did not belong to them. The motive behind the unlawful act was only this, that in order to strengthen the frontiers of freedom the Government should become stern, it should learn to protect itself, it should not submit to injustice, it should not be cowed down by threats and it should not run after a mirage. Finally, at page 290 which occurs in the same chapter, the author says that at the time of the Chinese Aggression he used to donate blood in the jail without any expectation in return. He desired that it should be realised that the life of an individual was subordinate and that the prime necessity was to strengthen the country. While considering

the question whether the book as a whole is capable of creating the impact or impression which is canvassed before us, these passages cannot be forgotten.

285. In our opinion, therefore, the passages which are mentioned in the order of forfeiture dated the 26th September, 1968 cannot be held either by themselves or as read in the context of the book as a whole to promote feelings of enmity and hatred between Hindus and Muslims in India. Such a conclusion seems to us impossible to take on any reasonable view of the matter.

....

298. We therefore allow the petitions, set aside the order of forfeiture dated the 26th September, 1968 passed by the 2nd Respondent and direct that the respondents shall not take any steps in furtherance of the said order. Copies of the book seized by the 5th respondent in pursuance of a search warrant issued by the 4th Respondent, shall be returned to the author and the publisher from whom they were seized. The interim order of restraint passed by us on the 8th of October, 1968, on the application of the 2nd Respondent that further proceedings be held in camera, is hereby vacated.

41. The three-Judges bench analysed as above the strong views of Dr Savarkar and Nathuram Godse on the policies and practices of Gandhiji as a particular opinion of historical events of the age, which could be expressed without any restriction. Thus the possibility of rejecting the copy of the statement of Nathuram Godse, on the ground of section 8(1)(a) is removed with this judgment. The appellant is not asking for the book containing passages supporting or glorifying the killers of Gandhi, which were also held to be part of the 'freedom of speech and expression' under Article 19(1)(a) of the Constitution of India. The Right to Information is intrinsic in this fundamental right to freedom of speech and expression as held by Supreme Court in several judgments, and thus the reasonable restrictions under Article 19(2) do will apply to the right to information also. The restrictions under Section 8 of RTI Act, are more or less coached in the same theme and language of Article 19(2). Thus the Bombay High Court cleared the disclosure or circulation rejecting several grounds which are akin to Section 8(1)(a). Moreover, the appellant is seeking only the statement of Nathuram Godse as given to the trial court in Mahatma Gandhi Assassination case, which cannot be denied. One may disagree with Nathuram Godse and his co-accused, but we cannot refuse disclosure or circulation of his opinion. At the same time, neither Nathuram Godse nor the holder of his theme or opinion can go to the extent of killing a person, whose philosophy he cannot agree with. Three judges have explained this aspect:

257. We must make it plain that we should not be taken as expressing our agreement with the views of the publisher or of the writer. The question before us is not whether the assessment made by the publisher or the writer of the historical situation is strictly correct. One might have an honest difference of opinion in regard to the views expressed by the publisher and the writer that Gandhiji's policy of appeasing the Muslims led to the partition of the country. In fact, if it were open to us to express our own view of the situation, we should have said that no historian can overlook that Gandhiji saved the lives of hundreds and thousands of Hindus and Muslims. The two countries which at one time were part of one nation might have seen even greater miseries but for the saintly wisdom, courage and sacrifice of Gandhiji. That however is beside the point. The charge is that the book contains matter which promotes feelings of enmity and hatred between Hindus and Muslims in India and we have to examine whether the charge is proved.

42. French Enlightenment writer, philosopher, historian, Francois Marie Arouet, popularly known as Voltaire, famous for his wit and his advocacy for freedom of speech, separation of church and state, and freedom of religion, says: "***I may disapprove of what you say, but I will defend to the death your right to say it***". Gandhiji's life, character and image as champion of peace, Indian Independence and Hindu-Muslim unity cannot be tarnished either by physical elimination or hundreds of pages of adverse analysis of his policies.

Decision:

43. The CPIO stated that rules under Public Records Act, 1993 mandated them to collect Rs. 3/- per page for copying. The Commission directs the authority not to charge Rs. 3/- per page because the RTI Act overrides any such provision. The Commission directs respondent authority to provide copies of documents at Rs. 2/- per page. The Commission also directs the NAI to place the index of records available with them about assassination of Mahatma Gandhi on their official website along with the procedure to gain access and recommends development of an archive to include present digitized records and collect as many as possible from various sources to be part of their disclosures under Section 4(1)(b). This will effectively reduce the number of the RTI applications of Gandhi assassination related issues. The aim of Section 4 is to encourage voluntary disclosures which will not create any necessity for citizens to file an RTI application.

44. The Commission directs the respondent authority to transfer the RTI to following public authorities:

- a) The PMO for their information and necessary action to formulate appropriate policy to build archives of records regarding Mahatma Gandhi Assassination, investigation, trial, punishment, official correspondence, and action taken on the recommendations of JL Kapur Commission;
- b) Ministry of Home Affairs, for records of investigation and prosecution of Mahatma Gandhi assassins (from Police), imprisonment and execution of accused (from Jail authorities), record containing reasons to acquittal of two accused in appeal and any other record from Mumbai or Pune or any other place where the investigation resulted in arresting accused etc, correspondence with Government of Bombay/ Maharashtra;
- c) The Station House Officer, Tughlak Road Police Station for case diaries or any other record showing investigation etc, including efforts to trace three absconding accused (if any of accused were absconding) in Gandhi Murder case;
- d) The Registrar General of Supreme Court of India, for any judicial record on Gandhi Murder case from of any of courts; and
- e) The Secretary General of Parliament of India, for complete record of Justice J L Kapur Commission including the original report on conspiracy to assassinate Mahatma Gandhi.

45. The CPIO of Ministry of Home Affairs, more particularly the Delhi Police, or Tughlak Road Police Station is directed provide original records of investigation of Mahatma Gandhi Murder Trial such as investigation reports, case diaries or any other communication or correspondence they have, final charge sheet, if any, or any record showing efforts to arrest the accused Mr. Gangadhar Dahawate, Mr. Surya Dev Sharma and Mr. Gangadhar Yadav to the NAI for preservation under Archives, inspection of which the NAI may offer to the appellant.

46. The Commission directs the CPIO, office of Registrar General, Supreme Court to inform whether these records transferred to National Archives, or

search and take necessary steps to provide certified copies of concerned documents to the appellant, within 30 days from the date of receipt of this order.

47. Learned Commissioner Mr. Sharat Sabharwal in his order CIC/BS/A/2013/000081/SH dated 11.3.2013 has mentioned that there is a strong case for an organization such as the National Archives of India to convert the large number of records, that it holds, into microfilm or digitized form, accompanied by an elaborate index, so as to make it easier for researchers and scholars to look for the information that they need.

48. The Commission agrees with the above recommendation and hopes that national Archives of India would get enough funds from Government of India to digitize and categories the records of Mahatma Gandhi and make them available in easy and accessible format on their official website to enable the people to read the entire documents about assassination of Mahatma Gandhi.

49. It is duty under section 4 of RTI Act, of Union of India and concerned authorities like the PMO, the Ministry of Culture, the National Archives of India, the Ministry of Home Affairs etc. to provide the authentic and comprehensive information in digitized form about assassination of Mahatma Gandhi including reasons for not apprehending the three accused and records to show that no accused was acquitted as doubted by the appellant.

50. All this information should be placed in public domain to facilitate research or answer curiosity of the generations to come. The people of present and future ages should have liberty of thought based on entire factual information/documents on this national tragedy of assassination of Mahatma Gandhi, and enough freedom to formulate their own opinion on his life and achievement.

(M. Sridhar Acharyulu)
Central Information Commissioner

Authenticated true copy

(Dinesh Kumar)
Deputy Registrar

Copy of decision given to the parties free of cost.

Addresses of the parties:

1. The CPIO under RTI,
National Archives of India,
M/o Culture, Janpath,
New Delhi-110001.
2. Office of Registrar/
Central Public Information Officer (CPIO)
Supreme Court of India, New Delhi.
3. The SHO, Tughlaq Road Police Station,
Dr APJ Abdul Kalam Rd, Safdarjung Lane Area,
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4. Shri Hemanta Panda,
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5. The CPIO under RTI
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152, South Block,
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6. The CPIO under RTI ,
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7. The CPIO under RTI
The Secretary General office
RAJYA SABHA Secretariat,
PARLIAMENT of INDIA
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8. The CPIO under RTI
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