

**THOMAS P. JOSEPH**

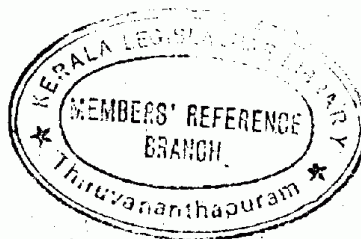
*COMMISSION OF INQUIRY  
LAKSHADWEEP BUILDING  
COURT COMPLEX  
KOZHIKODE - 673 032*

**VOLUME - I  
REPORT**

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**DATED: 18<sup>TH</sup> FEBRUARY, 2006  
LAKSHADWEEP BUILDING, KOZHIKODE**

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**THOMAS P. JOSEPH COMMISSION OF INQUIRY**  
**LAKSHADWEEP BUILDING, COURT COMPLEX**  
**KOZHIKODE - 673 032**



**APPOINTED AS COMMISSION OF INQUIRY**  
**AS PER GOVERNMENT**  
**NOTIFICATION NO. 24507/SSA2/2003/HOME**  
**DATED 23-8-'03**

**TO INQUIRE INTO THE INCIDENTS THAT OCCURRED**  
**AT MARAD BEACH, KOZHIKODE ON 02-05-2003**  
**WHICH RESULTED IN THE DEATH OF**  
**NINE PERSONS, INJURIES TO MANY**  
**OTHERS AND DAMAGE TO PROPERTY.**

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**REPORT**

**DATED: 18<sup>TH</sup> FEBRUARY, 2006**  
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**THOMAS P. JOSEPH COMMISSION OF INQUIRY,  
LAKSHADWEEP BUILDING, COURT COMPLEX, KOZHIKODE.**

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**THOMAS P. JOSEPH**  
**COMMISSION OF INQUIRY**

**THOMAS P. JOSEPH COMMISSION OF INQUIRY.**  
**OFFICE: LAKSHADWEEP BUILDING, COURT COMPLEX,**  
**KOZHIKODE.**

**CHAPTER - 1**

***PERSONAL***

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Commission	:	Sri. Thomas P. Joseph, District & Sessions Judge, Kozhikode (Formerly, District & Sessions Judge, Manjeri).
Counsel	:	Sri . P.V. Hari, Advocate, Kozhikode
Investigating officer	:	Sri. P.P. Unnikrishnan, Dy. Supdt. of Police (on deputation)
Secretary	:	Sri. K.T. Chandran
Staff	:	Sri. P.A. Varghese (Clerk-cum-Typist) Sri. K.P. Hussain, (Peon)



**THOMAS P. JOSEPH**  
**COMMISSION OF INQUIRY**



## CHAPTER - II

### *PARTIES TO THE INQUIRY PROCEEDINGS*

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#### **PARTY - A**

1. Hindu Aikya Vedi, Kerala, represented by State Organizing Secretary, Sri. M. Radhakrishnan.
2. Marad ArayaSamajam, represented by Secretary, Sri. T. Suresan.
3. Viswa Hindu Parishad, Kozhikode Khadakom represented by President, Sri. P.V. Karunakaran, Agrasala Kshethram, Court Road, Kozhikode.
4. Matsya Pravarthaka Sangham, represented by State Secretary, Sri. N.P. Radhakrishnan.
5. Bharathiya Janatha Party District Committee, Kozhikode, represented by President, Sri. Chettoor Balakrishnan Master.
6. Rashtriya Swayam Sevak Sangh (R.S.S.) Kerala Khadakom, represented by General Secretary, Sri. A.R. Mohanan.
7. Sri. G.K. Suresh Babu, Chief Sub Editor, Mathrubhumi Printing & Publishing Company Ltd, Kollam.

## PARTY -B

1. Janatha Dal, District Committee, Kozhikode, Gandhi Bhavan, Town Hall Road, Kozhikode-673 001, represented by President, Sri. M.K. Premnath.
2. National Development Front, (NDF) Kerala Unity House, 17/569, Rajaji Road, Kozhikode - 673 004, represented by
  - i. The Chairman - Sri. A. Sayeed, S/o Alavi, 17/589, Unity House, Rajaji Road, Kozhikode - 673 004.
  - ii. The General Secretary-Sri V.P. Nazarudheen. S/o. Mohammed 17/589 Unity House, Rajaji Road, Kozhikode-673 004.
3. Kerala Women's Front, Malabar House, Kuthukkal Road, Manjeri, Malappuram District represented by President Dr. Febina Salam.
4. C.P.I.(M) Beypore Local Committee, represented by Acting Secretary Sri. Peroth Prakasan.
5. Sri. Puthenpeedikakkal Beeran Koya, President, Beypore Grama Panchayat.
6. Seemamuntakath Aboobacker Koya, Beypore.
7. Sri. C. Moideenkoya, S/o. Sri. Koyatti, Seemamuntakath Veedu, Naduvattom amsom, desom, Arakkinar Post, Kozhikode Taluk.
8. Sri. C. Beerankoya, S/o Abdulla, Moolachintakath, Arakkinar P.O., Marad, Kozhikode,
9. Sri. T. Devadasan S/o. Sri. Sukumaran, Thekkethodi Veedu, Arakkinar Post, Beypore amsom, Naduvattom desom, Kozhikode taluk.
10. Sri. M. Ramesan, S/o. Swami, Manniath House, Arakkinar P.O., Marad, Kozhikode.
11. Smt. Assara, W/o Erajootty, Erajuvintaketh, Arakkinar P.O., Marad, Kozhikode



12. Smt. T. Sulochana, W/o Sukumaran, Thekkethodi House, Arakkinar P.O., Marad, Kozhikode
13. Smt. K. Leela, W/o Balaraman, Kommadath House, KoyavalappuParambu, Arakkinar P.O., Marad, Kozhikode
14. Sri. M.I. Mohammed, Member, Beypore Panchayat Board.
15. Muslim League Committee (I.U.M.L.) Beypore, Assembly Constituency, represented by Secretary, Sri. Ummer Pandikasala.
16. Confederation of Human Right Organization, Kerala, representde by:
  - i. The Chairman, Prof. P. Koya.
  - ii. The Secretary Genaral, Sri. Mukundan C. Menon.
17. All India Milly Council, Kerala Chapter, representd by the Chairman, Dr. P. Sayeed Marickar, S/o Marickar Haji, Kattiparuthi amsom, Valancherry, Tirur Taluk, Malappuram District.
18. Indian Union Muslim League (I.U.M.L.) District Committee, Kozhikode, represented by the General secretary, Sri. P.K.K. Bava, M.L.A.
19. C.P.I. (M), District Committee, Kozhikode, represented by District Secretary. Sri. V.V. Dakshina Moorthy.
20. D.Y.F.I. Arakkinar Unit, represented by Area Secretary, Sri. Ponnath Peethambharan, S/o. Unnipperavan, SagaraSarani, P.O. Arakkinar.
21. N.C.P. (Nationalist Congress Party) District Commitee, Kozhikode represented by president, sri. M. Alikoya
22. Sunni Yuvajana Sangham (S.Y.S.) Beypore Mandalam Committee, represented by General Secretary, Sri. P.T. Ashraf Bakhavi, S/o Ali Mohammed, Chaliyam.



23. Sri. Muhammed Koya,  
S/o. Aboobacker, Musliyarakathu,  
Mathottam Desom, Naduvattom amsom, Kozhikode Taluk.
24. Sri. K.P. Hassan Koya S/o. Amed,  
Kuniyedath House, Mathottam desom, Naduvattom amsom,  
Kozhikode.
25. Samastha Kerala Sunni Yuvajana Sangham (SKSYS)  
State Committee, Markaz Complex, Mavoor Road,  
Calicut, represented by the Executive Member,  
Sri. N.P. Ummer, S/o. N.P. Koya,  
Cherikkunnummal Thazham, Vengeri P.O., Kozhikode.
26. District Congress (I) Committee, represented by  
President, Sri. M. Veerankutty, Advocate.
27. Communist Party of India (C.P.I.) Kozhikode District  
Council, Krishna Pillai Mandiram, Kozhikode - 673 001,  
'represented by Secretary, Sri. E.K. Vijayan.
28. Sri. K.V. Moinkutty @ Moin Bappu S/o. Muhammed Haji  
Koyappathodi, Rahath Manzil, Kaimangalm, Palazhi, Kozhikode.

Party	- C	:	Commission
Party	- D	:	Sri. K.P.A. Rasheed, S/o Mammed Koya, Tharammal, Nallalam P.O., Kozhikode.
Party	- E	:	Civil Administration, Kozhikode, represented by District Collector, Kozhikode.
Party	- F	:	City Police Administration, Kozhikode, Represented by Commissioner of Police, Kozhikode.
Party	- G	:	Sri. A.M. Kassim



Party - H

1. The Mahal Committee, Marad Juma Masjid
2. Sri. P.P. Moideenkoya (Accused No. 141), S/o. AbduRehiman, Pareechintakath Veedu, Neermoochil Paramba, Beypore.
3. Sri. M.C. Mayin Haji, S/o Kunhali, Cheruvannur, Kozhikode.
4. Sri. T.O. Sooraj, former District Collector, Kozhikode
5. Sri. SanjeevKumar Patjoshi, Former Commissioner of Police, Kozhikode.
6. Sri. M. Abdul Raheem, Former Asst. Commissioner of Police (South), Kozhikode.
7. Sri. MaheshKumar Singla, Inspector General (Crime), Trivandrum.
8. The Home Secretary, Government of Kerala, Trivandruam.

**Name of Advocates appearing for parties before the Commission of Inquiry (Marad Incidents), Kozhikode.**

- |                       |   |
|-----------------------|---|
| 'A' Party Nos.1&2     | Sri. E.K Santhosh Kumar.                    |
| 'A' Party - No. 3     | Sri.P.K.Sreekumar.                          |
| 'A'Party No. 4        | Sri B. N. Binesh Babu.                      |
| 'A' Party No. 5       | Sri. V.P. Sreepadmanabhan.                  |
| 'A' Party No. 6       | Sri. Mukundan Panangal.                     |
| 'A' Party No. 7       | Sri. K.P. Anil Kumar.                       |
| 'B' Party No. 1       | Nil.  |
| 'B' Party No. 2       | Sri. P.C. Naushad & Sri. M.P.Abdul Latheef. |
| 'B' Party No. 3       | Sri.K.P. Mohammed Shereef.                  |
| 'B' Party Nos.4 & 20  | Sri. Edathodi Radhakrishnan.                |
| 'B' Party Nos.5 & 6   | Nil.  |
| 'B' Party Nos.7 to 13 | Sri. M.K. Dinesan.                          |



- 'B' Party No. 14. Sri. K. Alikoya (Kadalundi).
- 'B' Party No. 15. Sri. Moosa P. K. (Keezhseri).
- 'B' Party No. 16. Sri. A. Basheer.
- 'B' Party No. 17. Sri. K. M. Ashraf.
- 'B' Party No. 18. Sri. P. Muhammed Haneef.
- 'B' Party No. 19. Sri. K. Jayarajan.
- 'B' Party No. 21. Sri. M. P. Sooryanarayanan.
- 'B' Party No. 22. Sri. K. A. Jaleel (Eranakulam).
- 'B' Party No. 23. Smt. P. K. Noorbina.
- 'B' Party No. 24. Sri. M. T. Sameer.
- 'B' Party No. 25. Sri. B. V. M. Rafi.
- 'B' Party No. 26. Sri. M. Rajan.
- 'B' Party No. 27. Sri. A. K. Sukumaran.
- 'B' Party No. 28. Sri. Razal Rahiman.
- 'C' Party (Commission). Sri. P. V. Hari.
- 'D' Party No. 1. Sri. K. N. Jayakumar.
- 'E' Party. District Govt. Pleader, Kozhikode.
- 'F' Party. Sri. M. Shahier Singh.
- 'G' Party. Nil.
- 'H' Party No. 1 & 2 Sri. P. Mohammed Haneef.
- 'H' Party No. 3 Sri. K. Alikoya (Kadalundi).
- 'H' Party No. 4 Sri. M. Asokan.
- 'H' Party No. 5 Sri. Subash Benedict.
- 'H' Party No. 6 Sri. N. Bhaskaran Nair.
- 'H' Party No. 7 Nil.
- 'H' Party No. 8 District Govt. Pleader, Kozhikode.

  
**THOMAS P. JOSEPH**  
 COMMISSION OF INQUIRY

### CHAPTER III

#### *PRELIMINARY*

Marad: A small, Coastal hamlet and fisherfolks' Colony having dimension at the best 2 sq. kms lying within the Beypore Grama Panchayat limits towards northern side, about 5 k.m. away from Calicut City, bounded by Kozhikode Corporation area on the north and Arabian Sea on the west. The place was much talked about in and outside the State of Kerala during the last few years not because of its scenic beauty or picturesque sandy beach, not because of the birth/residence of any Celebrity but, on account of the infamous killings that occurred within that 2 sq.k.m area on 3/4-1-02 and on 2-5-2003. The first, it is not very much in dispute, was ultimately a communal clash between the two predominant communities of the area - the Hindus and the Muslims 4- in which five persons-three Muslims and two Hindus had to leave their terrestrial abode. Twenty one persons were seriously wounded, nearly fourteen houses were wholly destroyed, thirty five houses were partially damaged or destroyed and twelve fibre boats and one mechanized boat were destroyed. The Police swung into action and as many as 115 cases were registered against persons belonging to either communities. The Police could complete investigation without delay in large number of those cases but, chargesheets could not be filed due to the delay in the



State Government according sanction for prosecution as, in those cases, Section 153 A I.P.C. was involved. Consequently, the accused who were in custody had to be released on bail. It is while so, that at about 6.30 p.m. on 2-5-2003, about 90 persons armed with swords, knives and other weapons reached Marad Beach and started attacking the unsuspecting Hindus. In that incident, eight persons - Choyichantakath Chandran @ Krishnan aged 45/03, Choyichantakath Madhavan, S/o. Karimbali aged 60/03, Arayachantakath Krishnan, S/o Unni, aged 43/03, Gopalan, S/o. Choyi, aged 55/03, Dasan, S/o. Sami, aged 65/03. Thekkethodi Priji, S/o., Babu aged 20/03, Thekkethodi Santhosh, S/o. Rajan aged 26/03 belonging to the Hindu Community, and Askar Ali, S/o. Aboobacker belonging to the Muslim Community lost their lives. 16 persons including two women were injured. The Commissioner of Police, Calicut City and other Police men reached the place. The Hindus who tried to advance were scared away. The Beypore Police registered Crime No. 82/03 and started investigation. Same day night, the Police arrested 63 persons and seized weapons, some of them even blood stained, from the Marad Juma Masjid. Later, as per the order of the State Government, the C.B.C.I.D., Kozhikode took up investigation of the case and on 31-7-2003, filed chargesheet against 148 persons for offences punishable under Sections 120 B, 143, 147, 148, 427, 448, 449, 324, 326, 307, 302, 435 and 153. A read with Section 34 and 149 I.P.C, Section 27 (1) of the Arms Act, Sections 3, 4 and 5 of the Explosive Substances Act and Sections 3,4 and 9 read with Section 7 of Religious Institutions (Prevention of Misuse) Act. The C.B.C.I.D. after investigation, came to the conclusion that the accused, in order to avenge the killing of the members of the Muslim Community on 3/4-1-2002 entered into criminal conspiracy between May, 2002 and 2-5-2003



at various places including the Juma Masjid Mosque, Marad, made and stored in the Juma Masjid Mosque and its premises weapons like country bombs, patrol bombs, flambeau, swords, choppers, spears, iron pipes etc., attacked the eight persons referred above and other persons belonging to the Hindu community. In that onslaught, the said eight persons died while, few other persons were seriously wounded. It was also the conclusion of the Crime Branch that Askar Ali suffered fatal injuries while his colleagues inflicted injury on one of the above said persons. The Hindu organizations in and around Marad were quite unsatisfied with the investigation conducted by the Crime Branch as they thought that internal / external forces are behind the massacre and demanded investigation by the Central Bureau of Investigation (C.B.I.). It is in that background that as per Notification No. 24507/SSA-2/2003/. Home, dated 23-8-2003 issued by the Principal Secretary to Govt. by the order of the Governor and in exercise of the power conferred under Sec. 3 of the Commission of Inquiry Act, 1952 (Central Act 60 of 1952) that the Government appointed me as the Commission of Inquiry for the purpose of conducting an inquiry into the incidents that occurred at Marad Beach, Kozhikode on 2-5-2003. Following that, as per Notification No. 24507/ SSA2/ 2003/, Home dt. 27-9-2003, the Government prescribed the terms of reference of the Commission as follows:-

**To Inquire into and Report,**

- i. The facts and circumstances which led to the incidents at Marad Beach, Kozhikode on 2-5-2003 resulting in the death of 9 persons, serious injuries to many others and damage to property;
- ii. Whether there was involvement of any external or internal organization or organizations in the planning and execution of the incidents;



- iii. Whether there was any lapse on the part of the police or administrative machinery in taking timely preventive and remedial action and in dealing with the situation;
- iv. Such other matters as are incidental to and arising out of the above terms; and;
- v. To suggest suitable measures to avoid such unfortunate incidents in future.

The Commission was directed to complete the inquiry and submit report within six months (from 27-8-03)

2. Pursuant to the above Notifications, the Commission issued Notification No. 1/03 on 1-10-2003 and the same was published in all the vernacular and English Dailies having circulation in the State of Kerala, inviting written statements from persons/parties/organizations interested in taking part in the Inquiry and concerning the terms of reference stated above - Several /persons/parties/organizations filed written statements within the said time and the extended time. Of them, 36 persons/parties/organizations appeared before the Commission. The Civil Administration, Kozhikode and City Police Administration were impleaded as parties. On the basis of the contentions taken up by those persons/ parties/organizations concerning the terms of reference and in particular whether, external / internal forces are involved in the massacre on 2-05-03, the parties were grouped in the manner stated in Chapter II.

3. The A parties referred above took up common contention. They claimed that the Madrassa education given to the Muslim Children is in such a way as to instill hatred towards other religions. At Marad and elsewhere in the State, the Muslim fundamentalist/terrorist organizations were trying to create law and

order problems, attack the Hindus and demolish their places of worship in an attempt to convert Kerala State into another Kashmir. The funding for such operations came from the Hawala transactions. There were conscious attempts made by the Muslim fundamentalist/ terrorist organisations to scare off Hindus from the coastal areas north of Trissur in an attempt to convert that region into another Dubai. Those terrorists / fundamentalist organisations had close contacts with terrorist organisations which attempted to assassinate the then Union Home Minister, Sri. L.K. Adwani. Referring to the first communal riots at Marad on 3/4-1-02, the A parties claimed that it was the handiwork of CPI (M) which wanted a strong polarisation of the Hindu and Muslim forces to better its political ends. CPI (M) was disturbed on a Muslim getting elected from Marad, to the local panchayat with the help of the Hindus. To thwart any such possible alliance in future, CPI (M) wanted to divide the Hindus and Muslims and taking capital out of a small incident that occurred during the New Year celebrations in December, 2001, the CPI (M) indulged in large scale violence which resulted in the first communal riot on 3/4-1-02. Following that incident, the State Government did not take proper action. There was inordinate delay in filing the charge sheets. The State Government took up a policy of appeasing the Muslim fundamentalists / terrorists at the instance of the IUML. On 2-5-03, the Muslim fundamentalists / terrorists armed with deadly weapons made an onslaught on the Hindus leaving eight of them dead and several persons injured. The fundamentalist / terrorist organizations like the NDF are behind the incident. They are funded by foreign elements. The Indian Union Muslim League assisted those fundamentalist/terrorist organizations. The Police was quite inactive at Marad, and was only providing convenience to the communal elements to attack the Hindus. It is also contended that



the District Administration and the Police Administration, Kozhikode thoroughly failed in anticipating possible violence at Marad and acting upon whatever information the Intelligence Unit had collected. The then District Collector, Sri. T. O. Sooraj was communal in his activities. The A Parties claimed that the Muslim places of worship are misused for fundamentalist / terrorist activities.

4. The Muslim organizations, the IUML and its units among the B parties referred above, generally contended that the massacre on 2-5-03 was only a retaliation for the killing of the Muslims during the first communal riot on 3/4-1-02. They claimed that Aboobacker who was very popular among the Muslims of the area and who was going to dig the grave-yard for the Muslim brethren killed on 3-1-02 was attacked and killed by the Hindu fundamentalists in the presence of the Police on 4-1-02. That incident wounded the mind of many in the Muslim community and they avenged the killing of Aboobacker. They contented that the first communal riot was engineered by the BJP / RSS and the CPI (M) for political gains. The IUML and its units saw the hand of the CPI(M) in the massacre on 2-5-2003 also. The B party Nos. 2 and 3 denied that the NDF had any role in any of the incidents at Marad. Instead, the ArayaSamajam and the RSS were promoting illwill among their ranks against other communities. The ArayaSamajam and the RSS leaders were engaged in very provocative talks. Marad became tense only after the RSS secured foot-hold there, in 1956 and was successful in converting the ignorant fishermen into their discipline. Since then, the communal harmony and peaceful co-existence ceased at Marad. They referred to the role of the RSS in various communal riots in the State and elsewhere. They claimed that the NDF was formed on 14-11-1993



with the lawful and laudable objectives narrated in their written statement.

5. Such other B parties who are either the CPI (M) or its organisations / Units / claimed that the incidents during 3/4-1-02 and 2-5-03 were the result of the communal appeasement policy adopted by the UDF led by the Congress Party which ruled the State from 2001 onwards. The BJP/RSS and IUML are involved in those incidents. They claimed that UDF came to power with the assistance of the fundamentalists / terrorists organisations. Those organisations took advantage of the UDF rule. They also alleged that the Government machinery was quite inactive and that resulted in the incident on 3/4-1-02 and 2-05-03. According to them, the NDF was behind the massacre on 2-5-2003.

6. The statement of E party is field by sri. T.O. Sooraj, the then District Collector. He referred to the incidents which occurred on 3/4-1-02, the various measures taken by the Civil Administration for restoration and maintenance of peace at Marad and for rehabilitation. The incident on 2-5-03 was in retaliation of the murder of Aboobacker, killed on 4-01-02. The massacre on 2-05-03 was carried out by the radical Muslims including the relatives of Aboobacker who were keen to avenge the killing of Aboobacker. Following the incident on 2-5-03 also, the District Administration plunged into action. The statement referred to the various steps taken by the District Administration and claimed that there was absolutely no lapse on the part of the Civil Administration in taking timely preventive and remedial action and in dealing with the situation and that it was due to the timely action taken by the Civil Administration that the graveness of the incident was limited and the entire situation could be controlled.



7. The Police Administration, Kozhikode (F Party) is represented by the Commissioner of Police, Kozhikode City. The statement on behalf of the F party is submitted by Sri. T.K. VinodKumar, Commissioner of Kozhikode City. The Police Administration referred to the incidents at Marad right from 1954 onwards which resulted in communal division and clashes. The statement refers to the action taken by the Police in those incidents. There is reference to the local body election on 27-9-00 in which, Moideenkoya (he is an accused in crime No. 82/03 of Beypore Police Station) won the election from ward No. 20 (which takes in Marad) of Beypore Panchayat. It is stated that Moideenkoya won the election with the support of BJP/RSS. A minor incident that occurred during the New Year celebrations in December, 2001 grew into clash between the two communities on 3/4-1-02 in which, few persons from both communities lost their lives. The Police registered cases against all the culprits and the accused were arrested. Special investigation team was constituted for investigation for those cases. 'Kadalkodathi' was formed at Marad to settle minor disputes that arose between the members of the two communities. Kadalkodathi met on several occasions and settled minor disputes. Thus, all possible steps were taken by the Police to maintain and restore peace in the locality. It is while so, that a group of Muslims attacked the members of Hindu Arayasamajam Community on 2-05-03. The assailants gathered in the Marad Juma Masjid, formed into two groups and attacked some unsuspecting Hindu men. In that incident, 8 (eight) Hindus were killed. A Muslim by name Askar, was also killed. The Police forces reached the spot immediately and took steps for restoration and maintenance of peace. Cases were

registered against the assailants. The F party contended that there was absolutely no lapse on part of the Police in taking timely preventive and remedial action and in dealing with the situation. The F party also contended that but for such timely action, the graveness of the incident would have been unlimited.

8. The grievance of the G party is that the compensation awarded by the State Government is low.

9. The 'E' Party, Kozhikode District Civil Administration started evidence. It examined the then District Collector, Sri. T.O. Sooraj. Thereafter, it was the turn of the 'F' party, the City Police Administration. In the meantime, orders were issued to the State and Central Intelligence wings to cause production of certain intelligence reports. The orders were challenged by the State / Central Intelligence Departments before the Hon'ble High Court. There was a stay of disclosure of the intelligence reports. On account of that, the witnesses for the 'F' party could not be examined. In the meantime, the 'A' Parties were directed to adduce their evidence and accordingly, 'A' parties examined their witnesses. By this time, the Hon'ble High Court disposed of the writ proceedings and in consequence, the Central Intelligence Wing also produced some intelligence reports. Thereafter, the 'F' party examined its witnesses. At that stage, on 24-6-2005 after giving prior notice, I heard the counsel/ parties on the question of according status under section 8 B the Act on persons/parties/ organizations. After hearing them, order was passed on 1-7-2005 that status under section 8 B is accorded to the following persons, parties/organizations:-

<u>Persons / Parties / Organizations to which notice is issued.</u>	<u>The matter in relation to which notice is issued.</u>
<ol style="list-style-type: none"> <li>1. The Bharathiya Janatha Party ('A' party No. 5) District Committee, Kozhikode represented by its president.</li> <li>2. Rashtriya Swayam Sevak Sangh ('A' Party No. 6) State Committee, Ernakulam represented by its General Secretary.</li> </ol>	<p>Regarding their alleged involvement in the communal riot at Marad on 3/4-1-2002 which is alleged to be one of the circumstances that led to the massacre at Marad on 2-5-2003</p>
<ol style="list-style-type: none"> <li>3. The Communist Party of India (Marxist) - 'B' Party No. 4) Beypore Local Committee, represented by its Secretary.</li> <li>4. The Communist Party of India (Marxist) ('B' Party No. 19), District Committee, Kozhikode, represented by its Secretary.</li> </ol>	<p>Regarding their alleged efforts at Marad and premises to create communal divide among the Muslims and Hindus for political gains and regarding their alleged involvement in the communal riot at Marad on 3/4-1-2002 which is alleged to be one of the circumstances that led to the massacre at Marad on 2-5-2003.</p>
<ol style="list-style-type: none"> <li>5. The Indian Union Muslim League Committee ('B' Party) No. 15) Beypore Constituency, represented by its General Secretary.</li> <li>6. Indian Union Muslim League District Committee ('B' Party No. 18) represented by its secretary.</li> </ol>	<p>Regarding their alleged involvement in the communal riot at Marad on 3/4-1-2002 which is alleged to be one of the circumstances that led to the massacre on 2-5-2003 and their alleged connivance with forces behind the massacre on 2-5-03, for the commission of that crime.</p>





<p>7. a) The Mahal Committee, Marad Juma Masjid.</p> <p>b) Sri. Mayin Haji, S/o, Kunhali, Cheruvannur, Kozhikode, (Calicut Development Authority).</p> <p>c). P.P. Moideenkoya, (Accused No. 141), S/o Abdurhiman, Pareechintakath Veedu, Neermoochil Paramb, Beypore amsom, Marad. (Member of Ward No. 20)</p>	<p>Regarding their alleged connivance with the forces behind the massacre on 2-5-2003, for the commission of that crime.</p>
<p>8. The National Development Front ('B' Party No. 2) State Committee, Kozhikode represented by its General Secretary</p>	<p>Regarding their alleged activities intended at communal divide at Marad and premises and alleged involvement in the communal riot at Marad on 3/4-1-2002 and in the massacre on 2-5-2003.</p>
<p>9. The District Civil Admini- stration ('E' Party No. 1) represented by District Collector, Kozhikode</p> <p>10. The City Police Admini- stration ('F' Party No. 1) represented by the Commissioner of Police, Calicut City.</p>	<p>Regarding their alleged failure to assess the tense and violent situation at Marad before the massacre on 2-5-2003 and their alleged failure to take effective and timely action to prevent violence at Marad.</p>

<p>11. a). Sri. T.O. Sooraj, Former District Collector, Kozhikode</p> <p>b) Sri. SanjeevKumar Patjoshi, Former Commissioner of Police, Calicut City</p>	<p>Regarding their alleged failure to assess the tense and violent situation at Marad following the communal riots on 3/4-1-2002, alleged failure to take timely and effective preventive action, inept handling of the situation at Marad and their alleged failure to act in Co-ordination which ultimately helped the perpetrators of the massacre on 2-5-2003.</p>
<p>12. Sri. M. Abdul Raheem, Former Asst. Commissiner of Police (South), Kozhikode</p>	<p>Regarding his alleged connivance with the forces behind the massacre on 2-5-2003 for the commisison of that crime.</p>
<p>13. Sri. MaheshKumar Singla, Inspector General of Police (Crime) Trivandrum</p>	<p>Regarding his alleged refusal / failure to investigate into the alleged involvement of external/ internal forces behind the massacre at Marad on 2-5-2003 inspite of the free hand given to him by the State Government to investigate into "all aspects leading to the massacre", and his alleged attempt to make it appear that there were no such forces involved in the massacre.</p>



14. The Home Secretary,  
Govenment of Kerala


Regarding the alleged failure of the Home Department to grant sanction for prosecution of the accused involved in the communal riots at Marad on 3/4-1-02 in time, which is alleged to have contributed to the massacre on 2-5-2003 and the alleged inaction on the part of the Home Department and successive Govern-ments after 1996 to effectively act upon the various Intelligence/Police reports concerning alleged activities of the fundamentalist/terrorist groups in Marad and other parts of the State, to curb such activites which allegedly contri-buted to the massacre at Marad on 2-5-2003

10. The above persons / parties / organizations were given notice that they can (if not already) be represented by a counsel before the Commission, produce their evidence if any, in their defence and exercise the right conferred on them under the relevant provisions of the Commission of Inquiry Act and that they should, for the said purpose, appear before the Commission at 11 am on 15-7-2005.

11. On 15-7-2005, all the above 14 parties / organizations / persons having received the notices issued



to them u/s. 8B of the Act appeared before the Commission. All those parties/organizations/persons other than who are already impleaded in the proceedings as parties, were grouped for convenience as H parties 1 to 8. Almost all the persons/ parties/organisations/to whom notice under S.8B was issued, filed their explanation. The parties were given full opportunity to adduce their evidence. Altogether, 121 witnesses were examined and 622 documents were marked in evidence. The gist of the evidence of the witnesses is given in volume II. I will be referring to the evidence in detail in the following Chapters while considering the various points involved in the Inquiry. After the entire evidence was recorded, I heard the counsel for the parties..



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## CHAPTER-IV

### ARGUMENTS

The Counsel for the A parties argued that the BJP/RSS activists had no role in the communal riot at Marad Beach on 3/4-1-2002. The massacre at Marad Beach on 2-5-2003 was not merely a retaliation for the killing of Aboobacker, Yunus and Kunhikoya during the communal riot at Marad Beach on 3/4-1-2002. The learned counsel, referring to the oral and documentary evidence produced before the Commission submitted that what happened on 2-5-2003 was part of secret agenda of certain Muslim fundamentalist and terrorist organizations with the backing of external forces like the I.S.I, to wipe out the Hindu community from the coastal areas of the State. He submitted that the N.D.F. and the Al-Umma of TamilNadu are directly involved in the massacre on 2-5-2003. The attempt of the assailants as revealed from the evidence was to kill maximum number of the members of the Hindu community within the shortest possible time. According to learned counsel, the large quantity of weapons collected in and around the Juma Masjid Mosque at Marad Beach indicated that. According to learned counsel, the Civil/City Police Administrations failed in taking timely preventive and remedial action to prevent the massacre on 2-5-2003. The conduct of the then District Collector, Sri. T.O. Suraj is very doubtful. The very appointment of FW-2 (H party No.6), Sri. Abdul Rahim as the



Assistant Commissioner, South Sub Division, Kozhikode is suspicious. According to learned counsel, evidence revealed that the N.D.F. was exerting influence on FW-2 through Sri. A.A. Wahab. It is further contended that AW-12, Sri. P.K. Kunhalikkutty and AW-3, Sri. Mayin Haji (H Pary No. 3) had prior information about the massacre on 2-5-2003. According to the Id. counsel, the then District Collector (EW1) and the Commissioner of Police, Kozhikode, (AW32) are responsible for the failure of the Civil/ City Police Administrations.

2. The counsel for B party Nos. 2 ad 3 contended that there is no evidence, except certain police reports and intelligence reports which itself cannot be taken into account, to show that the N.D.F. is in any way involved in the communal riot on 3/4-1-2002 or the massacre on 2-5-2003. There is no evidence to show that any of the accused involved in those incidents are in any way connected with the NDF. The Id Counsel submitted that the CBCID had conducted thorough investigation but no involvement of the NDF was revealed. According to learned counsel, the N.D.F. as proved by Exits. B99 to 109 is a socio-charitable organization and was unnecessarily dragged into the picture by the Hindu organizations as part of their hate ideology. The Id. Counsel complained that the media was uncharitable in their propaganda against the NDF. He referred to instances where, the media had to withdraw their statements against the NDF and tender apology. He also referred to the evidence of BW7 and BW 8 and Exits. B146 to B149 to show to what extent the media has gone against the NDF. Learned counsel submitted that the whole trouble arose due to the hate ideology and annihilation programme of the SanghParivar outfits. He placed reliance on Exts. B9 (a), B15, B16(a), B24 to B 29, B 31 to B34 and Exts. B111 to B139 as also evidence of BW-16 and BW-17 to show that SanhParivar is engaged in violence everywhere in the Country. Ext. B 123



according to learned counsel, revealed that the SanghParivar was involved in 75 atrocities against minorities across the country. Exts. 120 and 121 revealed that the SanghParivar was getting foreign funds. Exts.B 113 and B 117 revealed that the SanghParivar was giving training in arms to its cadres and engaging in terrorist activities. Ext. B 30 contained reports of Judicial Commissions which condemned the activities of the SanghParivar. According to learned counsel, evidence revealed that there were communal activities in and around Marad atleast from 1954 onwards. It is in such a situation that three Muslims were killed on 3/4-1-2002. The learned counsel submitted that the relatives and close associates of Aboobacker, killed on 4-1-2002 were instrumental in the massacre on 2-5-2003. It is further contended from the production of copy of police report by AW7 and the details of intelligence / reports provided by witnesses for A parties that the SanghParivar has close connection with the intelligence wing. Thus, the possibility of the SanghParivar agents giving false information to the Police cannot be ruled out.

3. The counsel for B party Nos 4,5,19,20 contended that communal violence erupted at Marad Beach ever since a group of Hindus migrated to that place from Tanur. According to the learned counsel, the R.S.S. activists inaugurated the killing spree in Beypore Panchayath in the year, 1988. That was followed by the IUML activists killing one Ramesan in the year, 1989. Those incidents triggered communal riots at different places of Beypore panchayath. The learned counsel claimed that the CPI(M) and its local units always stood for secularism. It is not true that the CPI (M) activists are involved in the communal riot during 3/4-1-2002 or the massacre on 2-5-2003.

4. The counsel for B party Nos 5,6,14, 18 and H party Nos. 1 to 3 argued that there is no evidence worth the name to show that the IUML activists are involved either in the incidents during





3/4-1-2002 or on 2-5-2003. At any rate, there is no evidence to show that the I.U.M.L. as an organization is behind those incidents. According to learned counsel, there is no necessity or occasion to make any adverse comments on H party Nos. 1 to 3.

5. The counsel for E party and H party No. 8 referred to the various steps taken by the Civil Administration for restoration of peace in the locality after the communal riot on 3/4-1-2002. According to learned counsel, the Civil Administration had taken all necessary steps to prevent further violence.

6. Counsel for F party also referred to the various steps taken by the City Police Administration to prevent violence at Marad Beach. According to learned counsel, all possible action has been taken by the Police. He referred to the various oral and documentary evidence produced by the F party. Counsel for H party No. 4 (EW-1) submitted that there is no evidence to show that intelligence reports now relied by AW-30 were given to the H party No. 4. According to learned counsel, Ext. H 9 revealed that no such information was given by the intelligence wing. He also argued that since the allegation of corruption made against H party No. 4 is under enquiry by the Lok Ayuktha, Commission is not to make any finding on that issue and at any rate, that allegation has nothing to do with the terms of reference. It is the further contention of the learned counsel that the mere inclusion of certain persons in the kadavu committee as per the recommendation of the IUML is not sufficient to show that H party No. 4 was communal in his activities. The learned counsel wanted the Commission to refer to the confidential affidavit filed by H party No. 4. Counsel for AW-32 (H party No.5) contended that AW-32 was discriminated by AW29. According to learned counsel, notice under sec. 8 B of the Act was served on Aw 32 (H party No. 5) merely on the basis of shabbi evidence let in by AW29 who was out to spoil the future





of AW32. No adverse observation be made against AW32 for what transpired after he handed over charge as Commissioner of police, Calicut on 19-3-2003.

7. The counsel for the Commission submitted that Ext. C 17, the report prepared by the District Special Branch, Kozhiode unit in 1998 about 4 years before the communal riots on 3/4-1-02 cannot be ignored. He submitted that though under the provisions of the Kerala Police Manual (Amendment No. 2/1976), the police was to take firm action against persons who acted in a manner likely to create illwill, hatred etc. between different communities and though the Police could not ignore any case even if trivial in that line, the Police did not comply with those provisions. The provisions of the Religious Institutions (Prevention of Misuse) Act, 1988 were not complied. As regards the investigation into the alleged involvement of other forces behind the massacre on 2-5-2003, the learned counsel submitted that since the C.B.C.I.D. had not conducted any investigation into that matter and since at any rate, the alleged conspiracy involving other forces is separate from the conspiracy among the 148 accused in Crime 82/2003 of Beypore Police station (Crime 116 / Cr/ 2003 of C.B.C.I.D.), sec. 173 (8) of the Code of Criminal procedure had no application. He placed reliance on the decisions in Ramlal Narang vs. State (Delhi Admn.) (1979 Cri. L.J. 1346), Sri. Bhagvan Samardha Sree Pada Vallabha Vs. State of Andhra Pradesh (1999(6) Supreme 47) and Hasanbhai Valibhai Qureshi vs. State of Gujarat (2004 (3) Supreme 71).

8. I have gone through all relevant evidence. I considered the arguments advanced. Now, I shall refer to each of the terms of reference, the evidence collected and other circumstances brought out before the Commission.

  
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## CHAPTER-V

### *WHETHER, THERE WAS ANY LAPSE ON THE PART OF THE POLICE OR ADMINISTRATIVE MACHINERY IN TAKING TIMELY PREVENTIVE AND REMEDIAL ACTION AND IN DEALING WITH THE SITUATION"*

I am required to inquire into whether, there was failure on the part of the Civil / Police Administration in taking timely action to prevent the massacre on 2/5/2003 and in dealing with the situation. During 3/4-1-2002, there was communal riot at Marad Beach in which 2 persons from the Hindu Community and 3 persons from the Muslim Community died, several others suffered injuries and several houses were torched or otherwise destroyed. Going by Ext.S13 series and other evidence, the communal riot during 3/4-1-2002 originated from a very insignificant and trivial incident which occurred in a cultural programme arranged by Alliance Club at Sagarasarani, Marad Beach as part of its New Year Programme on 31-12-2001. In the course of the dance programme, one Sujith aged about 18 years allegedly had an altercation with one Sakeer following the former's foot falling on the latter's foot. That dispute was almost settled. On 1-1-2002, there was wordy altercation at Marad Beach between

Sujith and Sakeer. That issue was almost settled between the two families. At about 7 P.M. on 3-1-2002, Sujith was allegedly assaulted by Sakeer. At about 7.15 P.M., some Hindu men, learning about that incident obstructed Sakeer and questioned him. Learning that, the friends and relatives of Sakeer came to the spot and there was some tussle. In the meantime, some vested interests had spread the canard that in the dance programme on 31-12-2001, a Hindu boy had insulted a Muslim girl. Rumour spread that a communal clash occurred at Marad Beach. At about 7.20 P.M. on 3-1-2002, each side attacked the other using deadly weapons like swords, chopper, stick etc. At about 7.45 P.M., Thekkethodi Suresan and others attacked and killed Kunhikoya. At about 8.10 P.M., Prabhu and others attacked and killed Yunus. At about 8.10 P.M., Latheef and others attacked the house of Pushparajan, an R.S.S worker (he was later murdered, allegedly by C.P.I. (M) activists) in their attempt to kill Pushparajan and killed his nephew, Shinjith. It is said that Pushparajan though, was available in that house at the time of attack, saved himself by hiding in the water tank. At about 8.20 P.M., Ashraf and others attacked and killed Kunhimon. The District Collector, Kozhikode issued prohibitory orders within Beypore Police station limits u/s.144 Cr.P.C. for two days from 12 A.M. on 4-1-2002. At about 8 A.M. on 4-1-2002, allegedly in the presence of Police, Thekkethodi Suresan and others killed Aboobacker who is said to have been very popular among the Muslim community. In the meantime, several house were attacked and several fell injured. Following those incidents, there were peace



initiatives from the side of the Civil Administration, Kozhikode and as directed by the State Government, peace committees were formed. The police also swung into action. A KadaKodathi (കടൽ കോടതി) was formed with the Assistant Commissioner of Police (South Sub Division), Kozhikode on the chair. Elders from both the communities were members of that KadalKodathi. It is said that minor problems which arose between the two communities were being settled in that KadalKodathi. Policemen were deployed at Marad. A Control Room was opened at Marad Beach. Nine (9) Police pickets were opened in the area. It is while so, that the massacre occurred at Marad Beach at about 6.15 P.M. on 2-5-2003. A group of about 90 Muslims armed with deadly weapons are said to have come to Marad Beach and attacked the unsuspecting Hindu men. In that incident, 8 Hindus were killed. Askar, who is said to have been one of the assailants is said to have sustained injuries from his co-assailants. He also succumbed to the injuries. Thus, the total tally rose to 9. Several others sustained injuries. Learning about the incident, the Sub Inspector of Police, Beypore and party reached the spot, followed by Sri. T. K. VinodKumar (FW. 6), the then Commissioner of Police, Calicut and his men. It is said that learning about the attack, about 200 Hindus collected weapons and proceeded to the scene of occurrence. They were prevented by the Commissioner (FW 6) and party and at one point of time, the Commissioner had to fire few rounds in the air to disperse them. Learning that some of the assailants have taken assylum in the Juma Masjid at Marad Beach, the police party tried to enter the Mosque. They were



obstructed by the Muslim women who surrounded the Mosque. Ultimately, the Police made their entry into the compound and the Mosque, some Muslim men who are said to have taken part in the massacre and wearing blood stained clothes and weapons were arrested on the spot. The Police is also said to have seized about 90 country bombs, 40 swords, knives and other weapons from the Mosque. The Beypore Police registered Crime No.82/03 and started investigation. The investigation was later entrusted to the Crime Branch C.I.D.Unit, Kozhikode. They re-registered the case as Crime No. 116/03/Cr. The Crime Branch investigation team was lead by Sri. T.V. Kamalakshan, Superintendent of Police, (AW19). The investigation was supervised by the Inspector General of Police, Sri. Maheshkumar Singla (AW35). The Crime Branch Police, after investigation filed chargesheet arraying 148 accused, in the J.F.M.C-V, Kozhikode on 31-7-2003. (Ext. C9 is the C.C . of chargesheet and Ext.C10, C.C. of a memo of evidence prepared by the Crime Branch C.I.D. Unit). That case is now under trial in the Court of the Special Judge (Marad Cases), Kozhikode.

2. Following the massacre at Marad Beach on 2-5-2003, several Muslim families fled from the Beach and they were accommodated in the relief camps opened by the Civil Administration. There was demand for their rehabilitation. The Hindu organizations refused to co-operate with the rehabilitation programmes unless, the State Government ordered investigation by the C.B.I into the massacre and the alleged involvement of external/ internal forces behind the massacre. The office bearers of the



Kozhikode Press Club and others tried to mediate. In the mediation talks initiated by the Gandhi Peace Foundation, an understanding was reached between the Hindu organizations and the State Government. Consequently, rehabilitation process started on 10-10-2003 and that was completed by 24-10-2003. Reports say that 285 displaced families were rehabilitated. That included 280 Muslim families, 4 Hindu families and one Christian family. That involved a total of 1320 persons - 308 males, 588 females and 424 children. The police operations following the massacre on 2-5-2003 was led by the commissioner of police, Sri. T. K. VinodKumar and assisted by his subordinates including the Assistant Commissioner (South Sub Division), Sri. Abdul Rahim. As regards the performance of police after the massacre on 2-5-2003 in the matter of prevention of spreading violence, there is no serious case for any of the parties before the Commission that there was any failure. Almost all the Political parties who are represented before the Commission were unanimous in their opinion that the police acted swiftly and efficiently to prevent the spreading of violence after the massacre on 2-5-2003. The main dispute is on the question whether, the Civil/ Police Administration failed in anticipating the massacre and taking timely, preventive and remedial action. To decide that, it is necessary to go into the question whether, the Intelligence wing had collected sufficient information regarding the possible violence at Marad Beach after the first communal riot and before the massacre on 2-5-2003 and whether that information was passed on to the Civil/ Police Administration.





3. Before going deep into that issue, it is necessary to decide whether the Intelligence reports produced by the Intelligence Wing can be used in evidence by this Commission. The Commission had vide, Order dated 29-1-2004 held that the State Police is not entitled to claim privilege in respect of those documents u/s. 123 or 124 of the Evidence Act. The secret documents were marked for reference as Ext.S series. That order was challenged in the Hon'ble High Court in W.P. (C) No.5006/04. The Hon'ble High Court ultimately directed, while disposing of the Writ Petition and W.A. No.628/04 that the Commission is to decide the issue and if ultimately, it is found that those documents are entitled to the privilege under Sections 123 or 124 of the Evidence Act, the Commission cannot refer to such documents. Accordingly, I considered the issue. Since the documents produced by the Central Intelligence Bureau were not required, those documents (marked for reference as Ext.S19) were deleted from the item of evidence. Notice was issued to the Additional Director General of Police (Intelligence), Trivandrum and the Commissioner of Police, Kozhikode. They filed affidavits claiming privilege. The relevant documents were perused by the Commission in the Chamber in camera, in the presence of those officers. As per order dated 26-11-2005, the Commission overruled the objection of the said Officers and held that Ext. S6 to S18 (Ext. S1 to S5 are not secret documents in respect of which privilege was claimed) are not entitled to the privilege u/s. 123 or 124 of the Evidence Act. Hence, those documents will be made use of by the Commission.



4. BW1 is the local M.L.A., Sri. V.K.C. Mammad Koya. He had visited Marad Beach several times after the 2002 and 2003 incidents. His evidence is that mostly, people of Marad Beach are fishermen. Only very few have higher education (beyond the 10th standard). The average education is less than S.S.L.C. Nobody is employed in the Government or private institutions. Their financial condition is very poor. After the first communal riot on 3/4-1-2002, a meeting was convened in the Beypore panchayat Office on 5-1-2002. That was attended by officials and the leaders of various political parties. A Committee was formed with the District Collector as Chairman and the Revenue Divisional Officer (R.D.O.) as the Convener. The Committee initiated some steps to bring about peace in the area. Relief camps were opened by the Arayasamajam for the Hindus and the Mahal Committee, for the Muslims. The C.P.I.(M) opened, in the words of the witness a secular relief camp in the house of one of its activists, Balaraman (BW2). Sri.V.K.C.Mammed Koya claimed that on his visit to Marad Beach after the first communal riot, he understood the possibility of further violence there, at any time. There were wide spread rumours that another attack is imminent. The Police action had to be strengthened. He addressed letter to the Chief Minister to that effect on 12-6-2002. Ext.B80 is the copy of that letter. The Chief Minister gave him an acknowledgment for that letter, as per Ext.B81 dated 19-6-2002. He was informed that the matter is being looked into. Again, he sent another letter dated 28-1-2003 (Ext.B82) to the Chief Minister informing the latter that another communal riot might take place at





Marad Beach at any point of time. The witness claimed that he had talked to the then District Collector (EW1) and Commissioner of Police Kozhikade (AW32) about that possibility. Ext. X11 is the copy of the proceeding of the State Legislative Assembly on 16-7-2002. It is revealed from Ext. X11 that BW1 had raised questions about the Police action at Marad Beach, what action was taken to prevent recurrence of violence and he was told by the Chief Minister (DWI), about the action taken so far. In answer to the query as to what was the stage of the watch tower to be constructed for the Police at Marad Beach, the Chief Minister replied that Rs. 1 lakh was sanctioned for the purpose. Ext.X12 is the proceedings of the Assembly on 28-1-2003. It is stated therein, that administrative sanction was granted for Rs. 6,34,000/- for purchasing materials for watch tower but, no fund was allocated for that. The M.L.A. was informed that action will be taken subject to the availability of funds. It is the further version of the witness that there were communal clashes at different places of Beypore constituency (Marad Beach comes in that constituency) following the demolition of Babri Masjid. The witness referred to certain instances of such violence on the anniversary of that incident on 6-12-2001 as well, and how the police failed to tackle the issue. Ext.A84 (a) is the report in the New Indian Express dated 16-7-2004. Vice Admiral Sri. Sureesh Metah is reported to have said that a Coast Guard Station is to be set up in Beypore in March, 2005, few acre of land is identified for the purpose and that the Coast Guard Station can be set up, if the State Government handed over the land. He is also reported to



have said that the Beypore Coast Guard Station will plug the entry points in Malabar region for sneaking in weapons and explosives by the terrorists and that 'Kozhikode' is the hub of such activities, earlier it was drug trafficking and now, ammunition is also being smuggled in. Ext. A85 (a) and A86 (a) are similar reports in 'Malayala Manorama' and 'Mathrubhumi' dailies dated 16-7-2004 containing the same report. BW2 is a C.P.I.(M) activist and resident of Beypore Panchayat. BW3 was president of Beypore Grama Panchayat during 2000-2005. They referred to the communal clashes at Marad Beach and other places within Beypore Panchayat limits since 1954. They also referred to the political murders the place saw since 1993.

5. DW1 is Sri.A.K.Antony, the Chief Minister of the State during the relevant time. He conceded that BW1 had told him that the Police should be more vigilant at Marad Beach. According to him, the massacre on 2-5-2003 was an unparalleled incident.

6. AW6, Sri. T. Suresh, the then Secretary of the Arayasamajam and resident of Marad stated that following the communal riot on 3/4-1-2002, the fundamentalists/terrorists/extremist elements, aided and instigated by the N.D.F. were making preparations for another round of attack on the Hindus. They were collecting weapons and stockpiling the same in and around Marad Beach. He referred to the deliberations in the 'Kadalkodathi' convened by the then Assistant Commissioner, (South), Sri. Abdul Rahim and claimed that in the meeting of the



'Kadalkodathi' held on 22-3-2003, getting information about the wordy altercation between two groups of Muslims after the Juma prayer in the Marad Mosque on the issue whether the Muslims should retaliate, they had informed the 'Kadalkodathi' chaired by the then assistant Commissioner (South), Sri. Abdul Rahim about that incident and the possibility of violence. The Assistant Commissioner (South) however, pacified them saying that on enquiry, that information was found to be baseless and hence, the Hindus should not believe that and other like rumours. According to the witness, the police did not seriously take into account their complaint about the possible violence. AW5 is Noufal, a resident of Marad. On 4-4-2003, he saw a wordy altercation between two groups of Muslims near the Juma Masjid at Marad, within its compound. He heard a person asking whether, they should not live in the southern side of Marad (where, there is Hindu congregation). According to the witness, that was a wordy altercation on the question of making violence at Marad. He asked the local C.P.I.(M) leader, Ponnath Peethambaran to take up the matter with the local M.L.A. (BW1) and others and do something in the matter.

7. AW27, the Assistant Sub Inspector in the Kozhikode District Special Branch Unit during the relevant time, claimed that had reported to the Assistant Commissioner, District Special Branch (hereinafter referred as D.S.B.) after the first communal riot at Marad on 3/4-1-2002 and before the massacre on 2-5-2003 that there was the possibility of violence again at Marad. Whenever any incident occurred at Marad, he used to report to his

superior officers about the possibility of violence at Marad. The witness claimed that even in the conference convened by the then Commissioner, Sri. Sanjiv Kumar Pat Joshi (AW 32), he had reported that the situation at Marad was tense and that more vigilance by the Police was required in the area. He learned that the N.D.F. had its activities at Marad. He had also reported to his superiors about the N.D.F. workers at Marad. Aboobacker, killed in the riot on 4-1-2002 was running a 'Kalari' (at Marad). Hence, Aboobacker was called "Ustad, Gurukkal" etc. The witness claimed that at about 6.30. P.M (the time obviously is a mistake as the incident occurred by about 6.15 P.M) on 2-5-2003, immediately before the massacre, he got information that something untoward was going to happen at Marad. He immediately contacted the Assistant Commissioner (D.S.B) and the Beypore police. They were informed about the possibility of some incident. He tried to contact the Juma Masjid at Marad over telephone, but the person who attended the call, possibly identifying him as an Intelligence Officer abruptly disconnected the phone. The witness claimed that the police strength at Marad was being reduced day by day, but he had never reported that the area was calm (so that, the police strength could be reduced). The witness claimed that even after the 'Snehasangamam' at Marad Beach in October, 2002 (conducted by the Civil Administration with much fanfare), he had learnt and reported about the possibility of violence at Marad. AW28, the Head Constable of the State Special Branch unit (S.S.B), Kozhikode also had reported about similar situation at Marad after the first communal riot and before the massacre on 2-5-2003.



He had reported that there was possibility of violence. He noticed that one of the picket posts at Marad was opened in the house of one Rukkubi. The wireless set was installed in that picket post. The witness realised that it was dangerous to keep the wireless set in that picket post since there was the possibility of information being leaked out through the inmates of the house and hence, made a strong suggestion that the picket post or atleast, the wireless set be removed from that house. Nothing was done on that report until the massacre on 2-5-2003. AW28 also had reported several times that the Police strength at Marad had to be stepped up. He had reported about the stockpiling of weapons at Marad after the first communal riot and before 2-5-2003.

8. AW30 was the Dy.S.P, State Special Branch, Kozhikode unit during the relevant time. Beypore police station came under that unit. He claimed that his field staff had given reports to him that the situation at Marad was not at all normal. He had received reports about the possibility of retaliation by the sons and relatives of Aboobacker who was killed at Marad on 4-1-2002. He received report that Bijili, S/o.Aboobacker is being assisted and instigated by fundamentalists / terrorists elements like the N.D.F. and the P.D.P to wreck vengeance on the Hindus. He conveyed the information to the Intelligence Head Quarters. The witness had attended all the meetings of Communal Harmony convened by EW 1, the then District Collector, Kozhikode (Sri.T.O.Suraj). In such meetings also, he had reported the dangerous situation at Marad and sought action. Thus, the then District Collector,



Sri.T.O.Suraj was informed and he was aware about the possibility of violence at Marad. According to the witness, the Communal Harmony Meetings were not effective and there were no serious deliberations in those meetings. The witness filed an affidavit (attached to his deposition) stating that on one occasion, the Communal Harmony Meeting was held simultaneously with the meeting of Malabar Mahotsava Committee (to indicate that the meeting of Communal Harmony was only a farce). He had given reports to the Police that the Police strength at Marad had to be increased. But what happened was that the Police strength was being reduced step by step, after January, 2003. The Intelligence Wing of the State Police department had never reported that the situation at Marad was normal so that, Police strength could be reduced. He claimed that reports were received from the field staff about collection and stockpiling of weapons at Marad. Both side were collecting weapons. Mostly, the collection of weapons was in the Muslim dominated area of Marad. He wanted the local police to initiate immediate action. Ext.S13 (a) is the report dated 12-2-2002 about the collection of weapons at Marad. Copy of that report was given to the Commissioner of Police, Kozhikode for immediate action. Ext.S13 (b) is another report dated 16-9-2002 to the Commissioner of Police, Kozhikode about the collection of weapons wherein, even the place of storage of weapons was mentioned. That report was accompanied by a site plan of the area where the weapons were planted. The witness claimed that the local Police took the report casually, neglected it, there was no effective search for the weapons and instead, a search for





namesake was conducted. Instead of effectively searching the stretch of 150 meter long, slab covered and mud covered drain referred in Ext.S13 (b) and the site plan for tracing the weapons, the local police searched for about an hour at a stretch of about 30-40 meters and that too, without even tilting the slabs or removing the mud. The local Police reported that the information given by the State Special Branch was false and baseless. On that report, the Intelligence Headquarters wanted the S.S.B., Kozhikode Unit to give explanation. That Unit reported that the search conducted by the local Police was only an eyewash. Ext.S13 (c) is the reply given by the State Special Branch, Kozhikode Unit in that manner. Ext.S13 (d to i) are also reports prepared by the S.S.B. Kozhikode Unit and sent to its superiors. Ext.S14 is the letter dated 24-8-2002 addressed to the Inspector General of Police (Intelligence). According to the witness, it was not likely that the large quantity of deadly weapons seized from the Juma Masjid, Marad were collected and stockpiled there in one day. The State Special Branch, Kozhikode Unit had informed the Beypore Sub Inspector about the wordy altercation regarding retaliation in the Juma Masjid in March, 2003 and that matter had come up for discussion in the 'Kadalkodathi' held on 21-3-2003. It was decided in the 'Kadalkodathi' that the information (on retaliation) was not correct and that such 'rumours' should not be spread. That 'Kadalkodathi' meeting was presided over by the Assistant Commissioner (South), Sri: Abdul Rahim. The witness learned that though the Assistant Commissioner (South) had discussed the matter in the 'Kadalkodathi' the Hindus as well as Muslims were not confident about the version of the Assistant Commissioner (South).





9. Aw29 was the D.I.G., Kannur Range from 8-4-2002 till 1-12-2003. He has worked as Commissioner of Police, Calicut from 30-11-1991 till 9-12-1994. He made surprise visit at Marad between 9.30 P.M. and 1.30 A.M on 24-8-2002 and noticed that only two Armed Reserve Police Constables are posted in each Police picket posts. Those Policemen were not checking vehicles passing through their picket post to prevent transportation of weapons to Marad. During his earlier visit also, he had instructed the Police to check the vehicles and suspected persons. That was not carried out by the local Police. During the visit on 24-8-2002, he had instructed the Commissioner of Police, Kozhikode, 4 Sri. SanjivKumar PatJoshi (AW32-H.Party No.5) and the Assistant Commissioner (South), Sri. Abdul Rahim (FW2-H. Party No.6) to give written instruction in the Pata Books (of the Policemen on duty at Marad) about the duties to be performed by them. He also instructed them to post one local Police Constable in each picket posts (since the local Police Constable will be capable of more policing, while the A.R.P.C. is only for re-inforcement). He had asked the Commissioner and Assistant Commissioner (south), to take more interest in surprise checks. Ext. A 105 is the letter addressed by him to the Commissioner after his visit at Marad on 24-8-2002. It is stated in Ext. A105 that the Assistant Commissioner of the Control Room (in Calicut city) had no information as to what is happening in the Control Room. There was no effective supervision of the Control Room by the Assistant Commissioner (Control Room) or even the Commissioner. In spite of repeated directions, the Television sets were not removed from the Beypore police station and other Stations. No local Police



Constable were posted in the picket posts at Marad which contained only two A.R.P.C. s each. Ext. A105 directed the Assistant Commissioner (Control Room) to post a local Police Constable in each picket post and the mobile patrol team to check the picket posts frequently as the Constables on duty were not checking vehicles. The Assistant Commissioner (South) was directed to give written instructions in the 'Pata Books' about the duties to be performed by the Constables on duty. AW29 got information that Bijili, S/o. Aboobacker killed in the first communal riot was found active among certain Muslim fundamentalist elements, Bijili was keen to avenge the killing of his father and that he was being instigated by those fundamentalist element for retaliation on the Hindus. AW29 conveyed the information to the Commissioner, Sri. Sanjiv Kumar PatJoshi and asked the police to keep vigil. Ext.S.12 is the copy of that D.O.Letter dated 24-1-2003. The witness claimed that every now and then, he had been informing the Commissioner, Sri. PatJoshi about the tense situation at Marad. He claimed that he issued memos to the Commissioner, Sri. SanjivKumar Patjoshi (Aw32-H.Party No.5) on certain inactions on the part of that Officer. Ext.A106 is the memo dated 5-6-2002 addressed to the Commissioner and Assistant Commissioner (South), asking them to shed their lethargic attitude. AW29 received complaint from the then District Collector, Kozhikode that the Commissioner, Sri. Sanjiv Kumar Patjoshi was not regular in attending the meetings of the Communal Harmony Committee. Thereon, AW29 issued memo to Sri. SanjivKumar Patjoshi. Ext.A111 is the copy of that memo dated 26-8-2002. Ext.A112 is



the reply given by Sri. Patjoshi on 26-8-2002. According to AW29, had the Commissioner, Sri. Sanjiv Kumar Pat Joshi carried out his instructions properly, the massacre at Marad on 2-5-2003 could have been averted.

10. AW31 was the Assistant Commissioner of D.S.B., Kozhikode during the relevant time. He admitted that AW27 had given reports to him whenever minor incidents occurred at Marad, that there is possibility of those minor incidents developing into issues between the two communities. He used to give reports to the Commissioner also. He had attended the Communal Harmony Meetings once or twice when directed by the Commissioner, and in those meetings, he had reported that there was possibility of flare-up at any time. He claimed that AW27 had informed him about 10-15 minutes before the massacre on 2-5-2003 that some incident is going to happen at Marad. He contacted the Assistant Commissioner (South) and conveyed the information. The witness claimed that whenever information was received about the collection of weapons including bombs, that was conveyed to the Commissioner who directed the Assistant Commissioner (South) to conduct search for the weapons. But, AW31 does not know whether any weapons were traced in such searches before 2-5-2003. He had received reports that the Hindus and Muslims had stockpiled weapons. He had also received information that relatives of late Aboobacker were trying to retaliate. Ext.S13 (j) is the report sent by him on behalf of the Commissioner, Calicut to the Inspector General of Police (Intelligence) reporting that the information given by the S.S.B., Calicut Unit about the

stock-piling of weapons was 'false and baseless'. According to the witness, the local Police had conducted effective search for the weapons but, could not trace it. (On going through the counter affidavit filed by Smt. Sobhanakumari, Additional Secretary to the Home Department, Govt. of Kerala in the Writ Petition filed by some of the relatives of the dead in the massacre on 2-5-2003 in the Hon'ble High Court seeking C.B.I. investigation, I find that the State Government also took the stand that the Intelligence Wing had collected some information regarding the possible violence at Marad and passed on the same to the local Police).

11. EW1 (H Party No.4), Sri.T.O.Suraj, District Collector, Kozhikode during the relevant time referred to the various steps taken by the Civil Administration after the first communal riot, for restoration of peace. He claimed that peace meetings were convened on nine (9) occasions. An Awareness Camp was held at Marad for women and children on 1-10-2002. Peace rally was held at Marad Beach on 2-10-2002. Since non availability of drinking water was a problem, 30 additional water taps were opened. The Civil Administration spent Rs. 28,67,000/- for relief measures at Marad from January, 2002 till 2-5-2003. He convened meetings of the Committee for Communal Harmony. He was getting daily and weekly reports from the S.S.B. and D.S.B. that the situation at Marad was normal and peaceful. He had not received any information from BW1 or the Intelligence Wing about possible violence at Marad. He claimed that the Intelligence Wing was not able to collect any information regarding



the possible violence at Marad, not because of any failure on its part but because, incidents even surpassing the Intelligence Wing occurred. After the Section 8B notice was served on the witness, he was recalled for further examination on 9-9-2005, when he claimed that there was failure on the part of the Intelligence Wing to collect relevant information regarding the possible violence at Marad. Supporting EW1, the Clerk in S-2 Section of the Collectorate (HW3) and the Addl. District Magistrate, Kozhikode (HW4) also claimed that in none of the Communal Harmony Meetings, there was any reference to any possible violence at Marad. AW2, the then R.D.O., Kozhikode referred to the steps taken by him to restore peace at Marad Beach. He referred to the cases booked under S107 of the Code of Criminal Procedure.

12. The Commissioner of Police, Kozhikode from 12-11-2001 till 19-3-2003 (Sri.Sanjivkumar Patjoshi - H Party No.5) gave evidence as AW32. He referred to the various steps taken by him and the local Police to maintain peace at Marad Beach. He visited the area several times, developed contacts with the local people and carried out all instructions given by his superiors. He explained the reasons for not attending the Communal Harmony Meetings on few occasions. He acted swiftly for providing infrastructure for Police at Marad, proper policing and even for expeditious filing of chargesheets in the cases relating to the first communal riot. He claimed that proceedings u/s. 107 Cr.P.C were initiated against 342 persons. After the notice u/S.8 B was served on the witness, he gave further evidence. He then accused AW29 of discriminating

against him and produced certain testimonials for his 'impressive performance' as Commissioner. The City Police Administration examined the Asst. Commissioner (South) as FW2. He claimed that strong police patrolling and picket posts were arranged at Marad. A control room with 24 hour wireless network was established at Marad. List of communal goondas was opened. Rowdy list was opened. 'Kadalkodathi' was formed. Special Squad of the D.S.B. conducted raids for weapons. All instructions given by the superior officers were carried out. Bijili, S/o.Aboobacker was questioned thoroughly by himself and Circle Inspector, Cheruvannur. FW3- C.I. Cheruvannur from 28-10-2002 till 12-6-2003, FW4- S.I., Beypore from 13-1-2002 till 19-11-2003 and FW5- S.I., in-charge of FW4 while the latter was on leave, gave evidence about the police action at Marad during the relevant time.

13. According to the A parties, the Intelligence Wing had collected some information regarding the possible violence at Marad but, that was either neglected or, lightly and casually handled by the local Police with ulterior motives. I referred to the evidence collected by the Commission about the information regarding possible violence. One question may arise whether, the Intelligence Wing could have collected better or more information about the possible violence. It may also be said that as claimed by AW21, the then Director General of Police only some generalised information was collected by the Intelligence Wing. But, in further examination, even AW21 admitted that if the Intelligence Wing had ponied out that a particular person was being instigated and assisted by



certain fundamentalist/ terrorist elements to retaliate, that was a specific information. One has to think that the intelligence officials are not Gods or semi Gods to forecast all possible violence. It is also to be remembered that the infrastructure provided for the Intelligence Wing in this State when compared to the other States is very weak and insufficient. I had occasion to discuss with a Senior Officer of the TamilNadu Intelligence Wing on the working of the TamilNadu Intelligence Wing. I have prepared a separate report on that discussion. I may say, the infrastructure provided for the State Intelligence Wing for collection and dissimulation of intelligence is very weak and insufficient. No separate fund is provided for the State Intelligence Wing. The result is that the Intelligence field staff may have to spent from their pockets (which need not be expected always) to treat an informant or other source who gave information and for such other matters. The field staff are not provided with sufficient equipments to convey information received by them immediately, to their superiors. They have to depend either, on public telephone booths or some private telephones for the purpose. No vehicles are provided to the field staff. The efficiency of the field staff is also worth consideration. Since the Rules required that men of ability and aptitude are to be posted in the Intelligence wing, I called for information from the Commissioner of Police, Kozhikode as to what method was being adopted to ascertain that ability and aptitude for Intelligence work. He was kind and gracious enough to inform the Commission that men of ability and aptitude are taken to the Intelligence Wing! I am sure, he had nothing to say





about the methodology adopted because, there was none. He was also not able to tell the Commission what type of training is being given to the Intelligence Wing. Evidence revealed that some Policemen from other branches are simply posted in the Intelligence Wing. The information, whatever it be collected by the State Intelligence Wing regarding possible violence at Marad has to be viewed, understood and appreciated in that backdrop. On going through the oral and documentary evidence adduced before me, I can gather that some specific information was collected by the State Special Branch, Kozhikode Unit regarding possible violence at Marad. Exts. S8 to 18 specifically refers to the tense and dangerous situation at Marad Beach and the Muslim youths getting ready for an attack. I find, that information was collected by the State Special Branch about the stockpiling of weapons by both groups in Marad Beach after the communal riot on 3/4-1-2002 and well before 2-5-2003. They had also informed that Bijili, S/o. Aboobacker was found active among the fundamentalist elements working in the area, Bijili was keen to avenge the killing of his father during the riot on 3/4-1-2002 and that for the said purpose, those elements were instigating Bijili. Ext.S.18 series contain specific information and details of those elements found active in the area. Report dated 4-4-2002 stated that people feared another violence and that efforts of the Peace Committee and the Govt. were not yielding the desired results. There are reports about transportation of weapons and patrol cans, use of a Jeep bearing registration No.KLL/3848 for the purpose, and even training being given by an organization to its selected



cadres in the nearby places. It is revealed from the evidence that huge quantity of weapons were seized from the Mosque in the early hours of 3-5-2003. Following that, the Investigation Team conducted raids and several weapons were seized/ unearthed from the compound of the Mosque, nearby places and even from the house of some of the accused, some were recovered u/S.27 of the Evidence Act. As stated by AW21, the then Director General of Police and AW30, the Dy.S.P, State Special Branch during the relevant time, it is difficult to believe that all those weapons were brought to the Mosque, its compound and other places at Marad in one or even few days before the massacre on 2-5-2003 or even after 19-3-2003. It is revealed from Ext. C9, C10 and Ext. S1 to S5 and the letters addressed by AW29 to AW32 and marked through the former that since several months before the massacre on 2-5-2003 and ever since the Communal riots on 3/4-01-2002, certain persons including some of the accused were collecting / making weapons including bombs and the same were brought to Marad Mosque, planted there or in the near by places. Weapons were brought in vehicles, even under the nose of the police picket post at Vayanasala junction which is very near to the Mosque. If the words of AW21, the then D.G.P. is to be believed, thus specific information was given by the S.S.B., Kozhikode Unit to the local Police about possible violence at Marad after the first communal riot in January, 2002 and before the massacre on 2-5-2003. Information was also given to the local police about the tense and distributing situation at Marad and the stockpiling of weapons in and around the Mosque. I also



referred to the evidence of AWs 27 and 31 about the former getting information about the untoward happening even 10-15 minutes before the incident and the local Police being alerted about that. I may say that with the available infrastructure that the State Intelligence Wing had, it collected some specific information in the matter and that was conveyed to the local Police headed by the Commissioner of Police, Kozhikode City well in advance. There is therefore, no much merit in the contention that there was 'failure' on the part of the Intelligence Wing to collect information regarding possible violence at Marad.

14. I referred to the evidence of BW1, the local M.L.A. as to how he got information regarding the unrest at Marad and that information was conveyed to the Chief Minister of the State. I referred to the evidence of AW5 and AW30 about the wordy altercation between the two groups in the Muslim community in the compound of Juma Masjid, Marad, few weeks before 2-5-2003 about retaliation, that matter was brought to the notice of the Police authorities including the Assistant Commissioner (South) and that matter was discussed in the meeting of the 'Kadalkodathi' on 21-3-2003. From these evidence, I come to the conclusion that through the Intelligence Wing and otherwise, the Government and local Police were informed about the tense, disturbing situation at Marad the stockpiling of weapons, the possible violence at Marad and that even contained specific information.

15. EW1 (H Party No.4- Sri. T.O. Suraj) has a case that even if any such information was collected by the Intelligence Wing and received by the local Police, that



was not conveyed to the Civil Administration or even EW1. I referred to the stand of Sri. T.O. Suraj when examined on 29-12-2003. Then, he claimed that after the first communal riot and till 2-5-2003, no information was given to him about any possible violence or collection of weapons at Marad. He was getting daily and weekly reports from the State Special Branch and the District Special Branch. But those reports claimed that the situation at Marad was normal and peaceful. He had no idea about the activities of the Intelligence Wing at Marad except, that he received daily and weekly reports. He never had the impression that the functioning of the Intelligence Wing at Marad was not satisfactory. He did not also think that the massacre on 2-5-2003 was due to the failure of the Intelligence Wing. He was asked whether, he thought (at the time of his examination on 29-12-2003) that the daily/weekly Intelligence reports given to him about the situation at Marad as peaceful, were wrong. The witness opined that his belief is that certain things which even surpassed the intelligence activities occurred. He had not come across any report about the possibility of Muslim fundamentalists attacking Hindus at Marad. He claimed that he had given direction to the police in the Communal Harmony meetings to closely watch and take action against the organizations and persons indulging in any fundamentalist activities in Kozhikode District. After the notice u/s.8 B. of the Commission of Inquiry Act was slammed on the witness, he gave a detailed statement in writing to the effect that the statement made by the Intelligence officials that they had collected information about the possible violence and that such information was given to



him in his capacity of the District Magistrate, are false and intended at saving the face of the Intelligence Wing who failed to collect information regarding violence. When further examined on 9-9-2005, he claimed that AW30 (Dy.S.P, Sri. Raj Mohan) had never reported in the Communal Harmony Meetings about the possible violence at Marad. AW30 made that statement to cover up the failure of the Intelligence to collect necessary information. He had stated in his the earlier examination (on 29-12-2003) that something happened surpassing the Intelligence activities because, by then, he had not seen any Police report on the investigation of Crime No.82/03. In the confidential affidavit filed by EW1, he accused AW30 for discriminating against MUSLIM officers and making adverse reports on them. He also accused AW30 of being associated with the Hindu fanatics.

16. HW3 is Sri. Subair, Clerk in the S2 Section in the District Collector's Office from 1-8-2001 to 31-5-2005. That section dealt with Communal Harmony Meetings, He used to take down notes during the meetings to prepare the minutes. Whatever were discussed in meeting are reported in the minutes. Ext.H9 is the minutes. According to the witness, it is incorrect to say that the entire deliberations in the meetings were not mentioned in the minutes. HW4, Muhammed Sageer, Additional District Magistrate, Kozhikode from April 2001 to March, 2004 claimed to have attended the Communal Harmony Meetings at times. He claimed that AW30 had not made any report regarding the possible violence at Marad in any of the Communal Harmony Meetings. According to the



witness, failure of the Intelligence Wing to collect information was one of the main reasons for the massacre on 2-5-2003. He claimed that there was only general discussion in the Communal Harmony Meetings concerning the situation at Marad. AW2 was the Revenue Divisional Officer during the first communal riot and the massacre on 2-5-2003. He used to attend the Communal Harmony Meetings. He was recalled on the request of EW1 (H Party No.4). He claimed that AW30 had never reported in the meetings that the situation at Marad is taking violent turn. No Intelligence report also was placed in the committee for discussion. The Civil Administration did not get any information from any Police Officers about the possible violence at Marad before 2-5-2003. It is contended on behalf of the Civil Administration and specifically, on behalf of EW1 (H party No.4) that there is no material on record to show that any such information even if collected by the Intelligence Wing or the local police was conveyed to the Civil Administration or EW1 (H Party No. 4).

17. I have gone through the Guidelines issued by the State Government in the matter of Communal Harmony Meetings. The Guidelines were prescribed after the communal riot at Marad on 3/4-1-2002. Going by the Guidelines, the District Collector is to convene the meetings of the Committee for Communal Harmony where, matters relating to communal amity is to be discussed and necessary action based on that, is to be taken. Ext.H9 does not mention about any Police Officer reporting in the Communal Harmony Meetings about the possibility of





violence at Marad. AW30 and AW32 have a case that entire matter reported in the meetings were not being including in the minutes. It is true, AW30 or AW32 could point out the omission if any in the minutes, in the next meeting of the committee but, they concededly did not do that. From that failure of the Police Officers alone, it is not possible to infer that none of them had brought to the notice of the Committee information regarding the possible violence, the tense situation at Marad or stockpiling of weapons. It is also difficult to think prima facie, that the top Police Officers had not informed atleast the District Collector who is also the District Magistrate and primarily responsible for maintenance of law and order in the District and particularly in the light of the Guidelines and the meetings were convened to discuss matters which affected communal amity. According to EW1 (H Party No.4), he was getting daily / weekly reports from the Intelligence Wing and those reports mentioned about peace and normalcy at Marad Beach. How could, the S.S.B. which collected information about the tense situation, possible violence and stockpiling of weapons at Marad Beach suppress that from the District Collector (District Magistrate) atleast in the Communal Harmony Meetings and paint a rosy picture about Marad Beach by giving reports as claimed by EW1? And, for what purpose should the Intelligence Wing do that? And, if the daily/weekly reports thus received by EW1 (H Party No.4) gave an altogether different picture of Marad Beach to mislead him (for what, God alone knows), he could have easily summoned those daily/ weekly reports. He was wise enough not to do that. If the





Intelligence Wing and/or the local Police had not passed on the information to the District Collector (EW1), I may say, that does not go to his credit. As per pr. 13 of the Manual of Guidelines to Prevent and Control Communal Disturbances And to Promote Communal Harmony, it was the responsibility of the District Administration to identify the elements who have the capacity to create any possible communal riot directly or indirectly or any minor incident between different communities which might grow into communal problems. It is irresponsible and even exposure of inefficiency to claim that the District Collector who was also the District Magistrate was not being informed by the local Police and Intelligence wings about the alarming situation at Marad. I am unable to think, in the absence of strong motive for the Intelligence Wing and the local Police that they suppressed the real situation from the notice of the District Collector (EW1). Atleast, there is no reason why the Intelligence Wing and the local police should do so. I am also not very much impressed by the last minute claim made by EW1 in his "Confidential Affidavit" that AW30 was communal and targeting the Muslim officers. That could only be treated as the 'last straw' in the hands of EW1 in his attempt to escape from responsibility. The then Commissioner, Sri. SanjivKumar Patjoshi (AW32) told the Commission in his evidence that he had very good relationship with EW1 (I will be referring to that 'relationship', later) and had shared whatever information he received, with EW1. In fact, there is indication in Ext.H9 itself that AW30 had given information to the District Collector (EW1) regarding the



tense situation at Marad. Ext. H9 (page 13 to 15) states that AW30 had sent copy of letter dated 24-1-2002 addressed to the Director General of Police, Kerala to the then District Collector, Sri. Viswanath Sinha, marking it "Secret". So, AW30 was in the habit of sharing such secret information with the District Collector as well. There is no reason to think that AW30 stopped that practice when EW1 (H Party No.4) assumed charge as District Collector on 14-6-2002. It is also pertinent to note that EW1 (H Party No.4) had in his testimony on 29-12-2003, tried to give a clean chit to the Intelligence Wing and save it by saying that something happened at Marad Beach, which even surpassed the Intelligence Wing and hence the Intelligence wing were not able to collect information regarding violence. Obviously, EW1 (H Party No.4) was claiming that inspite of best efforts, the Intelligence Wing was not able to collect information regarding the massacre on 2-5-2003. He did not utter a word against the Intelligence Wing then. But, when he was served with a notice u/S8.B, he turned round and came up with the theory that all the materials produced by the Intelligence Wing regarding their collecting information about violence at Marad are incorrect, their evidence to that effect and that information was given to him are intended to cover up their failure and save their skin. According to EW1, he learned about the failure of the Intelligence Wing only after the investigation of Crime No.82/03 regarding the massacre on 2-5-2003 was over and that is why, in his earlier deposition, he had not attributed failure on the part of the Intelligence Wing. What had that investigation to do with the Intelligence



information collected by the Intelligence Wing and what did that investigation say about collection of Intelligence information ? Only EW1 can explain that. Assuming so, the Crime Branch had filed the charge sheet on 31-7-2003. Was not EW1 aware of that when he was examined before the Commission on 29-12-2003 ? I am not inclined to accept that explanation of EW1 (H Party No.4) and can only understand that as an attempt made by him to wriggle out from the responsibility arising from the evidence that information was given to him. I asked EW1 (H Party No.4) in the course of his examination on 9-9-2005 whether, he was maintaining a Register in his office (Collectorate, Kozhikode) showing the reports received by him from the local Police or the District Special Branch. He had to answer in the negative. In other words, no Register even was being maintained in the office of the District Collector, Kozhikode during relevant time to show which all reports were actually received by him. EW1 (H Party No.4) had no difficulty to say that whatever reports were received, were being maintained by his Confidential Assistant and that such reports were not being placed in the Communal Harmony Meetings. According to HW3, the clerk in the S-2 Section in the office of EW1 who was dealing with the file, the secret reports were received by the Sheristdar and were kept by EW1 himself in his official residence. HW3 also stated that there was no register maintained for the reporters thus received. If this be the situation, I am left with the evidence of EW1 (H Party No.4), his subordinate officers and sub-staff (AW2, HW4 and HW3, respectively) that no



such information was received from the Intelligence Wing / local Police nor, was there any discussion regarding that, in the Communal Harmony Meetings. I am not inclined to believe those words in the facts, evidence and circumstances stated above. On the other hand, the preponderance of probability also is in favour of the fact that information regarding the tense situation at Marad Beach was given to the Civil Administration headed by EW1 (H Party No.4).

18. Now, I shall come to the issue whether, Civil/ Police Administration acted effectively and properly on the information received by them regarding violence at Marad Beach and whether, they took timely, preventive and remedial action to prevent the massacre on 2-5-2003. So far as the Civil Administration is concerned, EW1 and AW2 testified on the various steps taken by them to bring about peace in the area after the riot on 3/4-1-2002. Their evidence in short, is that peace committee was formed, several rounds of discussions were held to bring about peace in the locality, relief camps were opened for those affected by the riot, till 30-10-2002 peace meetings were convened nine times, peace rally was held at Marad Beach on 2-10-2002, awareness camp was held for the women and children on 1-10-2002, from January, 2002 to 2-5-2003, Rs. 28,67,000/- (Rupees Twenty Eight Lakhs and Sixty Seven Thousand Only) was spent by the Civil Administration for relief measures, major portion of which was used for repairing 91 houses damaged in the riot on 3/4-1-2002, new water supply scheme itself was launched and 30 additional water taps were opened at Marad Beach

since lack of drinking water was one of the reason for skirmishes among the womenfolk. AW2 stated about initiating proceedings u/s.107 of the Code of Criminal Procedure.

19. There is no disputing the fact that the Civil Administration had initiated some steps to bring about normalcy in the area. There is the evidence of EW1 and Ext. E1 series about convening certain Committees, peace rally and even, a 'snehasangamam', repair of the damaged house and opening few water taps. The question is whether, that was sufficient to prevent further violence? Going by Ext. S18 series (see report dated 4-4-2002), the much said about peace initiatives taken by the Civil Administration were not effective except, that the Revenue Authorities had convened certain meetings. In the foregoing paragraphs I stated how, certain persons were acquiring and stockpiling weapons either for offence or defence. Police reports (see Ext.S13 series and S.18 series) say about a Hindu family at Marad Beach collecting weapons to protect the Hindus in case of another communal riot. Reports refer to the rumours (as on date of that report, that was a rumour - that was proved real on 2-5-2003) spreading in the locality about imminent communal clashes. I referred to the evidence of BW1, the local M.L.A. about his assessment of the situation at Marad and informing the Chief Minister about the possible violence. Ext.S6 series shows that the letter sent by BW1 had even reached the City Police Administration. Evidence of BW1, Exts. F42, 43 and other documents show that there were Political / communal clashes at many places in Beypore Panchayat in the year 1999,



on 6-12-2001 and the subsequent days. The civil Administration should have been aware about this. As per evidence, senior Revenue officials including AW2 were available at Marad Beach after the first riot on 3/4-1-2002 and before 2-5-2003. Evidence before the Commission revealed that all those who visited Marad Beach after the first communal riot and before the massacre on 2-5-2003 got the impression that the situation there, was alarming and that there was distrust among the two warring communities. According to FW2 (H Party No.6), the peace found at Marad Beach was only superficial and hence, he asked for more police re-inforcement vide Ext.S6 series (between 22-8-2002 and 25-1-2003) But concededly, the senior Revenue Officials were not able to assess the tense and dangerous situation at Marad. May be, the Revenue Officials are not specially trained for the purpose but even then, if the local M.L.A. and others who visited the area were able to learn that situation, there is no reason why the senior Revenue Officials having sufficient experience should fail in that. In fact, in the light of Ext.H15, atleast EW1 (H Party No.4) could not plead that much ignorance. Ext. H15 is the letter dated 30-7-2002 from the Principal Secretary to the Govt. of Kerala, to the Director General of Police and others referring to the 'uneasy calm' prevailing at Marad Beach. That letter is based on a letter from EW1 the District Collector. Necessarily, the report on 'uneasy calmness' should have originated from EW1 who should have got that information from his subordinates or the Police. At any rate, atleast from the fact that some cases were registered against some of the accused in the cases relating to communal riots on 3/4-1-2002 under S.107 Cr.PC, the





District Administration and EW1 should have been aware that as claimed by EW1, everything was not normal or peaceful at Marad Beach. Hence, there is no merit in the contention that the District Administration and EW1 were unaware of the tense situation at Marad Beach.

20. The Civil Administration headed by EW1, the then District Collector had not taken any steps to prevent violence on the premise that another riot at Marad Beach was possible at any point of time. Their only claim is about conducting few camps, peace rally or even 'snehasangamam' (which itself did not yield result) or opening few water taps. One must bear in mind that the area was communally torn and divided right from 1954 and saw a fierce riot just few months back. AW2 himself states from the copy of report to the then District Collector, Sri. Viswanath Sinha referred in Ext. H9 that it was reported by the SSB that the peace conferences convened by the Revenue Officials did not acquire the confidence of the people of Marad at the grass root level. The Civil Administration should have borne in mind that communal division had, for several reasons gone deep into the mind of the people. The Civil Administration either failed to learn or forgot this ground reality. I do not forget the evidence of AW2 about booking some cases against certain persons u/s. 107 of the Code of Criminal Procedure. AW2 filed a statement when recalled for further Examination at the instance of EW1 (H Party No.4) showing the details of such cases. But, AW2 conceded that in most of those cases, proceedings were dropped after the period of the interim bond. It is revealed from the evidence of AW2 that 16 cases were thus dropped. According to





AW2, he was otherwise busy with several other official matters and hence, could not complete the proceedings within six (6) months. But, AW2 was not that much helpless S.116 (6) of the Code of Criminal Procedure empowered him to direct that such proceedings would continue even after the expiry of the period of six months from the date of its commencement provided, there were special reasons for that, to be reduced to writing. Therefore, I am to presume that if those proceedings u/s.107 of the Code had a natural death on the expiry of the said period of six months, according to AW2, there existed no special reason to direct continuance of the proceedings beyond the said period of six months. As per pr. 14 of the Manual of Guidelines on Communal Harmony referred above, cases against persons indulging in communal / fundamentalist activities including, cases booked under S.107 CrPC are to be vigorously pursued in Courts. Hence the District Administration headed by EW1 cannot be heard to say that they were otherwise busily engaged, had no enough time and hence, the cases had to be dropped half the way. Fact remained, that the cases booked under S.107 CrPC were not effectively or vigorously pursued by the District Administration and hence, had a natural death. In fact, even the evidence of AW2 revealed that the impression of normalcy at Marad was also a reason for not pursuing the cases booked u/s. 107 CrPC.

21. I find from the evidence of AW32, the then Commissioner of Police, Calicut and other materials on record that the Communal Harmony Meetings were not really effective. Going by the evidence of AW30, the



Communal Harmony Meetings were an eyewash. For, his claim is that once, the meeting of the Communal Harmony and Malabar Mahotsava Committee were held simultaneously. I do not forget that EW1 and HW4 denied that. I do not also expect them to admit that. A responsible officer - AW30- has made a very serious statement and filed an affidavit in that line. It is revealed from Ext.H9 and that evidence of HW3 that instruction was received from the State Government on 5-4-2002 to hold meetings of the Committee for Communal Harmony. As per Pr.7 of the Guidelines on Communal Harmony Meetings, such meetings were to be held atleast once in a month at the District level for review of the Intelligence and the District Administration was to send monthly reports of the review to the State Govt. with copy to the Head of Intelligence of the State before the 10th of every month. Between 24- 4- 2002 and 29- 3-2003, the Communal Harmony Meetings were held only on 24-4-2002, 21-6-2002, 24-8-2002, 8-11-2002, 2-12-2002. 10-2-2003 and 29-3-2003. That means, there were no such meeting convened every month. Ext. H9 revealed that the meetings convened on 24-4-2002, 21-6-2002 and 24-8-2002 lasted for one hour each and the meetings on 8-11-2002 and 29-3-2003 lasted for 1/2 an hour each. It is surprising to note that the meetings on 2-12-2002 and 10-2-2003 lasted only for 15 minutes each. Certainly, there were no serious deliberations made in the Communal Harmony Meetings. That did not go to the credit of the District Civil Administration headed by EW1 (H Party No.4). Thus, evidence revealed that the Communal Harmony Meetings were not being convened as mandated by the Guidelines nor were the

meetings convened, effective. There was no effective action from the side of the Civil Administration to prevent the recurrence of violence at Marad Beach, one of the most politically and communally sensitive areas of the District.

22. The next question arose whether, there was failure on the part of the City Police Administration in taking timely preventive and remedial action? I referred to the oral and documentary evidence to say that the State Intelligence Wing had given information to the City Police Administration regarding the possible violence at Marad Beach, including the collection of weapons on large scale and Bijili, S/o. Aboobacker killed on 4-1-2002 trying to retaliate on Hindus with the assistance and under instigation from Muslim fundamentalist elements. AW32, Sri. SanjivKumar Patjoshi also admits that he received such information. I referred to the evidence of AW29, the then D.I.G. Kannur Range about his surprise visit at Marad Beach on 24-8-2002 and earlier, and giving specific directions to the Commissioner of Police (AW32) and the Assistant Commissioner (South), Sri. Abdul Rahim (FW2). The evidence of AW29 is that inspite of his giving specific information and directions, the City Police headed by the Commissioner, Sri. SanjivKumar Patjoshi (AW32) and the south Sub Division headed by Assistant Commissioner, Sri. Abdul Rahim (FW2) were lethargic in their action and that contributed to the massacre on 2-5-2003. In specific terms, AW29 (Sri. Sankar Reddi) stated that had the local Police carried out his directions, that would have prevented the massacre on 2-5-2003. He supported his claim with reference to several documents. I already referred to Ext. A105, the



letter addressed by him to AW32 after his surprise visit at Marad Beach at 9 pm on 24-8-2002 and earlier. Ext.A106 is the memo dated 5-6-2002 given by him to AW32, the Commissioner, requiring the latter and the Assistant Commissioner (South) under him to shed their lethargic attitude. Ext.A107 is another letter dated 14-5-2002 from AW29 and addressed to the Commissioner of police (AW32) Assistant Commissioner, South (-FW2-) etc., regarding the situation at Marad Beach. AW29 directed those officers to continue raids and take all steps to avoid any further incidents in the area. They were directed to closely watch the activities of those accused in the cases relating to the riot on 3/4-1-2002 who were on bail. Ext.S11 is the D.O. letter dated 12-4-2002 from AW29, to Sri. SanjivKumar Patjoshi (AW32) on the possibility of recurrence of violence at Marad Beach. It states that in the event of withdrawal of Police, violence will break out as the Muslim youths were bent upon avenging the killing of Aboobacker, that a particular organization is trying to extent its influence in Marad area and that its supporters were organizing training classes at Chakkumkadavu, towards north of Marad Beach. In Ext.S11, AW29 gave list of 13 activists of that organization (of them, three are accused in Cr.82/03 of Beypore Police station - Cr.116/CR/03 of C.B.C.I.D., Kozhikode) in the area who according to AW29, were potentially dangerous. Ext.S12 is another D.O. letter dated 24-1-2003 from AW29, again addressed to Sri. SanjivKumar Patjoshi (AW32) stating that there are disturbing trends at Marad Beach, the RSS Sakhas are found active in the area and that the R.S.S. men are stockpiling weapons to protect the Hindu families in the event of a communal flare-up.



It is further stated in Ext.S12 that Bijili S/o. Aboobacker, killed in the riot on 4-1-2002 was found active among Muslim fundamentalist elements in Marad area, he is an expert in martial arts, was keen to avenge the murder of his father and is being instigated by the fundamentalist elements for retaliation against the Hindus. The recipient of the letter was asked to keep close watch and take necessary action. Ext.A110 is the general instructions given to Sri. SanjivKumar Patjoshi (AW32) and others after the monthly crime review. Ext.A111 is the memo dated 26-8-2002 issued to Sri. Sanjiv Kumar Patjoshi (AW32) stating that the latter had not attended the Communal Harmony Meeting on 24-8-2002 and instead, was engaged in attending the felicitation function of cine actor, Jagathi Sreekumar. Ext.A112 is the reply dated 26-11-2002 from Sri. SanjivKumar Patjoshi (AW32) explaining the reason for his inability to attend the Communal Harmony Meeting on 24-8-2002. AW32 claimed that he had convened another meeting at 4 P.M. on 24-8-2002 in the matter of giving protection to the Grassim Company as per the order of the Hon'ble High Court, the District Collector had, on 8-11-2002 unilaterally fixed the meeting, he could not attend that meeting also since that day, he had to accompany the Senior Police Officers to the college ground, the venue of the meeting of the President of India. Sri. SanjivKumar Patjoshi (Aw32), in answer to the complaint of EW1 (H Party No.4), the then District Collector about the former not attending the Communal Harmony Meetings, reported that S.S.B., Calicut and Trivandrum units said that EW1 was communal and corrupt and that since he (Sri. SanjivKumar Patjoshi) belonged to the All India Service



Batch of 1991 and EW1 was a promote/conferred All India Service Batch of 1996, the decorum of All India Service required that the District Collector (EW1) should have checked up with Sri. SanjivKumar Patjoshi before complaining. Sri. SanjivKumar Patjoshi (AW32) explained that *"it is totally unbecoming of Collector to complain to superior of me about very minor issue of not attending one monthly Intelligence Meeting"*. He also claimed that he attended the function of Jagathi Sreekumar at 6 P.M. on that day and that the *"whole Calicut City people, media are all appreciating and calicut city police image has gone up very high"*.

23. In answer to the above version of AW29, Sri. SanjivKumar Patjoshi gave evidence as AW32. He was the Commissioner, Calicut from 12-11-2002 to 19-3-2003 (the massacre was on 2-5-2003). He claimed that he had been attending the meetings of Communal Harmony except when he was engaged in more important and urgent works. He claimed that he had taken steps for providing infrastructure at Marad such as providing watch tower, control room etc., and produced documents in support of that. He claimed that he had taken steps for proper investigation of the cases relating to the first communal riot, to apprehend the accused and complete the investigation in record time. He forwarded the case diary after investigation to the Director General of Police on 6-4-2002. There was long delay in obtaining the prosecution sanction which according to him, was one reason that ultimately resulted in the massacre on 2-5-2003. There was long delay in the Revenue department providing





the scene plans. As per his instruction, proceedings were initiated u/s.107 Cr. P.C. against 342 accused involved in the cases relating to the first communal riot. As per his instruction, rowdy lists were opened. But, the S.D.M. (AW2) dropped the proceeding against the accused abruptly. He claimed that it was due to his proper and effective policing that there were no major incident at Marad Beach until he handed over charge on 19-3-2003. He admitted that he had received the original of Ext.S12 and claimed that immediately on getting that letter, directed the Assistant Commissioner, south (-FW2-) and Circle Inspector, Cheruvannoor (FW3) to warn Bijili not to create law and order problem, to keep watch on Bijili and to include him in the goonda list and initiate Section 107 Cr.PC proceedings against him. On that direction, the Assistant Commissioner (South) reported the same day that there was no such person as Bijili and that S.S.B., Calicut say that it may be 'Noufal'. He did not believe that statement of the Assistant Commissioner (South) and asked him and other officers to trace Bijili. Then, the Assistant Commissioner (South), told him that he had questioned Bijili, recorded his statement and is verifying various aspects of Bijili. To the witness, it appeared that the Assistant Commissioner (South), was trying to shield Bijili. The Assistant Commissioner (South) had told him that Bijili is included in the communal goonda list and that the Assistant Commissioner (South) was keeping vigil on Bijili. He had received information contained in Ext.S13 and claimed that it was correct to say that some organizations and elements were instigating certain persons for violence at Marad Beach. He claimed that he had





deputed the bomb squad to search for weapons. He had provided tear gas shells, rubber bullets, plastic bullets with guns, 303 rifles, riot shields, lathis and extra jeep for exclusive patrolling in Marad area and an average of 30 men from the A.R. camp for deployment at Marad. Moreover, there were around 30 Constables in Beypore Police Station which was sufficient to control the law and order situation at Marad. He had also asked the Assistant Commissioner (South) to take men if necessary, from his sub division where, there may be around 400 men. On his relationship with AW29, his immediate superior officer, AW32 claimed that he had very cordial relationship just like equal brother officers. Pursuant to the notice under Section 8 B of the Act served on AW32, he was further examined. Then, he accused AW29 of discriminating against him while protecting Sri.T.Vikram, I.P.S. who took over additional charge of the Commissioner, Calicut on his transfer on 19-3-2003 and Sri.T.K.Vinodkumar (FW6) who took over charge as Commissioner from Sri.T. Vikram on 31-3-2003. AW32 claimed that for any silly and minor matters such as not wearing uniform while in office (according to him, he was not expected to wear uniform in office) or a minor mistake in his weekly diary regarding the time of his arrival at the parade ground, AW29 was issuing memos to him. AW29 never helped him (AW32) in the discharge of his duties. Instead, AW29 was trying to find fault with whatever action taken by AW32. It was also the version of AW32 that AW29 had illegally interfered in the investigation of certain crime cases such as the custodial rape case at Medical College Hospital, the case for illicit possession of arrack and the case



against a foreign national for alleged harassment of his wife. Bypassing him, AW29 gave instructions to the officers who investigated those cases to act illegally to save the accused. That was objected by AW32. For that, AW29 was harassing him. AW32 produced Exts. H 54 to 58 and Ext. H68, copy of his weekly diaries to show that often, he has been patrolling at Marad Beach and inspecting the picket posts. Some documents are to show how effective his policing at Calicut City was, and how that was appreciated by some of his superior officers, the public and the media. (This aspect will be discussed in the coming Chapter). AW32, in his further examination claimed that he learned that the tight grip of the police over the situation at Marad loosened after he handed over charge on 19-3-2003 and that resulted in the massacre on 2-5-2003.

24. The then Assistant Commissioner (South Sub Division), Sri. Abdul Rahim gave evidence as FW2. He was the Assistant Commissioner, (South) Sub Division from 17-6-2002 till 9-5-2003. Marad Beach which is under Beypore police station came in Cheruvannoor circle under the South Sub Division. He had learned on assuming charge on 17-6-2002, that Marad is a communally and politically sensitive area. He arranged for strong Police patrolling and pickets at Marad. A control room with 24 hour wireless network was established. Officers of and above the rank of Assistant Sub Inspectors were posted for patrol duty. List of communal goondas was prepared and they were put on watch. Rowdy list was opened against 97 Muslims and 71 Hindus. Proceedings were

initiated against 320 persons from both communities. 'Kadalkodathi' was established. That consisted of 8 persons each from each side, the Assistant Commissioner (South), Circle Inspector, Cheruvannoor and Sub Inspector, Beypore as members. That 'Kadalkodathi' was constituted for settlement of minor disputes even while legal action was initiated. The 'Kadalkodathi' met on 12 occasions between 28-1-2002 and 21-3-2003. (Ext. F5 is the minutes of the Kadalkodathi which shows that it had 7 sittings from 17-6-2002 till 9-5-2003. He denied the suggestion of A parties that he was informed by the representatives of the Hindu community about the wordy altercation in front of the Juma Masjid at Marad on whether or not, there must be retaliation on the Hindus, the matter came up for discussion in the meeting of the Kadalkodathi on 21-3-2003 and that he informed the members that the information is baseless. FW2 claimed that the Special Squad from the D.S.B. conducted several raids at Marad Beach for recovery of weapons. He issued direction to the Station House Officer, Beypore to prescribe duties to the policemen in the picket posts. Ext.F6 is his letter dated 12-2-2002. He instructed that Pata books be kept in each picket post, there should be local Police Constables along with the A.R.P.C. in each picket post, vehicles and strangers passing by the picket posts must be checked and that the officers should conduct surprise checks in the picket posts day and night. When he found that there was no sufficient men, he addressed letter to the Commissioner, Calicut. Ext.S6 series are the true copy of those letters dated 22-8-2002, 6-9-2002 and 25-1-2003. (in Ext. S6 dt. 22-8-2002, there is request to the Com-



missioner for more police strength.) FW2 claimed that no action was taken on that request until he was transferred from Calicut (South) Sub Division. As regards the instructions on Bijili, he claimed that he contacted the S.S.B., Calicut Unit and learned that there was no such person as Bijili and that it may be 'Noufal', still he conducted enquiry, traced Bijili, the Circle Inspector Cheruvannoor and himself questioned Bijili and warned him against indulging in any such activities, recorded his statement and kept him under watch. He claimed that he thought that peace was restored at Marad, but he later realised that it was superficial. That was why, he asked for more Policemen vide Ext. S6. He was on leave for 4 days during the first week of April, 2003. He was again on leave from 16-4-2003 till 1-5-2003 and resumed charge on 1-5-2003. He learned about the massacre on 2-5-2003 at 6 P.M. that day, immediately came to the scene and engaged himself law and order maintenance duties. He proved Ext. A3, search list prepared for seizure of swords, knives, chopper etc., from the Juma Masjid, Marad in the early hours of 3-5-2003. He claimed that he had scheduled a reception for his colleagues at Calicut in the evening of 3-5-2003 in connection with the marriage of his daughter but, that had to be postponed due to the incident on 2-5-2003. He denied the version of AW21, the then D.G.P. that he was not that much innocent as regards the circumstances that lead to the massacre on 2-5-2003, tried to shield one of the main culprits in that incident and was some how trying to remain at Calicut even after he was transferred, trying to understand from the Crime Branch sluths as to who all are the accused in the case. He produced certain press reports to controvert the version of AW21.



25. AW21, the then D.G.P. claimed that learning about the massacre, he came down to Calicut and held quick enquiry about the incident and transferred the case to the Crime Branch for investigation. During that time, he got reports about FW2 (Sri.Abdul Rahim) which were not good. FW2 had been deputed to enquire into certain information received before 2-5-2003 and take action on that. He did not deal with that matter as required. He did not intimate the real situation at Marad to his superior officers. He tried to make it appear that some person whom the Investigating agency considered to be an accused, was not really involved in the incident. Even after FW2 was transferred from Calicut (South sub division) and even though he had no official job, he was trying to learn what the Crime Branch was going to do, who are all going to be made accused etc., Consequent to the section 8 B notice served on FW2, AW21 was recalled for further examination. AW21 proved Ext. A104 (a), a report in the 'Malayalam' magazin based on a conversation with AW21. He claimed that FW2 (Abdul Rahim) was posted at Calicut (South sub Division) without his knowledge, that posting was unusual and after the incident on 2-5-2003, when AW21 checked up the matter with his office, learned that a Muslim leader had played a role in the posting of FW2 at Calicut (South Sub Division). But, he did not try to find out who, that Muslim leader was. He is sure that FW2 was not posted at Kozhikade (South Sub Division) as per the proposal of the D.G.P. He admitted that for the transfer and posting of officers of and above the rank of Dy.S.P., proposal from the D.G.P. was not required. Except recommending to the



Government (Ext.C95 is his letter dated 15.5.2003) that on 'public interest' FW2 may be transferred from Calicut (South Sub Division), he had not taken any other departmental or legal action against FW2, one of the reasons being that he retired on 31-5-2003. He asserted that he is aware whom, FW2 was trying to save but, declined to speak out that since it was not proper for him to do so, as the case (Crime No. 82/03) was under trial.

26. FW3 is Abdul Hameed, Circle Inspector, Cheruvannoor from 28-10-2002 till 12-6-2003. He claimed that he used to visit Marad almost daily and alert the policemen on duty. Instruction was given to them to observe the accused involved in the cases relating to the first communal riot. Raids were conducted for tracing weapons. Ext. F21 is his weekly diary produced to show that he had questioned Bijili on 28-1-2003 and on 2, 3 other occasions. Ext.F22 is the statement of Bijili recorded by the witness on 28-1-2003. FW4 is K.V Rahuramam, Sub Inspector, Beypore from 13-1-2002 to 19-11-2003. He was on medical leave from 19-1-2003 to 9-2-2003 and on training, from 6-4-2003 to 3-5-2003. Ext. F23 series are the copy of the General Diary maintained in the Beypore Police Station for the period from 3-11-2002 till 30-6-2002, 1-7-2002 till 30-10-2002 and from 31-10-2002 till 29-4-2003 produced to show that there was effective patrolling of the area and that several raids were conducted for tracing the weapons. Ext. F24 is the rowdy history sheet opened by the Beypore Police against 167 persons. Ext. F25 is the First Information Report Index for



initiating Section 107 proceedings against 319 persons. Ext.F26 is the F.I.R. register for seizure of 9 tin bombs from the terrace of the Government Veterinary Hospital, Beypore. FW5 was Sub Inspector in-charge at Beypore station from 6-4-2003 till 3-5-2003. He claimed that learning about the incident on 2-4-2003, himself and party proceeded to Marad and while they reached near Priya Hotel Junction, himself and party were obstructed by a group led by P.P. Moideen Koya - H Party No.2 - (a local I.U.M.L. leader, member of the local panchayat from the ward including Marad and accused in Crime No.82/03) and others. They pelted stones and country bombs at the police party. They carried knives, stones swords, sticks etc. The Police party dispersed the group and proceeded to Marad.

27. FW6 is Sri. T.K.Vinod Kumar, Commissioner, Calicut from 31-3-2002 till 18-8-2004. He deposed to the various steps taken by the Police under him to prevent spreading of violence after the massacre on 2-5-2003. He produced copy of his weekly report (Ext. F28) which revealed that during 31-3-2002 to 2-5-2003, he visited Marad Beach thrice.

28. I referred to the Intelligence Reports and other evidence to show that sufficient information was given to the local Police regarding the collection and stock-piling of weapons at Marad by different groups and the specific information given to them about Bijili and others preparing for violence at the instance of certain Muslim fundamentalist elements. I also referred to the evidence on



record to show that those weapons were not collected in one day or two before the massacre on 2-5-2003 and that those weapons, in the normal course should and would have reached the area long before 2-5-2003. Even going by the words of the then D.G.P. (AW21), it was not explicitly clear when those weapons were collected and stockpiled at Marad and that his information was that most of the weapons unearthed after the massacre on 2-5-2003 were rusted. According to AW21, it was quite distressing that the Police did not get information on that. Evidence revealed that weapons were freely collected and brought to Marad Beach and planted even in the compound of the Juma Masjid Mosque at Marad, under the nose of the Police picket Post. As per Ext.S1, the statement of the 2<sup>nd</sup> accused in Cr. 82/03 of Beypore Police station (Cr.116/CR/03 of C.B.C.I.D.), large number of country bombs were collected from elsewhere or made in the sea and brought to Marad Beach in country boats, collected in plastic buckets, brought to the Mosque compound in autorikshaw or other vehicles and planted there. So also, large number of swords and other weapons were brought to the Mosque compound in sacks and planted there. They had arranged to carryout the attack even a month before (2-5-2003), but since the news leaked out, they gave up the plan then. Still, our Police personal deployed in the area did not know about any of it! Ext.S1 reveals that weapons were brought to the Mosque compound in a jeep and autorickshaw (that jeep was seized by the Crime Branch team ) but, the Police men on duty at Marad Beach did not know about it atleast, once. Those vehicles could not have reached the Mosque compound except by crossing the picket posts atleast, at Vayanasala junction which is very close to



the Mosque. The policemen on duty there also, did not learn about the transportation of weapons! AW29 issued direction to AW 32 to check the vehicles and the suspected persons coming through the Police pickets and prescribe duties in the patta books. AW32- passed on that direction to FW2. And, what could FW2 do?. He passed on the direction to the Beypore Police and even mentioned that in the visiting officers remarks diary kept in that station. But, ultimately, were those directions implemented ?. Evidence is nil. Neither AW32 nor FW2 who faced action u/s 8B of the Act dared to cause production of the Patta books of the Policemen on duty at the picket posts. None of those Policemen are summoned as witness also. It is difficult to believe that none of the Policemen on duty in the picket posts could learn about the transportation of weapons which, going by evidence of the C B C I D, started immediately after the accused in the riot cases of 3/4-1-2002 were released on bail (after 90 days). It is eminently clear that there was no checking of vehicles or suspected persons passing through the picket posts. I do not forget that the weekly diaries of AW32 (Exts. H54 to 58 and H68) and the weekly diary of FW3 (Ext. F21) revealed that they had patrolled Marad Beach. AW32 also checked certain picket posts. But, there was a specific direction by AW29 to AW32 and FW2 to conduct surprise checks in the night. The documents do not show such patrolling or checking by FW3 after 7.30 pm. and by AW32, after 10.30 pm. FW2 was careful enough not to produce his weekly diary. It is certain that there was neither any effective policing nor, patrolling in the beach, worth the name. May be, certain actions were taken in the most casual manner, as none other than AW29 himself said, but that was not effective. It is distressing and disturbing to note from the evidence of FW1 who supervised the investigation of crime cases relating to



the riot on 3/4-1-2002 that no investigation was conducted then as to how, such large number of weapons reached Marad Beach. I referred to the war of nerves between AW30, the Dy.S.P. of the State Special Branch and AW31, the Assistant Commissioner, D.S.D., Calicut on the information given by the former regarding collection of weapons at a specific spot and the alleged failure of the local Police to unearth it. I also referred to Ext.S13 (a), the report given by AW30 with site plan. The materials on record revealed that though, specific information was given about concealment of weapons in the mud filled, slab covered drain at a stretch of 150 meters, the local Police conducted some search at a stretch of 30-40 meters without removing the mud and without even tilting the slabs. The report given by AW31 for and on behalf of AW32 was that the information given by the State Special Branch was 'false and baseless'. It has come in evidence that though the report regarding collection of weapons was given on 16-9-2002, the search was held only few days later, on 18-9-2002 with the possibility of the culprits even removing the weapons by then. I am unable to understand how, the District Special Branch (under the direct control of AW32) in such circumstances, could describe the information given by the State Special Branch as 'false and baseless' unless, they wanted to cover-up their own failure. AW31 conceded that he had sent report (Ext.S13 (j)) on behalf of the then commissioner (AW32), that the information given by the State special Branch was 'false and baseless'. So, AW32 was not unaware of the stand of the D.S.B. AW31 does not know whether, any of the slabs were tilted for the search. According to him, the raid party stated about the use of metal detector and search by hitting over the mud portion with iron rods. He may have obtained a report on the search from the circle Inspector, Cheruvannoor and Sub Inspector, Beypore who are said



to have led the search but, no such report was referred in Ext.S13 (j). Hence, AW31 was unable to give a specific comment on the version of the State Special Branch contained in Ext.S13(C) as to the manner in which the local Police had conducted the search. The witness conceded from Ext.S13 (k), the report given by him on behalf of the Commissioner that the slabs were not tilted or removed (since the same were large!). Even the evidence of FWs. 2 and 3 regarding that search is not very convincing. Concededly, the service of the Intelligence field staff (AW27) who had given that report was not obtained by the local Police for the search. Thus, on the available material, the reasonable conclusion to be drawn is that as reported by AW30, the search conducted by the local Police on the information given by the State Special Branch was nothing but an eyewash. AW30 even complained that the local police had a tendency to under-estimate the S.S.B. and describe the information given by the latter as 'false and baseless'. For instance, the S.S.B. reported about the possibility of violence on the eve of the 1<sup>st</sup> anniversary of the riot on 3/4-1-2002. Based on that information, more Policemen were deployed and nothing untoward happened. Then, the local Police would say that the information given by the S.S.B. was 'false and baseless'. That, in that area also, weapons were stockpiled is evident from the admitted fact that the staff of the Government Veterinary Hospital, Beypore found 9 tin bombs on the terrace of that building, information was given to the police and the same were taken to custody by the police and defused. That seizure did not in any way go to the credit of the local Police. Though, AW32, FW2 and FW3 claimed about several raids for weapons after the January, 2002 incident and before 2-5-2003 and produced some documents (Exts. F19 and 23) to support that, verification of those documents show that it was only once - and once alone on 2-1-2003 - that the





raid by the DSB and bomb squad yielded result – some weapons were traced (details of the weapons seized are not available). Ext.F19, the photo copy of reports of raid is for the period from 6-1-2002 till 6-5-2003. During that period, there were altogether eight (8) raids at Marad Beach and nearby places. Some weapons were reportedly traced on 2-1-2003. But, it is strange that the G.D. entry on 2-1-2003 is missing in Ext. F23(b). On no other occasion during the period of about 17 months, could the local Police trace even a single weapon, not because there were no weapons planted, but because the raids were casual and ineffective. There was lack of coherence, trust and co-ordinated action between the S.S.B. and D.S.B. and between the S.S.B. and the local Police. The direction contained in P.57 of Ext.S13 to conduct raid in the compound of Mosque for weapons was admittedly never carried out. In the light of that direction at least, AW32 and FW2 should have taken action against the Mosque authorities under the provisions of the Religions Institutions (Prevention of Misuse) Act,1988 by calling for information regarding the collection of weapons in the Mosque and its compound, and if necessary, conduct raids. There is no case or evidence that any such step was taken by AW32 or FW2. The evidence revealed that there was failure of the local Police to effectively search for the weapons and trace the same in spite of several information given by the S.S.B. and AW29. The local Police also failed to prevent the weapons being brought to Marad Beach and stockpiled there.

29. I referred to the information given by the Intelligence Wing as well as AW29 to the local Police on the attempt of Bijili, instigated and assisted by certain Muslim fundamentalist elements to wreak vengeance on the Hindus for the killing of his father,



Aboobacker on 4-1-2002. Concededly, that information was ultimately proved to be true in that Bijili is one of the prime accused in Crime No.82/03 (Cr.No.116/CR/03 of C.B.C.I.D) and as per the Crime Branch C.I.D. Unit (See Ext.C9) Bijili, along with his paternal uncle, Muhammed Ali played leading role in conspiring, planning and executing the murders on 2-5-2003. Ext.S12, the D.O. letter addressed to Sri.SanjivKumar Patjoshi (AW32) is dated 24-1-2003. AW32 (Sri.SanjivKumar Patjoshi) in his turn, immediately informed FW2 (Sri.Abdul Rehim) to initiate necessary action. The same day, FW2 reported to AW32 that there was no such person as Bijili and that S.S.B. Calicut Unit said that it may be 'Noufal'. Ext.X19 is the remark of FW2. Ext .H14 is the visiting remark of FW2 at Beypore Police Station on 24-1-2003. That is to the effect that Bijili could not be located from the array of accused or injured (in the incidents on 3/4-1-2002), that S.S.B. Calicut informed FW2 that it may be 'Noufal' and that the Sub Inspector, Beypore should collect the name and keep a close watch. There is no evidence to show that FW2 had contacted the S.S.B., Calicut Unit and got any such reply. AW30 denied that any such enquiry was made with the S.S.B. unit. Such a reply was quite unlikely also as the S.S.B. Kozhikode Unit and AW29 had specifically stated about the activities of Bijili, S/o. Aboobacker, victim of the riot on 4-1-2002. There was no reasonable possibility of FW2 doubting the identity of Bijili since FW2 was the Assistant Commissioner (south) from 17-6-2002 onwards and Ext.S12 was dated 24-1-2003. FW2, without any difficulty conceded that there was no difficulty for him in identifying or tracing Bijili since, Bijili was described as S/o. Aboobacker, a popular Muslim killed in the communal riot on 4-1-2002. Even FW2 has not given a statement before this Commission that he had any doubt on the identity of Bijili. If that

be so, there was no possibility of FW2 having any genuine doubt regarding the identity of Bijili. In other words FW2, for reasons known to him reported to AW32, the Commissioner on 24-1-2003 itself that there was no such person as Bijili and that it may be 'Noufal'. Assuming so, question arose why FW2 did not try to trace the said Noufal, who is also said to be an N.D.F. activists of the area. If that was the impression of FW2, he should have traced Noufal atleast. That also was not done.

30. Now I shall refer to the version of FW's 2 and 3 as to how effectively, they questioned Bijili. Though, it is their version that FW2 also had questioned Bijili, there is no record for that, not even a mention of that in the Station General Diary. FW2 did not produce his weekly diary if any, to show that he had questioned Bijili. Though, FW3 claimed to have questioned Bijili on different occasions, it is conceded by him also that Ext.F21 (his weekly diary) only mentioned that he enquired about Bijili on 26-1-2003 but, that document did not say that he had ever traced or questioned Bijili on any day or recorded his statement. Ext.F22 is the copy of the statement of Bijili said to be recorded by FW3 on 28-1-2003. I stated that the questioning on 28-1-2003 is not even mentioned in Ext.F21. In other words, there is no supporting document to show that FW3 had questioned Bijili on any date as claimed by him. Assuming that FW3 had actually questioned Bijili on 28-1-2003 as stated in Ext.F22, assuming that FW2 also had questioned Bijili subsequently, how effective was that questioning ? The evidence revealed that Bijili had only primary education and is a fisherman by occupation. According to FWs. 2 and 3 they, officers in the rank of an Assistant Commissioner and Circle Inspector questioned Bijili on several days but, were not able to gather anything from Bijili about him designs. Ext.s.C9 and C10 show how Bijili was a party to the conspiracy and the massacre

on 2-5-2003. Was Bijili so intelligent, wise and shrewd that he could escape the grilling interrogation by two or three senior Police officers for hours? I am not persuaded to think so. Instead, reason persuades me to think that either, those Officers had not questioned or even seen Bijili and instead, to cover up their failure, manipulated a statement like Ext.F22, or it was a causal questioning by some of them. Ext.F22 shows that it is a small statement. Concededly, FW2 or FW3 did not ascertain who are the friends and associates of Bijili, with whom was he contacting and such other matters which were essential in a proper interrogation. They did not ascertain whether Bijili had a land phone or a Mobile Phone. In other words, even if I were to assume that Bijili were questioned by FW2 and/or FW3, they did not cross check his version that he is not indulging any such unlawful activity and instead, were satisfied with his statement contained in Ext.F22 as if, they thought that Bijili would otherwise admit that he was involving himself in the conspiracy. AW29 stated that if Bijili were properly questioned, that would have definitely disclosed his plans and the conspiracy already hatched up. Certainly, the local Police failed in effectively questioning Bijili and getting his plans disclosed.

31. Exts.F24 and F25 are produced to show that rowdy history sheets were opened against 167 persons and that proceedings u/s 107 Cr.P.C. were initiated against 319 persons. In spite of the specific information given by the S.S.B. and AW29 about Bijili, the latter did not figure in Exts.F24 or F25. why was Bijili spared from those proceedings? I stated in the earlier paragraphs how the proceedings u/s107 Cr.P.C. had to be dropped half the way. Concededly, the local Police had not filed any report in those cases to continue the proceedings even after the initial period of

six months. The local Police neglected that also. According to AW32, he had directed FW2 to include Bijili in the Rowdy History sheet and proceedings u/s 107 CrPC. But, nothing of that sort was done. AW32 did not check up the follow-up action. There is no evidence to show that Bijili was kept under watch. Fact is that Bijili was simply let loose. AW32 and FW2 are responsible for that. I do not forget that going by the weekly diaries of AW32, he had visited Marad Beach several times and on some occasions, he had also checked the picket posts. But facts, evidence and circumstances revealed that the same were not effective or sufficient.

32. I referred to the evidence of AW29 and Exts.A105, 107 and the 'Secret' documents regarding the instructions given by AW29, to AW32, FW2 and others for proper policing and patrolling at Marad Beach. It is conceded that on the date of incident, there were only 13 Policemen on duty at Marad, one among them being a Head Constable (AW25). AW25 conceded that he was the Senior most officer on duty at Marad Beach on the crucial day, others being 12 constable of whom, inspite of the specific direction given by AW29 to have atleast one local PC in each of the (9) picket post, 11 were from the A.R.Camp. In other words, for all the 9 picket-posts at Marad, there was only one local P.C. I remember that AW29 had issued specific direction vide, Ext.A105 to post atleast one local P.C. in each picket post since that was required for effective policing as the A.R. men are meant only for reinforcement. But, the number of local P.C. available at Marad on the crucial day was only one. AW29 issued the instructions as per Ext.A105 after his visit to Marad



Beach on 24-8-2002. Going by Ext.F17, the Chart produced by the F party showing the deployment of Police at Marad Beach, there was only one local P.C. posted in the entire Marad Beach from 7-1-2003 till 30-4-2003 (one local P.C., each day). That Chart says that on 2-5-2003, there were 13 local P.C. in Marad Beach. But, evidence revealed and it is also admitted that there was only one local P.C. there, on 2-5-2003 (on 21-1-2003, there were three local P.Cs. on 1-2-2003, 20-2-2003, 1-3-2003 and 26-3-2003 there were two local P.Cs. But never after 7-1-2003, there were one local P.C. each atleast, in each of the 9 pickets as directed by AW29) Ext.F29 shows that on 2-5-2003, there was only one local HC and one local PC in the Marad Control Room, one ARPC each in six (6) pickets and two (2) ARPC each, in 3 pickets. According to AW25, the PCs from the ARCamp had only short experience. Apart from AW29, there was only one constable in the Control Room (at Marad) The evidence of AW25 shows that even those Policemen could do nothing worth the name at the time of the massacre, except saving themselves. As against the claim of AW32 regarding the weaponry made available at Marad, only one 303 rifle, few tear gas shells and few lathees were provided in the Control Room for them. At the time of massacre, there was not a single gun in the Marad Control Room or picket post, as per the version of AW25. There were only few tear gas shells and lathees. Even that, those poor policemen could not effectively use, going by the words of AW25 and FW2, because they did not have the mental make up to do that on a charged situation. Though, AW27, 28 and AW30 suggested in specific terms and AW29 issued direction to



increase the police strength at Marad Beach, it is revealed from the oral evidence and Ext.F17 that the strength was being scaled down day by day, and on the crucial day, there were only 13 Police men for the entire Marad Beach. It is also revealed from Ext F17 that for several days before 2-5-03, senior police officers above H.C. were not available at Marad Beach.

33. It is true that vide Ext.S6, FW2 had requested for further reinforcement. He requested the Commissioner, Calicut (AW32) to allot more policemen. He had also asked for providing infrastructure for the Police. Concededly, that was not complied. Instead, AW32 asked FW2 to take reinforcement if any, from his own sub division which had strength of about 400 men. There could not be a defence that the Policemen posted at Marad Beach were not effective because of lack of infrastructure - a paramilitary force cannot take up that plea. If, FW2 thought that more Policemen were needed by the situation at Marad, he should have managed it from his own sub division even if AW32 had denied further force rightly or wrongly. Certainly, AW32 should have alerted himself about the situation on getting the request for more men. But FW2 could not plead that because AW32 did not grant the request for more men, he did not provide more men at Marad Beach. FW2 did not reply to Ext. S7 dt. 2-9-02 that he had no sufficient men at his command for deployment at Marad. The issue was left there. Both AW 32 and FW2 were equally negligent or irresponsible in the discharge of their duties in that regard. The chart (Ext.F17) produced by the City Police administration revealed that on the prior dates,



there were bit more strength at Marad Beach than the skeletal strength on 2-5-2003. Going by the evidence of FW4, even the strength at Beypore PS. on 2-5-2003 was not sufficient to meet an urgent situation. Certainly, circumstances indicated lethargic attitude on the part of AW32 and FW2. and the local police.

34. It is strange to note that the wireless set allotted to the Police at Marad beach was kept in the house of one Rukubi, with the possibility of secret information leaking out through the inmates of the house. AW28 specifically informed the urgent need to shift the wireless set from that house, but nothing happened till 2-5-2003. Very effective policing indeed, at Marad Beach!

35. Regarding the altercation between the two Muslim groups in front of the Juma Masjid at Marad Beach few weeks before 21-3-2003, I adverted to the evidence of AW5, AW6 and AW30. FW2 denied that there was any discussion on that matter in the meeting of the 'Kadalkodathi' on 21-3-2003. But, I find that the denial is not trustworthy. Ext.F5 is the minutes of the 'Kadalkodathi' meetings. FW2 took charge on 17-6-2002 and since then, there were 7 (seven) sittings of Kadalkodathi until 21-3-2003 (FW2 took part only in 3 sitting viz. on 11-7-2002, 19-8-2002 and 21-3-2003). Resolution No.1 taken in the meeting on 21-3-2003 is that people should not jump into conclusions based on rumours, they should act only after ascertaining the truth of such rumours and that if at all there were any problem between the two communities, the members of the two communities must



discuss and settle it. Certainly, resolution No. 1 referring to the 'rumour' indicated that apprehension was raised by the members in the 'kadalkodathi' regarding violence. What else could be that 'rumour'? FW2 was not able to give a proper explanation as to what prompted the 'Kadalkodathi' to adopt that decision. AW30 has given evidence that the issue of retaliation and the consequent wordy altercation came up for consideration in the Kadalkodathi meeting on 21-3-2003. According to FW4, the wordy altercation in front of the Mosque on 14-3-2003 was regarding the administration of the Mosque! Thus, the Resolution No.1 in the meeting of the 'Kadalkodathi' on 21-3-2003 revealed by Ext.F5 supported the evidence of AW5, AW6 and AW30 regarding the altercation between the two Muslim groups about retaliation, that being brought to the notice of the local Police including FW2 and their ignoring the warning bell.

36. Evidence is given by BW2 and AW27 about physical training classes conducted by certain organizations even in the night at Marad Beach. According to BW2, the Muslim youths alone attended those classes taken by persons who came from outside Marad. But, the local Police had no idea about it. I remember that the SSB and AW29 had alerted the local Police about certain Muslims fundamentalist elements operating in the area. That also did not open the eyes of the local Police.

37. Evidence revealed that the conspiracy for the massacre started much before 19-3-2003 (on which day, AW32 handed over charge). Evidence revealed that the



local Police was quiet inactive on the situation at Marad following the communal riot on 3/4-1-2002. They did not act effectively on the information given by the Intelligence Wing. The local Police did not also effectively carryout the directions given by AW29 except, that the Commissioner (AW32) directed FW2 to carryout the directions and FW2 in turn, wrote down that direction in the visiting book of the Beypore Police Station. The patrolling and search for weapons said to be made by the local police were not effective or purposeful. To put it shortly, the local Police was lethargic in their attitude towards the situation at Marad Beach. According to FW6, Sri. T.K.Vinod Kumar, the Commissioner of Police, Kozhikode from 31-3-2003, even the relevant Intelligence reports were not shown to him by his office staff after he assumed charge on 31-3-2003. Even AW32 had to concede that the local police had no tight grip on the situation at Marad Beach, but according to him, that tight grip was lost after he vacated office of the Commissioner on 19-3-2003. It is difficult to think that the "tight grip" loosened after 19-3-2003. Even going by Ext. S1, the assailants had planned to strike one month before 2-5-2003 but that attempt aborted only because the news some how leaked out. The evidence, facts and circumstances revealed that the City Police Administration failed in taking effective steps to prevent the massacre at Marad Beach on 2-5-2003.

38. As regards the action taken (by the local Police) to prevent spreading of violence after the massacre on 2-5-2003, I stated at the beginning of this Chapter that there was no dispute that the local Police under FW6 - Sri. T.K. VinodKumar did a commendable job.



39. Some of the B parties have a complaint that there was wide spread looting and damage to the houses of the Muslims who fled from the beach following the massacre on 2-5-2003. According to them, the State Government succumbed to the pressure of the Hindu fascist / fundamentalist elements. The Government did not take any effective action against the provocative speeches made by some of the Hindu leaders including Sri. Praveen Togadia at Kozhikode, following the massacre on 2-5-2003. They also say that the Government was succumbing to the pressure of the Hindu fascist / fundamentalist elements by not ordering rehabilitation.

40. It has come in evidence that there was large contingent of police at Marad Beach following the massacre on 2-5-2003. House hold articles were damaged on the days after the massacre on 2-5-2003. One can certainly understand the ire of the relatives of those killed in the massacre on 2-5-2003 and the charged situation but certainly, that could not extend to wide spread damaging of the houses or house hold articles. The police was duty bound to prevent that, which they did not. That conduct of the Police cannot be appreciated.

41. As regards the delay in rehabilitation, the evidence goes to show that the Hindu organizations refused to co-operate with their demanding C.B.I. investigation into the massacre and it is only when the Government agreed to look into that matter atleast concerning the alleged involvement of other forces in the massacre on getting the legal opinion of the Advocate General, that the Hindu



organizations agreed for rehabilitation. There was delay in the rehabilitation. DW1, the then Chief Minister was of the view that rehabilitation could not be imposed on a section of the people of Marad by force and that the attempt of the Government was to find out amicable settlement, rather than again paving the way for blood shed. After consideration of the matter, the Commission is inclined to agree with that view of DW1.

42. The above discussion leads the Commission to the conclusion that there was only a symbolic presence of the police at Marad Beach on 2-5-2003 and even on several days before that. The Civil Administration by initiating some relief measures immediately after 3/4-1-2002, only indicated the symbolic presence of the State machinery. There were lapses on the part of the police and Civil Administration, Kozhikode in taking timely, preventive remedial action in preventing the massacre at Marad Beach, on 2-5-2003. But, the local Police acted effectively under the then Commissioner, Sri. T.K. VinodKumar in preventing the spreading of violence following that massacre though, it was unfortunate that household articles were damaged at Marad Beach in the presence of the police after the massacre on 2-5-2003.



THOMAS P. JOSEPH  
COMMISSION OF INQUIRY

## CHAPTER- VI-

### ***"THE FACTS AND CIRCUMSTANCES WHICH LED TO THE INCIDENTS AT MARAD BEACH, KOZHIKODE ON 2/5/2003 RESULTING IN THE DEATH OF NINE PERSONS, SERIOUS INJURIES TO MANY OTHERS AND DAMAGE TO PROPERTY".***

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In Chapter No. V, I stated how, a minor incident during the New Year day celebrations in the night of 31-12-2001 grew into communal riot on 3/4-1-2002 in which, two (2) Hindus and three (3) Muslims lost life, several persons from either side suffered injuries and houses were torched or otherwise destroyed. Going by the evidence, the communal rivalry started in the area way back in 1954 when a dispute between two individuals belonging to the two communities developed into a communal clash. Going by the documents produced by the Government and the evidence of BW2, there was a dispute between a Hindu by name Thambi and Muslim by name Ahmadkutty, who were residents of Naduvattom within Beypore Panchayat limits. While so, the Hindus took out a precession in connection with the temple festival and deviating from the usual route, proceeded through the front side of the Naduvattom Mosque. When



the procession reached in front of the Mosque, it is alleged, the processionists shouted slogans in praise of their Gods which was not appreciated by the Muslims who had gathered in the Mosque. A clash occurred, ultimately resulting in police firing resulting in the death of few persons. The official tally is four (4) while according to BW2, at least 10-13 Muslims died in the firing. From then onwards at least, there was communal division in the area. It is while so, that the minor incident occurred during the New Year Day celebrations on 31-12-2003. The A Parties alleged that the minor incident was exploited by C.P.I.(M)/I.U.M.L./N.D.F. to gain political mileage. According to the B Parties, communal violence started in the area ever since the R.S.S/B.J.P. started infiltrating into the Hindu Community in the area. They say that the area was peaceful until a group of Hindu migrants from Tanur took up residence at Marad. It is revealed from the evidence of AW6, Sri. T. Suresh, Secretary of the Arayasamajam representing the Hindu fishermen of Marad Beach that in fact, some Hindu families had shifted residence from Tanur about 30 years back and settled at Marad. He would say that in the coastal areas from Ponnani and reaching up to Puthiyangadi, there are no Hindu fishermen living since the last about 30 years. At Beypore, the Hindu fishermen are a minority. Rest are Muslim fishermen. According to AW6, the incidents during 2002-03 was the result of a long drawn plan to eliminate the Hindus from the coastal areas so that, the Muslims fundamentalists could dominate the area. He stated that there was no occasion for such large scale violence in



January, 2002 and that the minor incident that occurred during the New year Day celebration on 31-12-2001 was blown up.

2. In Chapter V, I stated from Ext.S13 series how the incident on 31-12-2001 developed into communal riot on 3/4-1-2002. Though the A Parties have a case that one of the Hindu fishermen was attacked and killed by his Muslim adversaries in the evening of 3-1-2002 which sparked off the communal riot, going by the documents produced by Police, the first murderous assault was by the Thekkethodi Suresan and others on Kunhikoya, a Muslim at 7.45 P.M. on 3-1-2002. At 8 P.M., Prabhu and others attacked and killed Yunus. This was followed by the Latheef and others attacking the house of Pushparajan, an R.S.S worker, and killing his cousin, Shinjith. That incident occurred at 8.10 P.M. on 3-1-2002. It was at about 8 A.M. on 4-1-2002 that while Aboobacker, referred in the preceding Chapter was allegedly going to prepare the grave for those Muslims killed the previous day, that he was fatally assaulted by Thekkethodi Suresan and others. The facts and circumstances which led to the murder of Kunhikoya at 7.45 P.M. on 3-1-2002 is also worth considering. The wordy altercation following the incident in the evening of 31-12-01 was settled on the spot itself. Even the wordy altercation between Sujith and Sakkir on 1-1-2002 also was settled. It is while so, that at about 7 pm on 3-1-2002, Sakkir assaulted Sujith. At 7.15 pm, some Hindu men questioned Sakkir. Learning that, the friends and relatives of Sakkir reached the spot and there was a tussle. At 7.20 P.M, both sides attacked each other

with swords, chopper, stick etc. This was followed by Thekkethodi Suresan and others attacking and killing KunhiKoya at 7.45 P.M. Therefore, the attack on Kunhikoya cannot be considered as the first onslaught in the series of incidents. The series of incidents that happened until then, snowballed into that murderous assault. Exts. F2 and F 45 to F47 are the copy chargesheets in Cr.Nos 5/02, 6/02, 2/02 3/02, and 4/02 registered by the Beypore Police for the murders on 3/4-1-2002. Ext. F 4 says about a bank announcement from the Marad Juma Masjid Mosque and following that, a group of people chanting 'Bolo Takbir' marching into the house of Pushparajan and killing Shinjith. The Beypore Police registered as many as 115 cases for the incidents which occurred on 3/4-1-2002. Those cases involved altogether, 422 accused at the time of registering the cases but, chargesheets were filed against 393 accused. Of them, going by the statement filed by the District Collector, Kozhikode, 213 accused were R.S.S./ B.J.P. workers while 78 were C.P.I. (M) men. 86 accused were I.U.M.L.workes. There were two I.U.M.L./ N.D.F. men while, two others were I.N.L./N.D.F. men. Four(4) accused were C.P.I.(M) / N.D.F. men while, 6 were I.N.L. men. There is no serious dispute that large number of activists of C.P.I.(M), I.U.M.L. and B.J.P./R.S.S. were chargesheeted in those cases though, according to those Parties /Organization, their activists were falsely implicated.

3. The Commission is called upon to report on the facts and Circumstances which led to the massacre on 2-5-2003. It follows, that it is within the scope of this Inquiry to identify what all facts and circumstances led or



contributed to the massacre on 2-5-2003. It is not very much in dispute that one circumstance that contributed to the massacre was the communal riot on 3/4-1-02. According to the IUML and Muslim organizations among the B parties, the killing of Aboobacker, very popular among the Muslim fishermen of the area for no reason whatsoever, at a time when he was going to prepare the grave for his Muslim brethren killed on 3-1-2002 pained the Muslim community and in particular, the youngsters. The N.D.F. units and I.U.M.L. units among the B Parties therefore, claimed that the relatives and friends of Aboobacker wreaked vengeance by retaliating on 2-5-2003. The C.P.I.(M) units among the B parties accused the State Govt. for adopting a policy of appeasement in favour of the fundamentalists and claimed that the communal clashes on 3/4-1-2002 was the result of that appeasement. The Govt. machinery failed to prevent the clashes. They claimed that the C.P.I.(M) activists were striving to spread peace and secularism. They accused N.D.F. and other Muslim fundamentalists for the massacre on 2-5-2003. The A Parties on the other hand, say that it was not merely a revenge for the killing of Aboobacker, but a case of the Muslim fundamentalist/ terrorist elements and organizations capitalizing the issue, instigating and assisting the close relatives and associates of Aboobacker to attack the Hindus. In the above situation, it is necessary to go into the circumstance which resulted in the communal riot on 3/4-1-2002. In understanding how that incident developed and culminated, it is necessary to go into the political situation that existed in the area.

4. BW3, the President of Beypore Grama Panchayat during 2000-05 and a C.P.I.(M) activist stated that the



Beypore Panchayat was formed in 1936. That panchayat came into existence in the present form in 1963. There was election to that Panchayat on political basis since 1979 onwards. Since then, C.P.I.(M) has been (and still is) ruling the Beypore panchayat. During 2000, the total number of wards in the panchayat was 20. In the election in 2000, the C.P.I.(M) candidates won in 10 wards while its ally, the Janata Dal won from 2 wards. The I.U.M.L. had 4 seats, the Congress (I) had 3 seats and the B.J.P. had 1 seat. Thus, the Left Democratic Front (L.D.F.) led by the C.P.I.(M) got majority and ruled the Panchayat. According to BW3, the B.J.P. formed an alliance with the United Democratic Front (U.D.F.) in 2000. In the election to the State Legislative Assembly from Beypore Constituency in the year 1991, the B.J.P. had forged alliance with the U.D.F. to defeat the C.P.I.(M) candidate. The C.P.I.(M) candidate won the election by a margin of about 7000 votes. In the election to the State Assembly in 2001 also, the B.J.P. had forged alliance with U.D.F. but, the C.P.I.(M) candidate, Sri.V.K.C. Mammed Koya (BW1) won by a majority of 5071 votes. The version of BW3 is that C.P.I.(M) was preventing all sorts of communal activities and divisions in Beypore Panchayat area. As regards the communal clashes in Beypore Panchayat, the witness claimed that after the Police firing of 1954, there was communal clashes in Beypore since 1974. In 1974, some Hindus migrated to Marad from Tanur side. In 1982, there was a dispute regarding the burial of the body of one Biyyathukutty at Marad, when that was objected by the R.S.S. and Arayasamajam workers. The witness was of the view that since then, there was

constant communal clashes and riots in the area. Along with that, there were political clashes and murders. On 12-1-1993, the R.S.S. men murdered Peroth Rajeevan, a D.Y.F.I. worker. Ext. B 83 series are produced to show that case was registered against R.S.S. men for the murder of Sajeesh, a C.P.I.(M) activist at Marad. The witness claimed that learning about the communal riot on 3-1-2002, himself and others rushed to Marad Beach, but their vehicles were blocked and attacked by the R.S.S. men. He claimed that the C.P.I.(M) participated in the peace initiatives and even set up secular relief camps. BW1, the M.L.A. from Beypore Assembly constituency said that mostly, People of Marad are fishermen and only few were fortunate to have education upto the 10<sup>th</sup> standard, with nobody employed in Govt./private institutions. The financial condition of the people of Marad was very poor. The Muslim fishermen are controlled by the Mahal committee and the Hindu fishermen are controlled by the Arayasamajam. He claimed that after the first communal riot on 3/4-1-2002, a peace meeting was convened in Beypore panchayat office on 5-1-02. That was attended by the leaders of the various political parties and officials like the R.D.O. Relief Committee was formed under the auspices of the Beypore Panchayat with the District Collector, Kozhikode as chairman and R.D.O., Kozhikode as Convener. The Committee met several times. Ext.B85 is the Minutes for Seven (7) meetings. It is claimed that all the political parties except, the B.J.P. attended those meetings. The committee decided to collect funds for repairing the houses. There were two relief camps, one for the Muslims organized by the Mahal Committee and the other





for Hindus, organized by the Arayasamajam. The C.P.I.(M) started a secular relief camp in the house of one of its local leaders, Balaraman (BW2). Thus, the C.P.I.(M) was in the forefront to propagate and protect secularism in the area. BW2 is a C.P.I.(M) activist of Beypore panchayat. He traced the history of communal clashes in the area to the Naduvattum police firing of 1954. BW2 would say that the stand of the Communist Party (then, undivided) was that the procession was taken along the front of the Mosque intentionally, to create communal division. He also referred to the Hindu families migrating to Marad from Tanur and about the communal clashes that followed. He claimed that after the riots in January, 2002 the C.P.I.(M) started relief camp in his house. The witness also referred to the political murders the area saw in the meantime and the elections on Political basis to the local authority. AW34, state Secretary of the B.J.P. and resident of Naduvattom about 3 K.M away from Marad Beach claimed that the C.P.I.(M) had upper hand in the Beypore Panchayat and Beypore Assembly Constituency right from its inception, people were unhappy under the C.P.I.(M) rule over the panchayat as the C.P.I.(M) adopted partisan attitude even in the matter of development schemes, people wanted a change and thus, with the support of people of different communities, P.P. MoideenKoya (H party No.2), the candidate of the I.U.M.L. defeated the C.P.I.(M) candidate in ward No.20 (which takes in Marad) in the local body elections in 2000. He admitted that there was a Hindu - Muslim alliance. The C.P.I.(M) feared that the alliance, would seal its chances. To ward off that possible alliance, the C.P.I.(M) indulged in communal riot on

3/4-1-2002. The witness referred to the Political murders in the area involving the C.P.I.(M), B.J.P./ R.S.S. and I.U.M.L. activists. AW38, a resident of Marad and R.S.S. activist, claimed that the riots on 3/4-1-2002 were sponsored by the C.P.I. (M) and the N.D.F. and that the B.J.P./R.S.S. had no role in it. He produced some documents which according to him, probalised his contention that the B.J.P/ R.S.S men were not behind those incidents. CW23, Sri. P. Parameswaran referred to the long history of communal division in the Coastal areas of Kozhikode District and stated how, in the Muslim dominated areas people belonging to that community had put up restrictions on the members of the Hindu Community even in the matter of religious observances.

5. It has come in evidence that the people of Marad are socially, educationally, and financially backward. Their main avocation of life is fishing operations and that too, using conventional methods. Evidence collected by the Commission revealed that the mental condition of persons engaged in conventional from of fishing in the Sea will be connected to their riskful, hazardous dons job. The evidence revealed that the average educational qualification of those who are accused in the incidents of 2002 as well as 2003 is 5<sup>th</sup> standard. It is also in evidence that politically, the people of the locality had taken sides, the major party in the area being the C.P.I.(M). Most of the Muslims were the activists of C.P.I.(M). Some of the Muslims were supporters of the I.U.M.L and very few were supporters of the Congress. It is while so, that the B.J.P./R.S.S. tried to set its foot in the area. Gradually, the



R.S.S./B.J.P. took control over the Arayasamajam which represented the Hindu fishermen. These facts are not very much in dispute. It is also a fact that right from the time election was held to the local Panchayat on political basis in 1979, the C.P.I.(M) either on its own, or with the help of its allies was winning the Panchayat and even the Beypore Assembly Constituency, with U.D.F. and the R.S.S./B.J.P. opposing the C.P.I.(M). Concededly, there was some sort of alliance between some of the U.D.F. partners and the B.J.P. in the Assembly / Panchayat elections since 1991 and that alliance found result in word No.20 of the Panchayat in the 2000 elections. The C.P.I.(M). candidate had to eat the dust at the hands of the I.U.M.L. candidate who had the support of the B.J.P./ R.S.S. BW2 conceded that I.U.M.L. leader, Mayin Haji (AW3) had secured 600 votes more than BW1 (C.P.I.(M). candidate ) from Beypore Panchyat, in the Assembly elections in 2001. If the CPI(M) Candidate won the Beypore Assembly election in 1991 with a majority of around 7000 votes, that majority was reduced to 5071 in the year, 2001. Ext. F4 (a) also shows that a UDF - BJP / RSS alliance in the Panchayat would be a formidable enemy for the CPI(M). It is quite possible in the light of Ext. F4 (a) also, that the C.P.I.(M). considered the alliance between the UDF partners and the BJP as a possible political threat to it in future. It is true that it has come in evidence that in spite of such alliance, the CPI(M) candidates won the panchayat, Assembly and even the later Lok-Sabha elections with convenient majority. That does not necessarily mean that the C.P.I.(M). was unconcerned with the political threat created by the new alliance. It is difficult to say that



it was because some members of the Hindu Community migrated to Marad from Tanur, that Marad area become communally divided. There is evidence to show that even before that, at least in the coastal areas of Kozhikode district, communal division had set in, whatever be the motive behind. Ext. F38, the report revealed that in the 1984 incident, the Communist Party took up the cause of the Muslims. The evidence before the Commission shows that whether it be the undivided Communist party or later the C.P.I.(M)., they were supporting the Muslim Community on every issue.

6. It has come in the evidence that one section of Muslims put up a structure in Marad Beach near the temple and adjoining the sea wall. Alleging that the construction is without permission and intended to be used as a Mosque, the Arayasamajam workers resisted it. According to them, the C.P.I.(M). led Panchayat Committee did not take any action against the unauthorized construction. Ext. C93 is the photocopy of the file No. C1-2807/00 summoned from the Beypore Panchayat office. It is revealed from Ext. C93 that on 13-11-2000, the Sub Inspector, Beypore reported to the Panchayat Authorities about the unauthorized construction and the possibility of that being used as Mosque by the A.P. group (A.P.Aboobacker group). He also pointed out the law and order problems that could arise. On 14-11-00, the Secretary of the Panchayat directed enquiry and issued notice to stop the construction. On 15-11-00, the official of the Panchayat after enquiry, reported that the construction is unauthorized, violated the coastal regulations



and that direction was given to stop the construction. On 16-11-00, the Secretary of the Panchayat issued notice to Sri. Aboobacker Mussaliar, President and Sri. Hamsa Mussaliar, Secretary of the SKSYS to demolish the structure and report compliance. Sri. Hamsa Mussaliar replied that they had permitted construction of a temporary shed in their property for the use of fishermen to keep their implements, the fishermen were unaware that permission of the Panchayat is required and that if the structure is removed, that will cause inconvenience to the fishermen. The staff of the Panchayat reported on 7-12-00 that it was not a temporary shed, it was a permanent building constructed eleven (11) meters away from sea wall and suggested further action for its removal. On 8-12-00, the Secretary of the Panchayat ordered removal of the structure. The Sub Inspector, Beypore was requested to take necessary action. On 28-12-00, the Secretary of the SKSYS offered to remove the structure. But, the file does not show that any further action was taken by the Beypore Panchayat ruled by the C.P.I.(M). BW3, President of the Panchayat committee during 2005 and C.P.I.(M) leader admits that there was no sanction from the Panchayat for the construction but, he does not know whether, any action for its removal was taken by the Secretary. It is quite unlikely that BW3 was unaware of the file. Fact remained that the building still existed.

7. Though, AW26 (Sri. Kanthapuram A.P. Aboobacker Mussaliar) was pleading ignorance about that structure and its use as a Moaque, there is evidence to show that the structure is really being used as a Mosque. Ext. C94 is



the photocopy of letter dt. 5/05 from AW15, State Secretary of the C.P.I.(M) to the Chief Minister of the State. It is revealed from Ext. C94 that AW26 had addressed a letter to AW15 seeking his intervention to open the 'Mosque' for prayers and AW15 requested the Chief minister to do the needful in the matter. There is thus reason to think that the C.P.I.(M) ruled Beypore grama panchayat had been softpedaling the issue regarding the unauthorized construction in a bid to appease the concerned group. It is only quite natural that such stand of the Communist party and later, the C.P.I.(M) gave sufficient space for the B.J.P./R.S.S. to have its foot hold in the Hindu Community in the area and particularly, the Hindu fishermen under the Arayasamajam. There is evidence to show that there were several political clashes during 1999 and before at various places in Beypore Panchayat with the BJP/ RSS on the one side and either the CPI(M) or the IUML on the other side. Few persons lost their lives and several persons were wounded (see Exts. F42 and F43). There were also communal clashes between the Muslims and Hindus within Beypore Panjayat area on 6-12-2001 and the subsequent days (see evidence of BW1). It is in that background that a minor incident occurred between the two young men of the Hindu/ Muslim communities during the New Year Day celebrations in the night of 31-12-2001. Going by the official records and oral evidence, that minor incident was almost settled and there was nothing which remained for a flare up like what happened on 3/4-1-2002 as revealed by Exts. F48 series. Evidence revealed that at about 8.10 P.M. on 3-1-2002, Latheef and others belonging to the Muslim community attacked the house of one Pushparajan, an R.S.S. worker of Marad Beach. There



was no reason why at that point of time, somebody should have gone in search of Pushparajan and attack his house. For, Pushparajan was not involved in any prior incidents between 31-12-2001 and 3-1-2002. Sensing danger, Pushparajan saved himself by hiding in the water tank of his house. The assailants however, unable to find Pushparajan, finished his nephew, Shinjith, a boy aged about 18 years who also was not involved in any incident. It is therefore, certain that the assailants were targeting Pushparajan, an R.S.S. worker. BW2 admitted that Sainudeen, one of the accused in the case for attacking the house of Pushparajan and murdering Shinjith is a C.P.I.(M) activist of Marad. It has come in the evidence of FW1 that Pushparajan, along with few other B.J.P./R.S.S. workers were accused in Cr. 45/99 of Beypore P.S. for the murder of C.P.I.(M) activist, Sajeesh at Marad Beach. (see also Ext. B 83 Series) FW1 who supervised the investigation of the cases relating to the incidents on 3/4-1-2002 claimed that Pushparajan had no involvement in any incident at Marad Beech from 31-12-2001 to 3/4-1-2002 and that the only reason for attempting at the life of Pushparajan was that he was accused in Cr. 45/99 for the murder of C.P.I.(M) activist, Sajeesh. Shinijith, 18 year old cousin of Pushparajan murdered in the house of Pushparajan was not involved in any case at all and was accidentally seen by the assailants in that house. There is therefore, strong reason to think that the C.P.I.(M) activists were utilizing the occasion to settle scores with Pushparajan, their political adversary. Ext.S13 contains reports (at P.64) which indicate that the C.P.I.(M) was unhappy about the alliance between the U.D.F. parties and



the R.S.S/B.J.P. in Beypore panchayat That report dt. 9-10-2002 stated that the C.P.I.(M) local leaders were trying to make the people believe that they were the protectors of the Muslims of the area. If any public function or demonstration of the C.P.I.(M) took place at Vellayil area (that place is near Marad), the demonstrators shouted provocative slogans against the Hindus to mentally harass the R.S.S/B.J.P. workers and appease the Muslims. Due to that, the R.S.S. workers had strong enmity against the C.P.I.(M) activists. Regarding their activities in Vellayil Beach, it was reported that Arayasamajam and the Mosque committee of that area were in good terms and were settling issues amicably among themselves, but that was disliked by the C.P.I.(M) activists. The C.P.I.(M) was quite unhappy about that development and wanted to take political mileage out of every minor incident reported from the beach, to establish their influence particularly, among the Muslim community. The C.P.I.(M) was not showing enthusiasm in conciliation and instead, were waiting for an opportunity to precipitate issues in the communally sensitive Vellayil Beach area. If that be the situation in Vellayil Beach area, I find no reason to think that different was its attitude in Marad Beach or other parts of Beypore Panchayat particularly, in the political scenario I stated above. There is evidence to show the C.P.I.(M) activists were involved in the incidents at Marad Beach between 31-12-2001 and 4-1-2002. I stated from the official records that 78 of the 393 accused are C.P.I. (M) activists. It is admitted by AW15 also that CPI(M) activists are chargedsheeted for the incidents on 3/4-1-2002. According to him, it is a false implication. Prima facie, it is difficult to



think so. CW3 has given evidence that the CPI (M) and the BJP were trying to exploit the sensitive nature of people of Marad. He explained how, one group was spreading rumours about the opposite group to widen the rift. I do not forget that after the incidents on 3/4-1-2002, the C.P.I.(M) activists or C.P.I.(M) controlled local body had called for peace meetings or set up 'secular' rehabilitation camp admitting people of different Communities. That does not rule out the involvement of C.P.I.(M) activists in the incidents on 3/4-1-2002.

8. There is no direct evidence to prove that the C.P.I.(M) as a Party is involved in the first communal riots on 3/4-1-2002. But, it is difficult to expect direct evidence for that. For, no Party activist involved in the incident will be inclined or willing to speak about that. It has come in evidence that Beypore panchayat and Marad area saw several, fierce political clashes and murders between the C.P.I.(M) or I.U.M.L. activists and B.J.P./R.S.S. activists. There is reason to think that those clashes and murders were intended at gaining or retaining political upper hand in the area. AW3 and AW38 deposed that the communal riots in January, 2002 was sponsored by the C.P.I.(M) which used its Muslim cadres for the incidents I stated above, the evidence of CW3 who conducted a thorough study of the matter, that the C.P.I.(M) and the B.J.P. were trying to exploit the sensitive nature of the people of Marad. CW3 stated that rumours intended at creating tension were spread by the political activists against their adversaries. BWs 2 and 3 accused the BJP/RSS for the violent incidents on 3/4-1-2002. BW2 who is a local

leader of the C.P.I.(M) was accused in the case for attempt on the life of an R.S.S. worker, Chambayil Gireesh (he was acquitted in that case). BW2 figured as accused in the FIR registered in connection with the death (alleged to be a murder) of an R.S.S. activist, Manoj. BW3, another local leader of the C.P.I.(M) and the President of the Panchayat and few other C.P.I.(M) activists were accused in SC. No. 75/01 for attempt on the life of another R.S.S. worker, Soman by throwing bombs. Viewed in the above backdrop, it is only reasonably to think that the C.P.I.(M) activists were also instrumental in the minor incident that occurred during the New Year Day celebration on 31-12-2001 developing into a major communal issue to create communal polarization

9. Next is the issue regarding alleged role of I.U.M.L. and B.J.P./R.S.S. activists. I stated that 213 B.J.P./R.S.S. activists and 86 I.U.M.L. activists are involved in the cases relating to the communal riot on 3/4-1-2002. The A Parties examined AW38 to show that the B.J.P./R.S.S. had no role in the incidents in January, 2002. They produced some documents also to support that claim. I have considered that evidence. But, it is not convincing. The reasons stated by AW38 are not sufficient or convincing enough to rule out the involvement of B.J.P./R.S.S. men. There is no much dispute that the B.J.P./R.S.S. had strong foothold in Marad Beach at least among the Arayasamjam activists. Next to the C.P.I.(M), the largest Political Parties in and around Marad Beach and elsewhere in the panchayat are the B.J.P./R.S.S. and the I.U.M.L. Evidence revealed that in all the political clashes



the area saw, the B.J.P./R.S.S. activists were on the one side and either, the C.P.I.(M) or the I.U.M.L. activists were on the other side. These Political Parties, facts, evidence and circumstances revealed were trying either, to retain, or gain or regain upper hand in the area. Kunhikoya, killed on 3-1-2002 is a close relative of H party No.2 (P.P. Moiteen Koya), a local leader of the IUML. According to AW3, the IUML leader, Kunhikoya was a sympathizer of the IUML while, Yunus killed on 3-1-2002 was an activists of that party. Those murders also would have provoked the IUML activists to retaliate. The murder of Kunhikoya and Yunus belonging to the Muslim Community and that of Shinjith and Kunhimon belonging to the Hindu Community took place between 8 P.M. and 9 P.M. on 3-1-2002. According to FW1, it is correct to say that there was sufficient arrangements made by the assailants to come armed on short notice. Weapons were later recovered from the houses/ compounds of the accused. It is difficult to believe that such large number of C.P.I.(M), I.U.M.L. and B.J.P./R.S.S. men got involved in such a major issue without the blessings of atleast, their local leadership. It was political interests and other vested interests that developed the minor incident on 31-12-2001 which was almost settled, into a major communal issue and ultimately, resulting in the killing of five(5) persons on 3/4-1-2002, injuring several others and damaging several houses. That incident certainly, was on of the circumstances that led to the massacre at Marad Beach on 2-5-2003.

10. Yet another unfortunate situation revealed by the evidence is the long delay in prosecuting the accused



involved in the 115 cases registered in connection with the riot on 3/4-1-2002. Almost all witnesses, except ofcourse DW1, the then Chief Minister clamied that there was unjustified delay in the Government granting sanction to prosecute the accused in those 115 cases which enabled the accused involved in those cases to come out on bail, indulge in conspiracy and other anti-social activities and gave occasion for the close relatives of some of those killed in the incidents of 2002 to wreck vengeance for such killings. According to DW1, there was no intentional delay. The delay was due to the unavoidable procedure.

11. AW21, the then Director General of Police claimed that there was long delay in filing the chargesheets in the cases relating to the first communal riot. The Police department on its side, wanted to file chargesheets within 90 days. Investigation was completed within that period and request was made to the State Government to accord sanction. There was much dealy in granting the sanction. Aw32, the then Commissioner of Police, Kozhikode stated that everything possible on the side of the Police was done for obtaining prosecution sanction but there was delay. AW32 produced Exts. H37 to H43 to prove the steps taken by him to obtain sanction, at the earlist. The delay, according to AW32, was one of the reasons which resulted in the massacre on 2-5-2003. FW1, Sri.T. Ramraj was supervising the investigation of the 115 cases registered in connection with the first communal riots. Ext.F1 series are the correspondence seeking prosecution sanction ( since in those cases, offence u/S.153 A I.P.C. was involved). He claimed that the investigation of those





cases was completed by 31-3-2002 and the C.D. file of the 102 cases were submitted to the Public Prosecutor for legal opinion as offence u/s.153 A I.P.C. was involved. On 6-4-2002, the then Commissioner of Police (AW 32) addressed the D.G.P. for sanction. On 8-4-2002, the file of those 102 cases with factual reports in each case were submitted to the Police headquarters. On 15-11-2002, prosecution sanction was received. But, a joint sanction order was received for 100 cases of Beypore police station (to be filed in various courts). Separate sanction orders were received for the cases of Feroke and Panniyankara Police stations. Thereon, FW1 consulted the Public Prosecutor on the propriety and legality of producing joint sanction order for 100 cases. The Public Prosecutor opined that separate sanction order is required in each case. On 29-11-2002, the Commissioner of Police addressed the Director General of Police for separate sanction orders. On 3-1-2003, the D.G.P. addressed the Home Secretary in that regard. On 8-1-2003, the Home Secretary opined that joint sanction is sufficient. On 4-3-2003, the Circle Inspector, Cheruvannoor had Produced the joint Sanction order in one case before the J.F.M .C-V, Kozhikode. Hence, that Officer applied to that Court for certified copies of the joint sanction order. That application was rejected by that the Court as the G.O. filed in that Court did not even appear to be the original (there cannot be a copy of a copy) The Circle Inspector, Cheruvannoor gave a report regarding that, to the Commissioner of Police. On 4-5-2003, the Home Secretary opined that joint sanction is sufficient. FW1 claimed that while so, he was transferred to Kannur on



30-12-2002. Later, individual sanction in each case was received and following that, after the massacre on 2-5-2003, chargesheets were filed in those 102 cases on 13-5-2002 (it is admitted that some of the accused in Crime No:82/03 of Beypore police station (Cr. 116/CR/03 of C.B.C.I.D.) are accused in the cases relating to the incidents on 3/4-1-2002 also). In the meantime, the accused in the cases relating to the incidents on 3/4-1-2002 who were in judicial custody got released on bail after 90 days of their arrest since the investigating agency could not file chargesheets (for want of proper sanction orders) within the said period. I have narrated in chapter V how, some of those accused were instigated and influenced by the fundamentalist elements to retaliate on the Hindus and how, even the steps taken against those accused u/s 107 CrPC did not yield the result.

12. The cultural /literary/political figures and ideologists examined before the Commission lamented on the lethargy on the part of the State Government in Prosecuting the culprits involved in the 1<sup>st</sup> communal riot without delay. It required a big hue and cry for the State Government to do that, even after the massacre on 2-5-2003. All of them stated in one voice that the failure of the State government to prosecute those culprits without delay and the consequent delay in the trial of the cases emboldened the fundamentalist/terrorist elements to carry on with their communal activities, conspire, plan and execute the massacre on 2-5-2003. Sri.M.T. Vasudevan Nair (CW 19) opined that it appeared as if it required another massacre (on 2-5-2003) for the State Government to prosecute the

culprits involved in the earlier communal riot. DW1, the then chief Minister stated that the Law Department was of the opinion that joint prosecution sanction was sufficient in respect of all the 102 cases, and that there was some procedural delay in granting sanction. It is not clear on what legal opinion, that decision if any, was taken by the Law Department. It is trite law that in all cases where offence u/s. 153 A of the Penal Code is involved, sanction for prosecution from the State Government is required. The various Authorities on the point say that the sanctioning authority should apply its mind to the facts and circumstances of the particular case before granting sanction. The Law Department, Home Department or any other Department involved in the process of granting sanction should have known this basic position of law and that the order of sanction was required to be produced in each cases. They should have in the normal course, learnt the difficulty that will be caused, apart from the legal flaw, if a joint sanction order is issued, that is produced in one case and then, certified copies are to be obtained to be produced in the remaining 99 cases. They should have learnt the delay that process alone would cause. The concerned departments were not very alert on the issue. The State Govt. cannot shirk its responsibility in this matter. Evidence revealed that though the investigation of the cases relating to the first communal riot was completed by 31-3-2002 and since 6-4-2002 onwards, the local Police authorities were clamouring for prosecution sanction, proper prosecution sanction was granted after long delay and ultimately, it was only on 13-5-2003 that



chargesheets were filed in those 102 cases which even involved murder. Since chargesheets could not be filed within 90 days of the commission of offence, all the accused involved in those cases including murder cases, were released on bail. The A parties have a case that prosecution sanction was purposely delayed by the U.D.F. Government at the instance of the I.U.M.L., a Partner in the ruling coalition. The Commission has no evidence before it to say, either that the delay was intentional or, that it was at the instance of the I.U.M.L. *But, from the facts and circumstances, the Commission can definitely reach the conclusion that there was unjustified delay on the part of the state Government in granting proper sanction for prosecution of the accused in the cases relating to the first communal riot.*

13. How that delay had any effect on the subsequent incident is the next question. It is said, delayed justice is denied Justice. I stated from the evidence that five (5) persons lost lives, several persons were injured and several houses were either torched or otherwise destroyed during the riot on 3/4-1-2002. Certainly, the victims and their relatives were aggrieved. I also stated from the evidence that Aboobacker, killed on 4-1-2002 was a popular figure in the Muslim community of Marad Beach. Thirteen (13) of the accused in crime No.82/03 of Beypore Police station (Cr. 116/Cr/3 of C.B.C.I.D.) are close relatives of the three Muslims killed in first riot. As per Statement dated 24-1-2004 filed by the Commissioner of Police, Kozhikode, seven of the accused in cr.82/03 (Cr. 116/Cr/3 of C.B.J.P.C.I.D.) are close relatives of Aboobacker. Bijili, one of the



accused is the son and Mohammedali, another accused is the brother of the said Aboobacker. Three of the accused in cr.82/03 are close relatives of Yunus, killed on 3-1-2002. Though, none of the eight (8) Hindus killed on 2-5-2003 were accused in any case relating to the riot on 3/4-1-2002, it is revealed from the statement filed by the Commissioner that eight persons who suffered injuries in the incident on 2-5-2003 were accused in some of the cases relating to the incidents on 3/4-1-2002. Of the said eight persons, three were involved in murder cases. Naturally, since the said persons found that those who were instrumental in the killing of Aboobacker and others were not placed before the Court for trial, they thought that justice was denied to them. That ignited feeling of revenge in their minds. That gave space for fundamentalist/terrorist elements to step in. Ext. C 22, the copy of documents received from the office of the Kerala State Human Rights Commission contained the copy to letter dt. 24-1-2003 addressed by AW29 to AW 32. It is stated in that letter that Bijili was found active among the Muslim fundamentalist elements (NDF/PDP) in Marad area and that he was being instigated for retaliation on the Hindus.

14. I stated how, the communal division started in the area in the year 1954 and the socially, educational and financially backward fishermen of Marad Beach were communally divided by vested interests to protect or prop up their personal interests. Political clashes and murders marred the peace of the area. Then came the communal riot on 3/4-1-2002. Though tally wise, number of killings



was more on the Muslim side by one, the Hindu side also came close by, with two of their men loosing life. There was disturbing trend at Marad following the killings on 3/4-1-2002. The enmity between the two communities continued with added vigour. Both sides acquired weapons for offence or defence. Some of the relatives of Aboobacker were bent upon avenging his killing. The Hindu side also may not have been sitting quiet. They apprehended retaliation from the other side at any time. In fact, it is stated in Ext. S12 that some R.S.S. men were stockpiling weapons in the building and business places of a house belonging to an R.S.S. activist, to protect the Hindu families in the event of a communal situation. That was the most opportune moment for the fundamentalist/terrorist elements to act. With their own agenda in mind, they instigated and assisted the relatives of Aboobacker to wreak vengeance for his killing, certainly to open up the issue again. This is revealed from various Intelligence Reports and other oral evidence produced before the commission. Witnesses have given evidence how certain fundamentalist elements were operating in Marad Beach and giving trainings to their cadres. The delay in prosecuting the culprits involved in the first communal riot thus gave room for fundamentalist/terrorist elements to step-in and poison the minds of the poor fishermen who were aggrieved at the killing of Aboobacker and others. That is how, the delay in granting prosecution sanction contributed to the massacre on 2-5-2003. Thus, it is revealed that the minor, insignificant incident that occurred in the course of the New Year Day celebrations at Marad Beach in the night of 31-12-2001 was utilized by





the activists of the C.P.I.(M), the I.U.M.L. and the B.J.P./R.S.S. with the blessings of atleast, their local leadership and that contributed to the communal riot on 3/4-1-2002 which was one of the circumstances that led to the massacre on 2-5-2003, the unjustified delay caused by the State Govt. in prosecuting the culprits of the communal riot on 3/4-1-2002 emboldened and enabled the fundamentalist elements to carryon their divisive activities, the delay in prosecution provided room for the fundamentalist elements to poison the mind of the close relatives of some of the Muslims killed on 3/4-1-2002, and to carry out their own agenda, instigated them to indulge in violence.



THOMAS P. JOSEPH  
COMMISSION OF INQUIRY

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## CHAPTER - VII

### *WHETHER, THERE WAS INVOLVEMENT OF ANY EXTERNAL OR INTERNAL ORGANIZATION OR ORGANIZATIONS IN THE PLANNING AND EXECUTION OF THE INCIDENT?*

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The A parties alleged and believed, that the massacre at Marad Beach on 2-5-2003 was not a revenge for the killing of the three Muslims and in particular, Aboobacker on 3/4-1-2002 but, it was a case of Muslim fundamentalist / terrorist elements and organizations, some of them having foreign links using the occasion to eliminate the Hindu community from the Marad Beach. It is their further case that certain political/ business interests were also actively behind the incident. They targeted the N.D.F. as the organization and the I.U.M.L. as the political party behind the massacre, with communal, political and business interest in mind. The CPI(M) organizations among the B parties also stated that the NDF is behind the massacre. The B Parties 2 and 3 and the Civil/ Police Administration stoutly denied these allegations and claimed that the massacre on 2-5-2003 was purely a murder, the motive being the revenge for the killing of Aboobacker at Marad Beach on 4-1-2002. The Crime Branch C.I.D. Unit, Kozhikode led by AW19, Sri. T.V. Kamalakshan, Superintendent of Police investigated into the massacre on 2-5-2003 and filed the

chargesheet on 31-7-2003. Ext.C9 is the copy of the chargesheet. Ext. C10 is the copy of memo of evidence. As per Ext.C9 and evidence of AW19, about 90 men among the 148 accused implicated in that case, participated in the execution of the massacre. They emerged from different sides at Marad Beach at about 6.15 P.M. on 2-5-2003 and unleashed attack on every Hindu whom they found. The Crime Branch concluded that the motive for the crime was the killing of Aboobacker on 4-1-2002. In Ext. C10, the memo of evidence, it is stated that the accused entered into the criminal conspiracy at the Marad Juma Masjid in May, 2002, at Beypore on 8-8-2002 and again, at Marad on 16-8-2002. Going by Ext. C 10, the Crime Branch CID unit wanted to establish that some of the accused were undergoing training in 'Karate' on Fridays in the house of accused, Delhath at Marad Beach. This conclusion of the CBCID is not acceptable to the A parties who maintained that the CBCID had not investigated into the involvement of other forces in the massacre. According to the A parties, the investigation of the CBCID was confined to the accused booked by them and the conspiracy among them.

2. The Commission issued notice under section 8 B of the Act to B party No.2 and the local units of the IUML in view of the materials placed before the Commission regarding their alleged involvement in the massacre on 2-5-2003. The Commission examined CW. 32 who proved Exts. C37 and C38, statements of the accused in Crime No. 367/03 of Nooranad Police Station. Going by Exts. C 37 and 38 and evidence of CW32, he arrested two of the accused in that case who were carrying iron rod, petrol in bottles and plastic can (which



were seized from them) and on questioning, it was revealed that they carried explosives for the purpose of causing communal division by destroying certain places of worship and the Idol of Sree Narayana Guru. Going by the statements, those accused were NDF activists and were acting as per direction of their leaders. CW. 35 proved Exts C57 to C63. As per Exts. C57 to C63, country bombs were seized from the Juma Ath Mosque in Meppayur Town on 16-12-1996, 4 of the accused connected with that were NDF activists and those country bombs were made to attack one Surendran, a scheduled caste for marrying a Muslim girl by name, Sulekha. Going by the statement of the accused, they were instructed by the local leader of the NDF to attack Surendran. (Ext. B151 is the copy of judgement showing the acquittal of the accused for want of evidence to connect them with the weapons). CW. 40 proved Exts. C86 to C88 in connection with Crime No. 257/96 of Perambra police station for offences punishable under sections 452, 427, 324, 307, 120 B and 109 read with 34 I.P.C. and sections 3 and 5 of the Explosive Substances Act. Ext. C88 is the copy of the statement of the first accused therein, Kunhumammed Faisi, who claimed to be the area Convenor of the NDF. That case was registered against Kunhumammed Faisi and others for abetting and attempting to cause the death of Surendran, a Scheduled caste for marrying a Muslim girl. CW34 investigated Crime No. 62/98 of the Kasaba Police Station. It is revealed from his evidence that he questioned A.T. Muhammed Ashraf (BW29) and Subair (BW28), accused in Cr. 62/98 and recorded their statements. Ext. C.49 series and C50 are the copy of the



said statements. Their statement is to the effect that they had harboured Ooma Babu, the Al-Umma leader who was involved in the Coimbatore Bomb Blast case. It is stated in Ext. C43, copy of seizure mahazar that while searching the body of Ashraf (BW29), an Indian passport and gun were seized. Ext. C49 series is to the effect that Abdul Nazar Madani (BW30), now detained in the Central Prison, Coimbatore in connection with the Coimbatore bomb blast case had sent Ashraf (BW29) to Pakistan for training under the ISI, Ashraf had gone upto Bangkok and unable to get US dollars, had to return. Ashraf who is a resident of Marad claimed that he was the unit secretary of the NDF. Ext. C50, statement of Subair (BW28) was to the effect that he was a member of the NDF. Ext. C51 is the statement of one Harris recorded by CW.34 to the effect that NDF was giving training in the use of fire arms at Marad, NDF was getting foreign funds and that the NDF had connection with Al-Umma. Going by Ext.C46 and 48, CW. 34 had, in the search in the house of Ashraf (BW29) seized the flight tickets and immigration clearance certificate of the said Ashraf for his travel from Thiruvananthapuram to Bangkok. Exts. C52 and 53 are copy of the statements of Abdul Salam & Muhammed recorded by CW.34 which also are to the effect that they were NDF activists of the area. Ext. C45 is the statement of Ayyappan, accused in Cr. 62/98. He claimed that he was making firearms (for the use of some fundamentalists). Ext. C56 is the copy of draft chargesheet in Cr. 62/98. Going by the above statements and other documents, the activists of Al-Uma of Tamul Nadu, the PDP and the NDF were collecting weapons



and were engaged in fundamentalist/terrorist activities. CW.36 proved Exts. C64 to 67. CW.36 investigated Crime No. 375/95 of Kuttiadi police station for offences under sections 201, 286, 304 A IPC, section 9 (1) of the Explosives Act and Sections 3 and 5 of the Explosive Substances Act. The allegation was that the accused therein, claimed to be SIMI activists manufactured bombs in the Haul of Juma Ath Mosque, Kuttiadi on 13-12-95 meant to kill the accused in 'Aboobacker Master Murder Case' in case those accused (RSS men) were acquitted by the Court. The country bomb accidentally burst in the course of its manufacture and one of the makers succumbed to the injuries. CW.38 proved Exts. C72 to 76 in connection with Crime No: 1039/03 of Kannur Town police station against the accused therein, claimed to be NDF activists for attacking the office of the 'Rashtra Deepika' at Kannur on 10-12-2003 for publishing report against the NDF that the NDF is engaged in desecrating places of worship. CW.39 proved Exts. C77 to 84. Going by Exts. C77 to 84 and evidence of CW.39, the then Sub Inspector, Manjeri he learned about the explosion in the compound of Green Valley Foundation, Manjeri, in the morning of 8-7-2001, reached there, found remnants of explosives, prepared mahazar and recorded statement of the witnesses. According to the witness, the Green Valley Foundation is controlled by the NDF. Material objects collected from the scene by the Scientific Expert were sent to the laboratory for examination and the report of examination revealed that Nitroglycerine which is an active principal of dynamite, was detected in those material objects. According to the





witnesses, the explosion occurred when the secret unit of the NDF was testing a timer device. It is also revealed from Exts. C77 to 84 and the evidence of CW 39 that the 26 and odd acre compound of the Foundation is well protected by barbed wire fencing on all sides, the NDF men stood guard there, day and night and that NDF activists were getting training in that Foundation. (That case is still under investigation). CW.41 proved Ext. C89 to C.92 in connection with Crime No. 220/04 of Chaliserry Police Station. Going by Exts. C89 to 92, and evidence of CW41, then Addl. SI, Challiserry, NDF activists who were running a secret training camp attacked the defacto complainant who stepped into that camp for food at the time of distribution of food for the trainees in the camp. It is alleged that the NDF activists thought that the defacto complainant had come there for Spy work. CW 33 proved Ext. C39 to 41. As per Exts. C39 to 41 and the evidence of CW 33, about 100 pipe bombs were seized from beneath Koomankallu river at Vengara in Malappuram District on 31-12 1995. Ext. C40 and C40 (a) are the statement of the Ist accused in that case - Cr. 194/95 of Vengara PS. for offences under section 4 of explosive Substances Act and S. 120 (b) r/w section 34 of the Penal Code that he was associated with SIMI and worked in that Organization till the age of 30 years. Imam Ali, the Al-Uma leader stayed for days in Vengara and gave training for the Ist accused and other SIMI activists in making country bombs. Imam Ali had undergone training in POK.



3. CW 1 was the commissioner of Police, Calicut during 1997-99 (she is now working in Uttar Pradesh- She was examined by Video Conferencing). Ext. C17 is an unauthenticated copy of Police report sent to the Inspector General of Police (Intelligence), during 1998. That copy was produced before the Commission by AW7, Sri. Kummanam Rajasekharan (there is a controversy how, AW7 got a copy of the Police report. But, the Commission is not required to go in to that question and hence that issue is left there). On the basis of Ext. C17, the Commission directed the D.S.B., Kozhikode Unit to produce the attested copy of Ext. C17. Accordingly, CW2 who was holding charge of the Asst. Commissioner, D.S.B., Kozhikode Unit produced the attested copy which is marked Ext.C18. CW 1, Smt. Neera Rawath filed an affidavit before the Commission. That affidavit is dated 12-4-2005 and is marked Ext.C16. In that affidavit and in her evidence, she asserted that Ext.C18 is a copy of the report kept in the office of the Assistant Commissioner (District Special Branch), Kozhikode and that it is a genuine record relating to the confidential files about the activities of the N.D.F. and other organizations kept in the office of the Asst. Commissioner, D.S.B., Kozhikode during her tenure as the Commissioner. She claimed that she had directed the then Circle Inspector, Nadakkavu (CW3, Sri. Pradeepkumar) to conduct study about the forces targeting at destroying the communal amity in the city. It is based on that study that the said report (copy of which is Ext.C18) was prepared. It is stated in Ext.C18 that the N.D.F. was running physical training centers at various places in Kozhikode district and



that such physical training included training in Karate and 'Kalari' with swords and other weapons. Selected members from the N.D.F were sent for further training for one year, at its training center at Manjeri. Iran and the I.S.I. of Pakistan were the money sponsoring agencies of the NDF. Sympathizers from Gulf countries also contributed largely. It is also stated in Ext.C18 that the Students Islamic Movement of India (SIMI) was working under the direction of the N.D.F. leaders. Several cases were registered against persons belonging to those groups. A further report in Ext. C18 is that two Ambulance vans of Solidarity Trust and Crescent Cultural Trust (both at Kozhikode) were moving in Calicut City, carrying not only patients, but also weapons. The report said that the N.D.F. was having units at Kappakkal, Chakkumkadavu, Panniyankara and Beypore (all these places are near Marad) and that Sri. A. Wahab, Maliyekkal House, Kinasseri (AW36) was a member of the N.D.F. (the Govt. may refer to Ext.S15, the profile of AW36 prepared by the S.S.B. where, his organizational affiliations are reported. Aw36 however, denied that he was a member of the N.D.F.) It is mentioned in Ext. C18 from the list of N.D.F. activists maintained in Beypore police station that Aboobacker @ super Aboobacker s/o. Muhammedkutty, a resident of Marad, (it has come in the evidence of BW2, a resident near Marad Beach and AW24 that Super Aboobacker is none other than Aboobacker, killed at Marad Beach on 4-1-2002. That version of BW2 and AW24 is not challenged ) was an N.D.F. activist. In page No.66 of Ext.C18, 'it is stated Ashraf and Subair ( BWs 29 and 28, respectively, crime No.62/98 of Kasaba



Police station and presently, undergoing detention in the Central Prison, Coimbatore in connection with the Coimbatore Bomb Blast) were Al-Uma workers. They, along with Rasheed, also accused in Crime No. 62/98 are also described as N.D.F. workers associated with its Payyanakkal unit. (As per Ext. C49 and C50, statements of Ashraf and Subair recorded by CW34, they are NDF activists. Subair claimed that he was the Unit Convenor. According to them, they had collected weapons for Ooma Babu) CW3, Sri.C.M. Pradeepkumar, now working as Dy.S.P., Vigilance stated that as per the direction of CW 1, he had conducted study about the activities of certain forces targeting at communal amity, and indulging in drug trafficking and gold smuggling. He claimed that he had conducted study about the N.D.F. The N.D.F. tried to achieve publicity by involving itself in human rights activities, discrimination against the socially backward classes and other social problems. Though, the N.D.F. highlighted human right issues, their field level workers were communally sensitive, were previously working in communal organizations and were involved in several cases. The workers of the N.D.F. infiltrated into many Political parties to get protection for their unlawful activities. N.D.F. and other fundamentalist organizations by infiltrating into political parties, tried to take advantage in Marad Beach. The witness referred to certain instances and claimed that the N.D.F. workers were undergoing physical training. The study conducted by him revealed that the money sources of N.D.F. and such other organizations were in the Gulf. Some organizations were dealing in gold smuggling a portion of which was being used for



religious / fundamentalist activities. He claimed to have questioned Abdul Nassar Madani (BW 30), involved in the Coimbatore Bomb Blast case. Madani had sent Asharf (BW 29) to Pakistan for training under the ISI. CW3 had also questioned Subair of Marad Beach, an N.D.F. worker (BW 28) involved in Crime No.62/98 of Kasaba Police station. CW3 assisted the police team in searching the house of the said Subair. The witness claimed that the Muscat- Karachi boarding pass and luggage coupons were seized from the house of the said Subair. The diary seized from the house of Subair (Ext.C100 is its photo copy) revealed his connection with the N.D.F. and how the N.D.F. raised funds from the Gulf. The witness claimed that Ooma Babu was involved in many terrorist activities in North Kerala. After the Coimbatore Bomb blast incident, Ooma Babu was given shelter at Kozhikode by Ashraf and Subair, accused in crime No.62/98 of Kasaba Police station. Ooma Babu was an Al-Uma worker of TamilNadu. The witness claimed that I.S.I. had strong base in Kashmir, Delhi, Bengal and Bombay. Kerala is placed in a very sensitive situation. According to the witness, Intelligence Reports in that line are correct. The Intelligence Agency had reported that the Bomb blasts in Coimbatore and Bombay are linked with the I.S.I. Explosives like RDX were seized from Badukkal near Mangalapuram, Coimbatore etc. In such a situation, the witness claimed that it is difficult to believe that Kerala is isolated or insulated from such activities (of the I.S.I.). The witness claimed that SIMI, banned by Central Government for its alleged unlawful and terrorist activities was the student wing of the banned, Jama-athe - Islami. Information is that



many SIMI members later joined the N.D.F. AW24 who retired as Supdt. of Police and worked in Kozhikode District for long in different capacity, claimed that he was a member of the special squad formed by the Police Head Quarters in the year, 2000 for investigation some cases involving murder and such other offences allegedly, committed by certain Muslim fundamentalists. He claimed that some of those murders were planned and executed by certain extremist elements in the N.D.F. He reported to his superior officers that to some extent, the N.D.F. was indulging in communal activities. The N.D.F. was defending many of its activities under the label of human rights activities. AW 24 had visited Marad Beach and learnt that 'super Aboobacker' killed in the 1st communal riot was an N.D.F. activist within Beypore P.S. limits and that the name (super Aboobacker) was included in the list of N.D.F. activists maintained by the Beypore Police. (as stated in Ext.C18). FW1 who supervised the investigation of the cases relating to the incidents on 3/4-1-2002 claimed that while questioning the accused, he learnt about the activities of the NDF in Marad Beach.

4. According to FW6, the Commissioner of Police, Kozhikode at the time of the massacre, that incident was meticulously and carefully planned and executed by the radical Muslims with the help of some of the relatives of the Muslims killed in the 1st communal riot. Aw21, the then D.G.P. claimed that there were reports that the N.D.F. is a terrorist organization. According to him, the Police considered the N.D.F. as a terrorist organization. AW21 does not have the impression that the massacre on





2-5-2003 was the result of revenge by the relatives of Aboobacker, killed in the first riot.

5. As regards the alleged involvement of the N.D.F. and I.U.M.L. in the planning and execution of the massacre at Marad Beach on 2-5-2003, the A parties adduced the following evidence:-

AW3 is a local leader of the I.U.M.L. and chairman of the Calicut Development Authority (CDA). He claimed that Sri.P.P. Modieen Koya (H Party No.2), one of the accused in Crime No.82/03 of Beypore PS (cr. 116/03/CR of CBCID) was treasurer of the I.U.M.L. committee, Beypore and member of the Beypore Panchayat (representing the I.U.M.L.). Sri.P.P.Modieen Koya was also the secretary of the Marad Jumma Masjid Committee during the relevant time. During April- May, 2002, P.P.Modieen Koya met AW3. Modieen Koya came with Muhammed Ali, brother of late Aboobacker (and accused in Cr. 82/03 of Beypore P.S.-Cr.116/CR/03 of C.B.C.I.D.). Muhammed Ali told AW3 that he wanted to avenge the killing of his brother, Aboobacker but, Aw3 dissuaded him. AW3 claimed that he thought that though the threat made by Muhammed Ali was potential, the latter had given up the idea as per his advise. Ext.A5 (a) is the report in 'Desabhimani' dated 8-5-2003 to the effect that the massacre on 2-5-2003 was with the knowledge of AW3. The witness claimed that he was questioned by the Crime Branch (which investigated the massacre) twice. He denied that he had produced some of the accused before Crime Branch and stage-managed their arrest. He also

denied that himself or any other I.U.M.L. leader had any role in the massacre. According to AW 3, 13 accused including Moideen Koya involved in crime No.82/03 relating to the massacre on 2-5-2003 are his party members but claimed that they were suspended from the Party pending enquiry. He was confronted with press reports that the Chief Minister (DW 1) had stated in the State Assembly that 82 of the accused are I.U.M.L. activists. The witness claimed that the said statement is not correct. It is revealed from Ext.X2, the copy of the reply given by the Chief Minister in the state Assembly on 22-7-2003 regarding Party affiliation of the accused in Crime No. 82/03 that 82 accused were members of the I.U.M.L. It is also revealed that SI/no. 71 in Ext. X2 is another local leader of the I.U.M.L. AW3 claimed that he is aware that some N.D.F. men were engaged in activities in Marad Beach. He is aware that there were N.D.F. men in that area (Marad Beach).

6. AW4 was the Chief Reporter of 'New Indian Express', Kozhikode during the relevant time. Ext.A 12 (a) is his report dated 11-5-2003 that the idea (of the assailants) was to ignite large scale riot than what happened on 2-5-2003, taking advantage of the revenge some persons had in the killing of Aboobacker. The witness learnt from his source in the police that few persons alone could not plan, operate and execute such a massacre, so meticulously. There was organizational backing behind the massacre. There was a well knit organization which was capable of providing intelligence input, training and funding, behind the massacre on



2-5-2003. Ext.A13(a) is his report in the 'New Indian Express' (NIE) dated 7-6-2003 that accused, Muhammed Rafi and Sakeer (Crime No.82/03) had links with terrorist organizations. Sakeer was an old N.D.F. worker. They ignited desire for revenge in the mind of some of the relatives of Aboobacker. Ext.A15 (a) is another report in the 'New Indian Express' dated 8-5-2003. That report stated that the real force of the N.D.F. is still a puzzle. Ext.A14 (a) is yet another report in the 'New Indian Express' dated 10-6-2003 to the effect that the arrest of some of the accused in crime No.82/03 was stage-managed to save I.U.M.L. interest since the I.U.M.L. feared that if a proper investigation is made, its leaders will be in the dock. An I.U.M.L. leader was producing some of the accused before the Crime Branch team which investigated into the massacre. The witness claimed that the N.D.F. leaders had, in a press conference claimed that their activists are working in all political parties except, the B.J.P. He had attended that press conference called by Sri. E. Aboobacker, the then Chairman of the N.D.F. in the office of the N.D.F. at Kozhikode. According to the witness, E.Aboobacker, P.Koya and Nazarudheen Elamaram were members of the erstwhile SIMI. Enquiry by the witness revealed that Aboobacker, killed on 4-1-2002 was an N.D.F. worker though, everybody thought that he joined the C.P.M. (The C.P.I.(M) leaders, B.Ws.1 and 2. denied that Aboobacker was their party man) Ext.A16 (a) is a report in the 'New Indian express' dated 4-5-2003 that a well knit gang was behind the massacre, as revealed by his sources in the police department. Ext.A20 (a) is the report dated 24-5-2003 that

satellite phones seized from terrorists of Kashmir revealed telephone numbers up to Malappuram District. Ext.B7(a) is the report in 'New Indian Express' dated 5-5-2003. That is a statement of AW15, Sri. Pinarai Vijayan, State Secretary of the C.P.I.(M) blaming the N.D.F. for the massacre at Marad Beach. Going by the report, Sri. Pinarai Vijayan was of the opinion that the massacre was deliberate and well planned, one sided attack carried out by the Muslim fundamentalists led by the N.D.F.

7. AW6, the Secretary of the Arayasamajan claimed that N.D.F. was active at Marad. He claimed that a gang from Tanur planned the massacre. Ext. A24 (a) is the report in 'Malayala Manorama' dated 10-5-2003 to that effect. Ext.A26 (a) is the report in 'Madhyamam' dated 4-5-2003 that Sri.T.K.Vinod Kumar, Commissioner of Police, Calicut (FW6) stated that the attack (on 2-5-2003) was in 'guerilla style'. Ext.A23 (a) is the report in the 'Deepika' dated 8-5-2003 about the role of highly placed person of the Calicut Development Authority (CDA-AW3 is the Chairman of the CDA) in the incident on 2-5-2003.

8. AW7, Sri. Kummanam Rajasekharan was of the opinion that fundamentalist/ terrorist activities increased in the State during the last 5 years, that the State Government was not seriously considering the reports of the Judicial Commissions on communal clashes or carrying out the recommendations made in it. He referred to the instance where, 'Aravindaksha Menon Commission' which inquired into the 'Poonthura Riots' had pointed out that a vehicle was used by the terrorists to transport weapons.



but, no action was taken to trace that vehicle though, its registration number was given in the report. He claimed that after the SIMI was banned, its activists joined the N.D.F. and alleged that the N.D.F. was leading the terrorist activities in the State for the last 6-7 years, but the Government did not initiate any action against them. No serious action was taken on the blast in the Green Valley Foundation (Manjeri) which is the headquarters of the N.D.F. The witness was of the opinion that the massacre on 2-5-2003 was not a retaliation for the murder of Aboobacker. One reason is that none of those killed on 2-5-2003 were accused in any of the cases registered for violence on 3/4-1-2002. Aboobacker was an N.D.F. activist. If the motive for the massacre was to take revenge for the killing of Aboobacker, the assailants should have targeted the accused in the case for the killing of Muslims on 3/4-1-2002. Instead, the assailants attacked unsuspecting Hindus who were either chatting on the beach or doing business in their premises. It is also the complaint of the witness that the then District Collector, Sri.T.O.Suraj was not impartial. The District Collector was lethargic in dealing with the communal situation. The I.U.M.L. was also involved in the massacre on 2-5-2003. Relying on Ext.X2, the witness claimed that 82 of the accused in Crime No.82/03 were I.U.M.L. men. They included P.P.Moideen Koya, local leader of I.U.M.L. But, the witness was not very sure whether the I.U.M.L. leadership as a whole, had prior information about the massacre. He is sure that certain leaders of I.U.M.L. including AW3, had prior information about the massacre. P.P.Moideen Koya, one of

the accused in Crime No.82/03 and local leader of the I.U.M.L. was closely associated with the Marad Juma Masjid. That mosque committee also had prior information about the massacre. The witness alleged that Sri. P.K.Kunhalikutty, (AW 12) the then Industries Minister had close connection with the N.D.F. He produced Exts.X3 and X4 to substantiate that claim. It is also the opinion of the witness that the investigation conducted by the Crime Branch on the massacre was not proper in that, the Crime Branch did not investigate into the involvement of external/ internal forces and instead, proceeded on the line that the massacre was retaliation for the killing of Aboobacker. The Crime Branch wanted to avoid C.B.I. investigation, as decided by the State Government. The State Government on its part, wanted that involvement of other forces behind the massacre should not be revealed. The State Government was succumbing to the pressure of the I.U.M.L. The witness referred to the discussions at Thiruvananthapuram at the instance of Kozhikode Press Club for rehabilitation of the displaced families at Marad Beach and claimed that Sri.P.K.Kunhalikutty (AW12) had apprehended that if the C.B.I. investigated the case, even himself and other I.U.M.L. leaders might be put behind the bars. The witness complained that though the State Government had reached an agreement with the Hindu organizations for the peaceful rehabilitation of the displaced Muslim families, the Government backtracked from its commitment. Ext.X5 is the report dated 19-1-2004 placed by the Chief Minister in the State Assembly, which contained the terms of the agreement. The witness produced Ext.X6, the article published by Justice V.R.





Krishna Iyyer, in the 'Hindu' to buttress his contention that the massacre on 2-5-2003 was not a retaliation by the relatives of Aboobacker. Instead, that was an attempt of the Muslim fundamentalists /terrorists to eliminate the Hindus from the coastal areas and monopolize that area.

9. The A parties examined few journalists. They are AW8, Special Correspondent of the 'Hindu', Kozhikode, AW9, Bureau Chief of 'Malayala Manorama', Kozhikode, AW10, Bureau in-charge of 'Varthamanam', Kozhikode, AW11, Bureau Chief of 'Desabhimani', Kozhikode, AW13, Bureau Chief of 'Kerala Kaumudi, Kozhikode (a resident of Naduvattom, near Marad) and AW14, Bureau Chief of 'Madhyamam', Kozhikode. They proved various reports in their respective newspapers regarding the massacre on 2-5-2003 and the forces behind that. They claimed to have conducted on the spot study and collected information from their sources in the police following the massacre on 2-5-2003. They were of the view that the attack on 2-5-2003 was in the form of terrorist attack, not directed against any particular individual but, directed against the Hindu community, killing any member of that community found by the assailants just as being done by the terrorists on unarmed victims of Jammu Kashmir. They suspected the N.D.F. behind the massacre. Those reports carried statements allegedly given by the Crime Branch Investigation Team including Sri. MaheshKumar Singla, who was supervising the investigation. Ext.X9 is the report produced by AW8. Ext.X9 is the report that the statement of AW35, Sri.MaheshKumar Singla indicated the role of the N.D.F. behind the massacre. Ext.A54 (a) is

the report in 'Desabhimani' dated 16-6-2003 about AW35 disclosing that former office bearers of N.D.F. had role in the massacre. Ext.A35 (a) is the reported statement of AW35 in the 'Malayala Manorama' dated 28-5-2003 that the massacre was not merely a revenge for the incidents on 3/4-1-2002. Ext.A24 (a) and A36 (a) are reports in the 'Malayala Manorma' that the group from Tanur had planned the massacre and that the C.B.C.I.D revealed that the said group had links with the N.D.F. It is further stated that Aboobacker, killed on 4-1-2002, was an N.D.F. activist. Ext.A38 (a) is the report in 'Varthamanam' daily dated 11-5-2003 that police circles indicated the role of N.D.F. in the massacre. Ext.A46 (a) is the report dated 11-5-2003 in the 'Desabhimani' about police circles indicating the role of N.D.F. in the incident. Ext.A66 (b), the report in the 'Kerala Kaumudi' dated 4-5-2003 was that the attack on Hindus at Marad Beach on 2-5-2003 was in 'guerilla style'. According to AW13, the massacre was carried out with a professional touch. Ext.A26(a) is the report in 'Madhymam' that FW6 indicated that the attack was in 'guerilla style' and that the assailants used bombs as generally used by the terrorists. The B party No.2 (NDF) produced Ext. B43(a) report in 'Hindu' dated 31-7-2003 that Sri. MaheshKumar singla had ruled out the involvement of outside elements in the incident. He had also claimed that no political party or organization had role in the conspiracy.

10. AW 12 was the Industries Minister, Kerala during the relevant time. Ext.A6 is a report based on his Press conference at Thiruvananthpuram on 6-5-2003. He is reported



to have stated that certain dark forces which wanted to communalize the State are behind the massacre on 2-5-2003 and that there must be an impartial investigation into that matter. The witness claimed that he might have said so, but did not mean anybody in particular. Ext.A63(a) is the report in 'Chandrika' (the mouthpiece of the I.U.M.L.) dated 24-5-2003. That report is based on the statement of the witness that the massacre was the result of a small section of the Muslim community which tried to unleash terror for gain. The witness claimed that he might have stated so. AW15, the State Secretary of the C.P.I.(M) referred to the history of communal clashes in the State during various period and claimed that during 1991-1996 when the U.D.F. was in power, 40 persons lost lives in communal clashes. After the U.D.F. came to power in 2001, 18 persons lost their lives. He claimed that it was because the U.D.F. Government was appeasing the fundamentalists for political gain. The witness was definite in his opinion that fundamentalists are operating among the Muslim community in the State and that the N.D.F. is the major Muslim terrorist organization functioning in Kerala. He believed that the N.D.F. is behind the massacre on 2-5-2003. Ext.A77 is a report in the 'Malayala Manorama' dated 22-11-1997 to the effect that the Kozhikode District Committee of the C.P.I.(M.) alleged in a resolution that in many parts of Kozhikode District, Muslim/Christian fundamentalists are spreading their roots and that Muslim fundamentalist organizations like the N.D.F. are trying to gain influence among the youngsters. The witness claimed that the N.D.F. men killed Binu, a C.P.I.(M) worker of Nadapuram. The witness also referred

to certain other instances of the N.D.F. activists killing C.P.I.(M) activists. He claimed that the mode of attack in all these places as well as at Marad Beach was the same – sudden attack on unsuspecting adversaries and killing them. The witness was of the opinion that the massacre on 2-5-2003 was not the result of the retaliation by an individual or group of individuals pained at the killing of anybody. Instead, a trained group was behind the massacre. AW17 was residing at Vellayil Beach till about 4 months before 2-5-2003. He is a fisherman by occupation and claimed that at about 7-8 P.M. on 2-5-2003, while himself and colleagues were returning to the Beypore harbour, they were attacked by a group of Muslims who came in country boats fitted with Yamaha engines. Those persons carried weapons such as swords and explosives. Explosives were thrown at AW17 and others. One fell in the country boat in which AW17 was sailing and it resulted in loss of vision of his left eye. The A parties examined AW17 to show that a group of assailants had escaped through the sea immediately after the massacre and in the course of that, attacked AW17 and others.

11. BW6, professor in the English department, Calicut University had occasion to conduct study about the communal violence. He claimed that the massacre (2-5-2003) was initiated by the Muslim fundamentalists.

12. AW27, the A.S.I. who was engaged in intelligence work in Marad beach claimed that Aboobacker was running a 'Kalari' and hence, he was called 'Usthad' He learnt that N.D.F. had its activities at Marad Beach. He had reported on the activities of

N.D.F. workers at Marad. Ashraf, accused in crime No.62/98 of Kasaba Police station and involved in the Coimbatore bomb blast case was an N.D.F. worker.

13. Ext. C22 contained the letter dt. 24-1-2003 sent by AW29 to AW32, that Bijili was found active among the Muslim fundamentalists (NDF/PDP) in Marad Beach and that he is being instigated by those elements for retaliation on the Hindus. I referred to Ext.C18, the report of the year, 1998 and prepared by the special squad formed as per the direction of CW1 and which studied the activities of fundamentalist / terrorist elements. In Ext.C18, it is asserted that Aboobacker was an N.D.F. activist. Though, B Party No. 2 (N.D.F.) has a case that Aboobacker was a C.P.I.(M.) activist, that is not supported by any evidence.

14. BWS 9 and 10 are accused in Crime No. 129/96 of Meppayur police station. Though they admitted that they are NDF activists, denied that they are involved in the said case. They have not given any statements like Exts. C58 and C59. They are falsely implicated in the case. BWS 11 and 12 are accused in Crime No. 1039/03 of Kannur Town Police Station and denied involvement in that incident. They have not given any statement like Exts C. 73 and 74. They admitted that they are NDF activists. BWS 13 to 15 are accused in Crime No. 220/04 of Chalissery Police Station and denied giving any statement like Ext.C91 series. They claimed that they are falsely implicated in the case. They admitted that they are NDF activists. BWS 19 to 21 referred in Ext. C18



denied any such activity as attributed to them in Ext. C. 18. They claimed that they have no connection with the NDF. BW23 claimed that he has not given any statement like Ext. C 54, to CW.34 (in Crime No. 62/98 of Kasaba Police Station). BW 23, the first secretary of Green Valley Foundation and member of the Supreme Council of the NDF and presently the Chairman of that Organization denied that there was any such explosion in the Green Valley Foundation compound while testing the timer device on 9-7-2001. He claimed that the enemies of the NDF had planted country bombs in its compound which exploded. When he learned that the investigation is turning against the NDF, he preferred complaint to the Superintendent of Police, Malappuram. The witness claimed that all the persons referred in Ext. C18 are not NDF activists. He gave a list of NDF activists from among the persons referred in Ext. C18. BW 28, detained in the Central Prison, Coimbatore in connection with the bomb blast case denied any connection with Ooma Babu, harbouring him or giving any statement like Ext. C51. He was an NDF activist attached to its Payyanakkal Unit. He was expelled from that Organization following his arrest in Crime No. 62/98. He admitted that Ext. C100 is the photocopy of his diary seized by the police from his house but, claimed that he was compelled to make certain entries in Ext. C.100. BW 29 also denied any connection with any Al-Umma or NDF leader and denied harbouring Ooma Babu. He has not given any statement like Ext.C49 series. It is not true that he was sent to Pakistan for ISI training. He went to Bangkok for job and unable to trace the agency which was to provide the job,





returned. He admitted that his flight ticket, luggage coupon and immigration clearance certificate etc. were seized by the police. BW 30, Abdul Nazar Madani, detained in the Central Prison, Coimbatore in connection with the bomb blast case, denied the statements in Exts. C44 series. He had not sent anybody to Pakistan for ISI training. He admitted that Muhammed Nafi (A.104), accused in Crime No. 82/03 of Beypore Police Station had met him several times (before the massacre on 2-5-2003) but, that was in connection with the appointment of Muhammed Nafi as 'Editor of National Review'.

15. The B Party No.2 (N.D.F. ) has a case that it is a socio-cultural or charitable organization engaged in human rights protection and the uplift of the downtrodden particularly, the backward classes. Chairman of its Supreme Council and presently , member of that Council gave evidence as Bw5. He claimed that N.D.F. is a socio-cultural, charitable organization formed in November, 1993 to fight fascism which was intended at eliminating the Muslims from the Country. The objective of the N.D.F. is to preserve secularism. The N.D.F. is a society registered under the Societies Registration Act. Ext.B99 is its bye-law. Ext.B100 to B107 are produced to show that N.D.F. has been striving to protect human rights, interest of the backward classes and to preserve secularism. It is revealed from Exts. B100 to B107 that the N.D.F. organized several meetings and conducted agitations with that objective. The witness claimed that N.D.F. had no involvement in any incident at Marad Beach or elsewhere in the State and none of its leaders/



workers are accused in the cases relating to the incidents at Marad. On the other hand, Arayasamajam was under the control of the R.S.S. since the last 15-20 years. The witness proved Ext.B9 (a) and Ext.B16(a) to show that these facts are admitted by AW6 himself. According to BW5, motive for the massacre on 2-5-2003 was the revenge for the killing of Muslims on 3/4-1-2002. He alleged that Aboobacker was killed in the presence of the Police. Aboobacker was very popular in the area and was loved by everybody. His relatives and associates retaliated, which resulted in the massacre on 2-5-2003. He denied that Aboobacker or his son Bijili were members of the N.D.F. and claimed that the Organization had no unit even, at Marad Beach. The R.S.S. men collected and stockpiled weapons at Marad Beach. That enabled the Hindus to come with arms against the Police immediately after the incident on 2-5-2003. The witness alleged that after the massacre on 2-5-2003, Marad Beach was under the control of B.J.P /R.S.S. activists and that even the Chief Minister had to seek their permission to visit the place. Regarding Subair (BW 28) who is accused in Crime No.62/98 of Kasaba police station and involved in the Coimbatore Bomb Blast, the witness claimed that he was an N.D.F. activist at the time of the bomb blast but, he was expelled from the Organization after that incident. BW5 claimed that a legal aid cell was formed under the leadership of the N.D.F to give legal aid to some of the accused in the Coimbatore bomb blast case. Legal aid was given to them as part of its human rights activity. He admitted that he was a member of SIMI during his student days. The membership in



that Organization was up to age of 30 years. Though SIMI was banned in the year 2001, the witness did not know the reason for that. In cross-examination by the A parties, the witness admitted that some local leaders of N.D.F. are accused in the case for the murder of Binu at Nadapuram. The Division Convener and Division Joint Convenor, Vatakara and State Council Member of the N.D.F. are accused in that case. The witness admitted that he is presently the Chairman of the Green Valley Foundation Trust, Manjeri but claimed that the Trust has no connection with the N.D.F. Its former chairman was a member of the N.D.F. Supreme council. None other than the N.D.F. men were ever chairman of the Trust. He admitted that there was a blast in the Green Valley Foundation Trust compound during the night in 2001 and claimed that the blast occurred  $\frac{3}{4}$  km. away from the office of the Trust. The Manjeri police had registered a case, but he does not know its present stage. He does not know whether the explosion occurred when the explosive unit (of the NDF) was testing a timer device. He does not also know whether the scientific expert had visit the spot. Enemies of the N.D.F. planted bombs which exploded. Ext. A96 is the photocopy of the charge sheet in crime No.257/96 of Perambra police station against N.D.F. men for allegedly attacking a scheduled caste for marrying a Muslim girl. The witness claimed that the N.D.F. men were falsely implicated in that case. The witness denied that N.D.F. is involved in any fundamentalist/terrorist activities in the State. Bw24, Chairman of the supreme council of N.D.F. and the first Secretary of the Green Vally Foundation denied that the explosion occurred



in the compound of that Organization. on 9-7-2001 when the timer devise was tested.

16. Question arose whether, fundamentalist/terrorist elements are operating in this State. Going by the evidence of AW12 and Exts. A6 and A63(a) which AW12 himself did not deny, certain 'dark forces' which wanted to communalise the Kerala society is working among the Muslim community in the State. AW15 who was a Minister and Legislator in Kerala for long and a senior political leader, has stated that there are Muslim fundamentalists working in the State (I am not confining the fundamentalism, or terrorism to any community - evidence before the Commission refers to such fundamentalist activities from other communities / religions as well. Ext. A77 is the resolution of the District committee of his party appearing in the Press on 22-11-1997 about activities of the Muslim/ Christian fundamentalists in this State). I referred to the evidence of CWs. 1 and 3, Aw24 (police officers), Ext.C18 and other documents to show that there is fundamentalist /terrorist activities in the State. Ext.C18 gives detailed information about that. Ext.C68 to C71 and the evidence of Cw37 prima facie shows that certain elements set fire to the bus belonging to the TamilNadu State Road Transport Corporation, at Kozhikode on 29-12-02. Ext.C39 to C41 and the evidence of CW33 shows that about 100 Pipe bombs were seized from Koomankallu in Vengara PS limits in Malappuram Dt on 31-12-1995. The statement of the 1<sup>st</sup> accused in that case (Ext. C40, C40(a)) prima facie revealed that he was associated with the SIMI until the age of 30 years


and was trained by Imam Ali (involved in Coimbatore Bomb blast case), leader of Al-Umma (who himself got training in POK) to make country bombs for fundamentalist / terrorist activities and that for the said purpose, Imam Ali even stayed in Kerala for sometime. Exts. C40 and C41 state that Imam Ali had got training in POK. Exts. A 88 and A89 series prima facie, show that several tube bombs were seized from Kadalundi river, in Malappuram district during January, 1996, and that a three member gang engaged in setting fire to the theatres in Malppuram district, exhibiting its photographs in the Gulf countries and collecting large sum of money were arrested by the police. Ext. C40 prima facie, shows that BW29 (Ashraf, accused in CR. 62 / 98 of Kasaba PS) had told about the Muslims of India and Kashmir suffering at the hands of the Hindus, his being sent to Pakistan for training under the ISI, his going upto Bankok and unable to go to Pakistan, returning. Ext. C51 prima facie, refers to certain Organization in the State receiving tube money for its activities. Ext.C14 is the record in Cr. No.246/CR. KNR/ 99 of CBCID, Kannur. That case was registered against certain Muslim fundamentalists for attempt on the life of the then State Chief Minister (late), Sri. E.K.Nayanar, EW1, the District Collector, Kozhikode during the time of massacre states that he had issued direction to the police to closely watch and take action against organizations and persons indulging in fundamentalist activities in Kozhikode district. Evidence of AWs 7 and 21 refer to the bomb blast in the Thrissur Railway Station. As pointed out by Cw3, there is no reason to think that the terrorist/ fundamentalist operation in other

parts of the Country had not crossed into the territory of Kerala State. Going by the manner in which the successive Government acted and the police investigated the cases, there is no reason to think that the State was able to keep such terrorist/fundamentalist activists beyond its territorial limits. It will be a folly to think so. It is seen from Ext.A84(a), A85(a) and A86 (a) that Vice Admiral Sureesh Mehta of the Indian Navy had stated in a Press conference that the proposed Beypore Coast Guard will plug the entry points in Malabar region for sneaking in weapons and explosives by the terrorists, Kozhikode was the hub of such activities, earlier, it was drug trafficking and now, ammunitions are also being smuggled in. The same report has come in all the leading dailies of the State on 16-7-2004. Hence, prima facie, there is no reason to discard it. This statement of Vice Admiral Sureesh Mehta corroborates the evidence of CWs. 1 and 3, the findings in Ext.C18 and the report in Ext.C22. I do not forget that the witnesses examined by B Party No. 2 and 3 and who are mentioned in Ext. C18 denied the allegations against them. But, I do not expect them to admit all those. From the oral and documentary evidence placed before the Commission, it is only reasonable to think that such fundamentalist/ terrorist activities are being carried on in Kerala as well.

17. The immediate question for consideration then is, whether external/ internal forces are behind the massacre on 2-5-2003 ? I stated that the crime Branch (C.I.D.) Unit Investigated the case relating to the massacre on 2-5-2003 and filed charge sheet (Ext.C9), about the claim of the B party



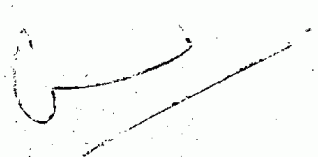
No. 2 that the massacre was the result of retaliation while the A parties claimed that it was an operation by the N.D.F. and other fundamentalist / terrorist elements. Though, B party No.2 has a case that Aboobacker who was killed on 4-1-2002 was a CPI (M) activist, BW5 admitted that they stated so, only on hearsay information. BWs 2 and 3 denied that Aboobacker was a CPI(M) activist. AW4, AW24 and CW3 have given evidence that Aboobacker was an NDF activist. AW24 says that the name of Aboobacker was included in the list of NDF activists maintained in the Beypore PS. This version is corroborated by Ext. C18. In Ext. C18, Aboobacker is shown as an NDF activist. There is no reason why in the year 1998, a false entry was made regarding the organizational connection of Aboobacker. It is pertinent to remember that even BW5 admitted that some of the persons shown in Ext. C18 are NDF activists. Going by the evidence of BWs 9 to 15 who are admittedly NDF activists examined by the B party No.2, documentary or other direct evidence about membership in the NDF is quite impossible. For even according to them, though they are NDF activists, there is no document to prove that. Only the Notebook maintained by the Area Convenor would show who are the members of the NDF unit. I do not expect that Notebook to come before the Commission. On a consideration of the above facts and circumstances, I find no reason to discard the evidence of AW4, 24 and CW3 that Aboobacker was an NDF activist. From Ext.X2, the report placed by the Chief Minister in the State Assembly on 22-7-2003, it is seen that 11 of the accused in Crime No.82/03 of Beypore Police station



(Cr.116/Cr/03 of C.B.C.I.D) are N.D.F. activists while, 9 others are N.D.F. activists working in the I.U.M.L. and the C.P.I.(M). In Ext.X2, Bijili, one of the main accused in Cr.82/03 of Beypore Ps (Cr.116/CR/03 of CBCID) is shown as an NDF/I.U.M.L. activist. I referred to the evidence of AW26 and CW3 that the N.D.F. infiltrated into other Political parties (except the B.J.P) and acted under its banner to conceal their activities. I also referred to the evidence of AW 4, supported by Ext. A15(a) about the Press Conference of some of the N.D.F. leaders that the N.D.F. men are working in all Political parties except the B.J.P. BW5 has admitted that there is no prohibition in the N.D.F. men working in any political party provided, the ideology of that party was not against the ideology of the N.D.F. It is revealed from Ext. C49 series and the evidence of CW34 that BW29 who was admitted by an N.D.F. activist was working in the PDP also. Therefore, the official version stated in Ext. X2 that 9 accused are N.D.F. men working under the label of I.U.M.L. and C.P.I.(M) can be accepted. The statement in Ext. X2 about involvement from N.D.F. activists in the massacre on 2-5-2003 gets corroboration to Exts.S1 to S3, the copy of confession statements of A2, A97 and A98 in Cr. No. 82/03 of Beypore P.S. There, they claimed that they 'were' N.D.F. activists as if, their connection with the N.D.F. was prior to the massacre on 2-5-2003. But, none of them said how, they ceased to be members of the N.D.F. None of them said that they joined any other organization after leaving the N.D.F. It is true that there is no documentary evidence to show that any of the accused in Cr.82/03 of Beypore

Police Station (Cr. 116/Cr/03 of C.B.C.I.D.) are N.D.F. activists. It is also true that BW5, BW24 and Bw28 denied that any of those accused are N.D.F. activists. According to them, N.D.F. did not even have a unit at Marad Beach. But, there is evidence to show that N.D.F. was active at Marad Beach. AW3, AW4, AW6, AW24, AW25, AW27, AW30, AW38, BW2, BW4 and CW3 have given evidence about the activities of N.D.F. activists at Marad Beach. The letter dt. 24-1-2003 sent by AW29 to AW32 (see Ext. C22) also referred to the activities of the NDF at Marad Beach. Ext. C51 shows that the NDF was active at Marad Beach, giving training to its cadres in the use of fire arms. It is revealed prima facie, from Ext. C49 series, statement of BW30 and Ext.S1, statement of A2 (Sakeer) in Cr.82/03 of Beypore PS (Cr.116/CR/03 of CBCID) which I find no reason to discard, that the N.D.F. had a unit which covered Marad Beach. BW28 admitted that he was an N.D.F. activist. He belonged to Payyanakkal which is very near Marad Beach. He was an N.D.F. activist of Payyanakkal unit. He would say that there is an N.D.F. unit at Chakkumkadavu, about  $\frac{1}{2}$  K.M. away from Payyanakkal. There is no territorial limitations while working in one unit of the N.D.F. If that be so, even if there was no separate unit for the N.D.F. at Marad Beach proper, there was nothing wrong or unusual in that Organization having its activists in Marad Beach also. Ext. S5, statement of H party No.2 (P.P. Moideen Koya) also refers to the activists of NDF at Marad Beach and their getting involved in the matters there. Evidence of AW24 is that it is the practise of the NDF activists to interfere in any matter involving Muslims, even without being asked for or

permitted. I have referred to the various press reports referring to the presence of NDF at Marad Beach and their involvement in the massacre, which in the light of the other evidence on record, can safely be accepted. Even going by the version some of the witnesses examined by B party No.2 who are admittedly N.D.F. activists, collection of documentary or other direct evidence regarding their membership in the N.D.F. is not possible. For, BWs.9 to 11 and BWs.13 to 15 who are admittedly N.D.F. activists of different units at different places and districts would say that there are no membership cards or receipts issued to them from their organization. Their respective Unit Convenors maintained a notebook where, the name of the members is written. No other document will show that they are N.D.F. activists. Similar evidence is given by BW5, leader of the N.D.F. If so, it is difficult to expect direct evidence whether, somebody is an NDF activist or whether, the N.D.F. has a unit at a particular place. I am not impressed in the facts, circumstances and evidence, by the version of A2, 97 and A98 in Ext. S1 to S3 that they 'were' N.D.F. activists. BW28 was admittedly an N.D.F. activist. He says that he was 'expelled' from the N.D.F. But, there was no official communication, oral or written to him regarding that. He learnt about his expulsion from the NDF from newspapers. Ext.X8 is the newspaper cutting about the News Conference of Dr.M.K.Muneer, Minister in the State Cabinet. He is reported to have stated that the N.D.F. is an amoebic body. This version is justified by the statement of BW14 that he does not know who is the leader of the N.D.F. next to the Area Convener. BW28, at a time



when he was admittedly an N.D.F. activist, wrote in his dairy, (Ext.C100) that he met 'Chief'. It is true that BW28 has a case that he was, under threat from CW34 made to make that entry. But prima facie, there is no reason to think so. When asked to say who was that 'Chief', BW28 said that 'Chief' meant 'leader'. He does not know anything else. The statement of A2, A97, and A98 in Ext.S1 to S3 that they 'were' N.D.F. activists was certainly an attempt made by them to make it appear that they 'were' not N.D.F. activists at the time of massacre on 2-5-2003. Being the cadres of a disciplined organization, it is quite natural that they tried to disassociate themselves from their organization.

18. I stated from the evidence of BW1, the socio economic and educational background of the people of Marad. Evidence revealed that the average education of the accused in Crime No.82/03 is 5<sup>th</sup> standard. They are all fishermen. It is difficult to think that those accused who are all fishermen placed in such poor situation were able to raise the enormous funds required for the planning, operating and carrying out the massacre and were able to do that so meticulously, even surpassing the Intelligence Wings. This fact is not concealed by the higher police authorities as well. The statement of Fw6, Sri. T.K. VinodKumar, Commissioner of Police during the relevant time that the attack was in 'guerilla style' (see Ext.A26 (a) is a definite indication that there was some other agency behind the massacre, than the accused booked by the Crime Branch. This is the indication given by AW12, the then Industries Minister also when he claimed that



certain 'dark forces' which wanted the State to be on communal turmoil was behind the massacre. Evidence revealed that there was a long drawn conspiracy and that the massacre was meticulously carried out. The large collection of weapons including country bombs shows that the attempt of the assailants was not merely to kill certain persons. They wanted to create still bigger havoc. Certainly, the attempt was to ignite large scale riot. AW 21, the then Director General of Police, was not prepared to believe that the massacre was the result of the revenge of certain persons. FW 6, the Commissioner says that Radical Muslims are involved in the massacre. The nature of the attack - armed groups emerging from different sides and unleashing a sudden attack - revealed that the attempt was to kill as many persons (from the Hindu community) as possible within the shortest time and escape. Evidence of AW17 shows that infact, a group of assailants or who had stood behind for lending assistance to the assailants, did escape through the Sea after the massacre. The escape of some of the assailants failed only because they were held up in the Marad Juma Masjid and the police party reached the spot immediatly after the incident.

19. At this stage; I may refer to the investigation conducted by the Crime Branch which of course, came to the conclusion that the massacre was the result of revenge on account of the killings of 3/4 -1-2002. I refer to the evidence of AW19. Going by his evidence, the question whether other forces (ie., forces behind the accused) were involved in the massacre was not even





an issue for the Crime Branch team. He claimed in unambiguous terms that there was no direction - oral or written from AW 35 (Sri. Maheshkumar Singla) to investigate into the involvement of other forces behind the massacre. The stand of AW19 is that the Crime Branch Team did not get evidence of involvement of other forces and hence, they did not investigate that. I am unable to understand how, the Crime Branch could wait for evidence to come to them, to conduct investigation. I was under the impression that the police should investigate and collect evidence, rather than waiting for evidence to come to the police for investigating. Putting the horse behind the cart and then blaming it for not pulling the cart! AW35, the Inspector General who was supervising the investigation was directed by this Commission to file affidavit whether he had issued any direction verbally or in writing, to investigate into the involvement of other forces in the massacre. I find from his affidavit that he was reluctant to make a commitment on that. On petition No.56/04 filed by the A parties, the Commission ordered on 15-9-2004 that AW35 (it was before his examination) should file affidavit whether, he had issued any specific direction to the investigation team to probe into the involvement of other forces. AW35 filed the affidavit claiming that no evidence came forward in that regard and no written instruction was given by him. On 14-10-2004, being not satisfied with that affidavit of AW35, he was again ordered to file affidavit whether, any instruction oral or otherwise was given by him. He filed an affidavit on 18-10-2004, but again without making any commitment on the issue. On 21-10-2004, AW35 was



warned that unless he filed proper affidavit in the matter, he will face the consequence for that. Then, he came with an affidavit dated 16-11-2004 where, in para 4, he claimed (as against the assertion of AW19) that he had given verbal instruction to investigate into the involvement of other forces to the limited extent of the information that some of the accused 'were' sympathisers of the N.D.F./ I.U.M.L./C.P.I.(M) etc. In spite of the fact that going by the evidence of DW 1, the State Government had given full freedom to the Crime Branch Investigation Team to probe in to all aspect (ie., including the involvement of other forces) if any behind the massacre, they did not investigate into that aspect. Evidence of AW19 shows that the CBCID had not even investigated on the information contained in Exts. S1 to S5. They had no idea about the Organizational connection of Aboobacker, killed on 4-1-2002. Why was the Crime Branch Team particular in not probing into the alleged involvement of the other forces? The A parties have a case that Investigation in that line was sabotaged by AW35 (I will refer to that aspect in the later Chapter). It is a fact that the Crime Branch had not investigated into the involvement of other forces behind the incident. In spite of the various Intelligence Reports referring to the alleged involvement of fundamentalist/ terrorist elements in the incident, AW35 had no difficulty to say that he had not seen any such Intelligence Reports (at least for guidance in the course of investigation) He claimed that he was 'unaware' of such Reports. He was one of the respondents in the Writ Petition filed by the mother of one of the victims of the massacre (on-2-5-2003) in the



Hon'ble High court for direction for C.B.I. investigation. In that case, the Additional Home Secretary, Smt. Sobhana Kumari filed counter affidavit stating that the Intelligence Wing had collected some information regarding the possible violence at Marad and the same was conveyed to the local Police. Ext.C19 contained that counter affidavit. AW35 was present in the Hon'ble High court in connection with that case and even explained certain matters to the hon'ble Judges. Still, AW35 claimed that he was 'unaware' of the statement in the counter affidavit of the Additional Home Secretary. Quite unbelievable, the statement made by a senior Police officer like the Inspector General! On the other hand, evidence of AW30 is that the Crime Branch officials who investigated the case had interacted with the S.S.B and that the Intelligence Wing had disclosed all details to them. AW19 claimed that he tried through AW35 to get the Intelligence Reports, AW35 had asked for those reports but, did not get it. It that be so, AW35 was simply speaking untruth before the Commission that he was 'unaware' of the Intelligence Reports. Nor am I inclined to think that inspite of AW19 trying to get the Intelligence Reports, he did not get it. AW19 and AW35 wanted to avoid questions based on the Intelligence Reports regarding the involvement of fundamentalists/ terrorists in the incident and even the organizational connection of Aboobacker and Kunhikoya killed, in the riot on 3/4-1-2002.

20. I asked AW19 whether, he felt anything particular in the statement of the accused referred in Exts.S1 to S 3 that they 'were' N.D.F. activists. The witness stated



that he did not feel anything particular about that. Quite surprising that a Senior Officer like AW19 investigating such a massacre (which, in the normal course could not have been planned and executed by few under educated and poor fishermen alone) was not alerted by that statement of the accused in Exts.S1 to S3. Any way, even according to AW19, no further investigation was made on the said statements in Exts.S1 to S3. AW19 and AW35 were asked whether A105, Mohammed Nafi had met Abdul Nazar Madani (BW30) in the Coimbatore Central Prison, eight (8) times before the massacre on 2-5-2003. They claimed that their investigation revealed that A105 had met Abdul Nazar Madani (BW30) only 2 or 3 times. The Investigation Team was generous enough to simply believe that statement of A105 (Nafi) without even cross checking with the Jail Register. AW19 and AW35 were confronted with the extract of the Jail Visitors Register and its English translation sent by the Supdt. of that Prison, and the statement therein, that A105 (Nafi) had visited Madani (BW30) in the Prison, eight times before the massacre on 2-5-2003. AW19 was sure that if A105 had visited Madani eight (8) times, there would be something suspicious in that. Then AW19 stated that a conspiracy in the visitors room of Coimbatore Central Prison was not possible since the Visitors will be permitted to have interview with the prisoners only in the presence of the Jail authorities. At this stage, I have to refer to the evidence of Abdul Nazar Madani (BW30). He stated that A105 met him in the Central Prison, Coimbatore several times but, in connection with the



appointment of A105 as the editor of 'National Review', a Magazine run by him from Ernakulam and its management. Whether that version of A.105 and BW 30 was true, was required to be probed. Fact remained that going by Ext.S4, Mohammed Nafi (A105) had also met BW29 (A.T.Mohammed Ashraf) in the same Prison who, going by Ext.C 49 series and evidence of CW34 was the unit leader of the N.D.F. during the said time and who, evidence prima facie revealed, was sent to Pakistan for I.S.I. training and for the said purpose, went up to Bankok but, had to return. Prima facie, those meetings with BW29 was not that much innocent. It is stated in Ext.C43 to C51 and evidence of CW34 that BW28 and 29 had connection with some of the Al-Uma leaders (B29 was concededly an N.D.F. activist and allegedly expelled from that organization in 1998). Ext. C51 and the evidence of CW34 is to the effect that N.D.F. had connection with the Al-Uma and that N.D.F. was collecting foreign funds. AW19 or AW35 had not even gone through the records of Cr.62/98 of Kasaba P.S. to ascertain the above facts. They were not even aware of that case. Fact remained that the Crime Branch Investigation Team did not properly question A105. (The extract of Jail register and its English translation are not separately marked in evidence. Hence it is appended to Ext. S4).

21. It is revealed from the evidence that A94 (Latheef) in Crime No.82/03 of Beypore Police Station (Cr.116/03 of C.B.C.I.D.) who is one of the prime conspirators of the massacre on 2-5-2003 was a close



associate of BW29 (Ashraf). As per the Crime Branch Investigation, A94 had assisted the other accused in making country bombs (which were meant to be used for the massacre but, fortunately not used). Exts. S1 to S3 show that A94-Latheef also is an NDF activist. A94 allegedly surrendered in court after the Crime Branch filed the chargesheet in Crime No.82/03 on 31-7-2003. The crime. Branch Team had no occasion to question A94 regarding his connection with Bw28, 29 or any other fundamentalist elements. I referred to the evidence of CW34 and Exts.C43 and C46 to 49 series which prima facie revealed that Ashraf (BW29) was sent to Pakistan for training and for the purpose, he had travelled from Trivandrum to Bangkok but unable to get US dollars at Bangkok, had to drop the plan and return. Going by ext.C100, BW28 had met 'chief' in relation to the 'expansion of Coimbatore' etc. These aspects were not investigated, not even attempted by the Crime Branch. AW19 admitted that the CBCID had no occasion to question some of the accused who surrendered in Court after the filing of the chargesheet. On the question whether, he could deny that those accused had terrorist link, AW19 said that he did not get evidence. I asked AW19 and Aw35 why, even if they were not able to question A94 as he surrendered in Court after the Crime Branch Team filed the chargesheet, they did not seek the permission of Court to question A94 and if necessary, further investigate. If the crime Branch were sincere enough to investigate into the involvement of other forces, it could and should have sought the permission of the concerned Court, questioned A94 who was then in judicial





custody and if necessary, investigated the matter further, with the permission of Court as provided u/s. 173 (8) Cr. P.C. AW35 absolved himself claiming that it was the responsibility of the Investigating Officer. AW19, who headed the investigation tried to escape saying that since the involvement of A94 in the incident (ie., conspiracy and making bombs) was revealed from other accused and witnesses, it was not necessary to question A94. How generous the Crime Branch Team was? Going by the evidence of CW28, Dy.S.P. who was a member of the Crime Branch team, the Collection of funds for the massacre started even several months before the incident. But, according to AW35, only small amount was required in the planing and execution of the massacre. But, AW35 forgot that even after the massacre, enormous money is needed to conduct the case, maintain the family of the accused and such other matters. Evidence revealed that there was no serious investigation into the source of the funds (Govt. may refer to the report in the documents marker initially, as Ext. C19 that a person called "FM" raised the funds for the massacre, he came from Dubai to Kozhikode on 2-5-2003 and returned few days after the massacre) CW 28 was of the opinion that A94 had to be interrogated and had conveyed that opinion to the superiors. But AW19 and AW35 did not consider that as necessary. Evidence reveled that the Crime Branch did not also investigate into the source of the large number of weapons. At the end, AW19 also confessed that the Crime Branch investigation was limited to the involvement of the accused booked by them which in other words, meant that the Crime

Branch did not investigate into the involvement of other forces behind the massacre. It is revealed from the evidence of AW17 that a group of persons who in all probability had taken part in the massacre or, involved in it in some way escaped through the sea in country boats. The CBCID investigation was not directed against that group. Thus, the conclusion arrived by the Crime Branch is no answer to the issue regarding the involvement of other forces behind the massacre.

22. I found from the evidence that the N.D.F. was active at Marad Beach at least after the communal riot on 3/4 -1-2002, was giving physical training for its cadres and further, that some of the accused in crime No. 82/ 03 are N.D.F. activists. I also referred to the oral and documentary evidence which revealed that Aboobacker,, killed on 4-1-2002 was an N.D.F. activist. Though, the C.B.C.I.D. had array<sup>e</sup>ad altogether 148 accused in connection with the massacre on 2-5-2003, it is revealed from the official records (AW19 was not able to give specific reply in this regard) .that of the said 148 accused, only seven (7) are close relatives of Aboobacker, eight (8) are related to Kunhikoya and three (3) are related Yunus who were killed on 3/4-1-2002. Even according to the CBCID (See Exits. C9, C10), communal hatred towards the Hindus was one of the motives for the massacre. If thus, only 18 persons among the 148 accused involved in the conspiracy and murder and among the 90 accused who actually took part in the murder, were related to the three Muslims killed on 3/4-1-2002, what was the interest of the accused (other



than those 18) to be involved in the planning and execution of the massacre? What was the interest of those large number of accused who were neither related to Aboobacker, Kunhikoya or Yunus, nor belonged to Marad Beach? Was it merely a revenge for the killing of the three persons, or was it merely Communal hatred arising from those killings? It is difficult to believe so. It is revealed from the evidence that the assailants did not spare even persons aged 65 years. Few of the victims were aged 20 years. Some of the victims were chatting on the sandy beach while some others were engaged in other activities. There was no provocation at all for the massacre. The assailants were not targetting any person or persons. Instead, they emerged on the beach from different sides like bolt from the blue and attacked whichever Hindu they found, within the shortest possible time which left 8 Hindus dead and several others wounded. The surprise attack must have baffled the victims. The communal riot on 3/4-1-2002 was not a one sided attack so that, for that reason alone, the entire Muslim Community rose up in arms against the Hindus. In that riot, two persons from the Hindu Community and three persons from the Muslim Community died. People from both sides suffered injuries and both side suffered property loss (See Ext. F48 series). So, it is difficult to understand the massacre on 2-5-2003 as an upsurge of the whole Muslim Community against the Hindu Community. It is pertinent to note that if the massacre on 2-5-2003 was in retaliation of the killing of Aboobacker



on 4-1-2002, the assailants must have targetted any of the accused in the case for the murder of Aboobacker. Concededly, none of the 8 Hindus killed on 2-5-2003 are involved in any of the cases registered for the incidents related to the Communal riot on 3/4-1-2002. None of the injured in the incident on 2-5-2003 are accused in the case for the murder of Aboobacker. These circumstances indicated that the massacre on 2-5-2003 was not merely revenge for the killing of Aboobacker, Kunhikoya or Yunus on 3/4-1-2002. Instead, that was an attack on the Hindus as anticipated and indicated by AW 29 in his letter dt. 24-1-2003 (see Ext. C22) and addressed to AW32. At this stage, it is relevant to consider the evidence of AW21, the then Director General of Police regarding the very appointment of the then Asst. Commissioner (South), Kozhikode Sree Abdul Raheem (FW2). It is revealed from the evidence of FW2 that he had no special interest at being posted in Kozhikode District and had not also requested for that posting. AW21 stated that after the massacre on 2-5-2003, he checked up and found that the posting of the Asst. Commissioner (South) FW2 at Kozhikode was not as per the proposal made by him. He enquired and learnt that the posting of FW2 as Asst. Commissioner (South) was to oblige a Muslim leader. This, AW21 asserted in Ext. A104 (a) as well. Going by Ext. C18, AW36 who is closely related to FW2 is an NDF activist (I do not forget that AW36 had denied that and FW 2 claimed ignorance about the Organizational connection of AW36). These are circumstances indicating that it was not merely the 148 accused who are behind the massacre on 2-5-2003 but, there are other forces behind that incident.



23. The B Party No.2(N.D.F.) examined BW25 to show that R.S.S. workers are accused in Cr. No.282/98 of Tirur Police station for the murder of one Yassir for his conversion from Hinduism to Islam. BW27 is examined to show that one Venugopal, said to be an R.S.S. activists is accused in Cr. No. 101/99 of Fort Kochi police station for the unauthorized possession of explosives. BW16 is examined and Exts. B152 and 153 marked to prove that R.S.S. activists are accused in Cr. No. 39/05 of Vallikunnu Police Station for attacking the N.D.F. activists. BW 17 is examined and Exts. B154 and 155 marked to prove that R.S.S. activists are involved in Cr.No.81/05 of Kathiroom Police Station for unauthorized possession of explosives. BW18 is examined and Exts. B 156 and 157 marked to prove involvement of R.S.S. activists in the murder of an NDF activist.

24. Certainly, the above mentioned evidence produced by the B party No.2, prima facie refers to some of the R.S.S. activists involving in fascist/fundamentalist activities. In fact, Aw24 opined that the R.S.S., V.H.P and N.D.F. are terrorist organizations operating in the State of Kerala. But, that the R.S.S. or V.H.P. are stated to be terrorist organizations is no answer to the issue on hand. I do not forget that the B Party No.2 produced several books, magazines, extracts from Judicial Commission Reports etc. which, according to the B Party No. 2 indicated the fascist and fundamentalist nature of the SanghParivar Organizations. The Commission is not presently inquiring into the question which are all the fundamentalist/terrorist organizations operating in the State. That is a matter for the State Government to probe into deeply.



25. In the light of the facts, circumstances and the oral and documentary evidence stated above, there is weight in the evidence of CW1, CW3 and AW24 regarding the fundamentalist/terrorist activities indulged in, by some NDF activists. Prima facie, it is difficult to accept the contention of the B party No. 2 that its activities are confined to what is stated in Ext. B 99 to B107.

26. The evidence on recorded<sup>✓</sup> thus revealed that N.D.F. activists were actively involved in the planning and execution of the massacre on 2-5-2003. Then, the next question is whether the N.D.F. as an organization is behind the massacre?. I did not come across any direct evidence in that line. The B party No.2 relied on the version of AW35 that the CBCID team had checked up with the office bearers of the N.D.F. and verified their telephone call sheets but, found no involvement for the organization. But it is difficult to expect such direct evidence for the involvement of the organization. It is prima facie revealed from Ext.C51, statement of an N.D.F. activist recorded by CW34 that the N.D.F. men were undergoing training in shooting at Marad Beach using air guns. There is the evidence of AW27 and BW3 about the NDF giving physical training to its cadres at Marad Beach. It is unlikely that this was done without the blessings of their local leadership, at least. It is disclosed from the evidence that the massacre on 2-5-2003 was the result of a long drawn plan, spread over several months. Weapons including country bombs were collected or made from different places, brought to Marad Beach and





stock- piled there, well in advance. Though, according to AW35, only a small amount was used for the planning and execution of the massacre, in the way the conspiracy was made and was carried out and the collection of large ~~member~~<sup>num</sup> weapons from different places, the large funds required to defend the case that will follow and maintain the family of the accused, it is difficult to accept that version of AW35. Large funds must have been raised for the purpose. Ext. C 51 stated that foreign funds were used at Marad Beach. Ext C 29 series shows that collection of funds started even from abroad, about 7 months before the massacre. It is revealed from Ext.S5 (the statement of A141 - H Party No.2) that the conspirators had obtained the help of N.D.F. leader, Hamsakoya of Chettipady and others to prepare the plan and execute it. (According to AW35, Hamsakoya referred in Ext.S5, is a 'congress man' and he was questioned. But he does not remember whether the statement of Hamsakoya was recorded. Counsel for F party submitted that no such statement was recorded. But that version of AW35 that Hamsakoya was a congressman cannot be accepted in the light of the statement in ExtS5 that he was an N.D.F. activist.) Ext. S1 to S3 and S5 revealed that some of the local leaders of the NDF are involved in the conspiracy for the massacre. I also stated that the attack was in guerilla style as described by FW6. The operation was planned and executed in such a meticulous manner that the Intelligence Wings also were not able to do much about it. In the normal course, it is difficult to think that few poor, uneducated or under educated and



unsophisticated fishermen would be able to do that. The facts, circumstances as well as the methodology used by the perpetrators strongly indicated the presence of a well knit organization behind. It is quite unlikely that the NDF activists would involve in the planning and execution of the massacre without the blessings of their local leadership, atleast.

27. Notice u/s. 8 B were served on the Beypore unit of the I.U.M.L., the Mahal Committee of the Marad Juma Masjid (H Party No.1), Sri. P. P. Moideen Koya (H Party No.2) and AW3 (H Party No.3) They denied involvement in the massacre in any manner.

28. So far as the I.U.M.L. is concerned, there is no direct evidence to show that the I.U.M.L. units as a party are involved in the conspiracy or massacre. Though, the A parties have a case that AW12, Sir P. K. Kunhalikutty is connected with the massacre, after consideration of the entire materials, I did not find sufficient evidence in that line. True, as per Ext. C44 series (statements of BW30 recorded by CW34), AW12 reportedly had some connection with the NDF. AW7 proved Exts. X3 and X4, also to show that AW12 had connection with the NDF. AW12 explained that when a representation from the local MLA for withdrawal of Cr. 87/100 of Kondotty P.S. (allegedly involving NDF activists) came before him, he only put the note 'C.M. may see' and forwarded the file to the Chief Minister. That item of evidence is not sufficient to hold that AW12 had connection with the NDF. Even if it is assumed

that AW12 had some connection with the NDF, that did not mean that he is in any way connected with all the activities of NDF, good or bad. The fear expressed by AW12 against CBI investigation of the case is not sufficient to hold that AW12 is connected with the massacre.

29. AW3 (H Party No.3) is the local leader of the I.U.M.L. and Chairman of the Calicut Development Authority. Sri. P.P. Moideen Koya (H Party No.2) is also a local leader of the I.U.M.L. and was member from ward No.20 which took in Marad Beach as well. He is the brother of Kunhikoya killed at Marad Beach on 3-1-2002. He was also secretary of the Mahal Committee of the Marad Juma Masjid (H Party No.1). He is A 141 in Cr. 82 /03 of Beypore PS- (Cr. 116/CR/03 of CBCID ). Going by Ext.X2, Sl.No. 71 there, is also a local leader of the I.U.M.L. and accused in that case. It is revealed from the evidence of AW2 that in the Calendars seized from the Marad Juma Masjid following the massacre on 2-5-2003, the date "2-5-2003" had been rounded in red ink. According to H Party No.2 and associates, it was because the 'Nikah' of a resident nearby was scheduled to be held in the Madrassa attached to the Mosque on 2-5-2003. It is difficult to believe that it was on account of the 'Nikah' that the date '2-5-2003' was specifically rounded in 'red' ink in both the Calendars. If that be so, the Calendars should have shown other days also in the same way, when some other 'Nikah' were performed there. There is no such case or evidence. The use of 'red' ink is



indicative of bloodshed planned on 2-5-2003. 2-5-2003 was a Friday when the Muslim fishermen will be off duty and remaining at the shore while as usual, the Hindu fishermen would have gone into the sea for fishing. A most convenient day indeed, for the murderous assault!. The Khasi of the mosque is an accused in Cr.82/03 of Beypore PS. Part of the conspiracy was hatched up in the Mosque. Evidence revealed that large number of weapons including countrybombs were stockpiled in the mosque and its compound, well in advance. Facts, circumstances and evidence revealed that the date for the assault, in the normal course must have been fixed with the knowledge of the Mahal Committee or at least, its leaders, Evidence of AW27 shows that few minutes before the incident, getting some information about that, he telephoned to the Marad Juma Masjid, somebody attended the call but learning that AW 27 is an intelligence official, disconnected the phone. After the massacre, some of the culprits escaped into the Mosque. Immediately after the Police reached the place, the local Muslims including women and children blocked the police entering the Mosque and for the purpose, surrounded the Mosque. The evidence on record revealed that on 3-1-2002, following the murder of Kunhikoya, there was a bank call from the same Mosque and following that, chanting 'Bolo Takbir', some Muslims marched to the house of Pushparajan and killed Shinjith. Thus, evidence revealed that the Mahal committee or its leaders were involved in the conspiracy, had prior information about the incident and allowed its premises to be used for the conspiracy and the preparation for the



crime. The evidence of FW3 shows that Sri. P.P. Modieen Koya (H Party No.2) had tried to convince him that Bijili, S/o. Aboobacker (one of the prime accused in Cr.82/03 of Beypore PS) was an I.U.M.L. activist, that Bijili is not involved in any criminal activity and hence, Fw3 need not conduct much enquiry about Bijili or even suspect Bijili. Evidence of FW5 is that when himself and party were coming to the Marad Beach learning about the massacre and reached Priya Junction near Marad, P.P. Modieen Koya (H Party No.2). and others who carried knives, country bombs, stones and sticks obstructed their movement throwing stones, country bombs etc. at them. Evidence of AW3 shows that Sri P.P. Moideen Koya (H party No.2) was aware of the threat made by Mohammadali to avenge the murder of Aboobacker. These circumstances are sufficient to show that the 'Khasi', P.P. Modieen Koya (H party No.2) and other members of the Mahal committee (H party No.1) were parties to the conspiracy or atleast, had information about the conspiracy and the impending violence. I stated from Ext. X2 that Sl.no.71 there, is another local leader of the I.U.M.L. and reported to be party to the conspiracy. Ext.X2 shows Mohamimed Ali, one of the main conspirator and accused in the massacre on 2-5-2003 as an I.U.M.L. activist.

30. Turning to AW3 (H party No.3), I stated that the he was the Chairman of the Calicut Development Authority during the relevant time and a prominent leader of the I.U.M.L. in the District. Ext.A5 (a) is the report



in 'Deshabhimani' dt 9-5-2003 that the massacre was with the knowledge of AW3. Though business interests were attributed against AW3 for allegedly being party to the conspiracy to eliminate the Hindu community from Marad Beach and though, AW3 conceded that he has some landed property in Marad Beach, evidence is not sufficient to hold that AW3 had any such business interest or was a party to the conspiracy. AW3 conceded that he was questioned by the C.B.C.I.D. thrice. He admitted that during April - May, 2002, P.P. Moideen Koya (H party No.2) had met him along with Muhammed Ali, brother of late Aboobacker (another accused Crime No.82/03). Muhammed Ali told AW3 about his desire to avenge the death of his brother. AW3 claimed that he dissuaded Muhammed Ali and sent him away. It is his further claim that he had informed the Relief Committee that they should be more vigilant but he had never intimated any of the authorities about Muhammed Ali expressing his desire to avenge the killing of his brother. AW3 was under the impression that though the threat made by Muhammed Ali was potential, he had later given up that idea. That version of AW3 cannot be accepted without a pinch of salt. A person of the stature of AW3 who was aware of the grave situation at Marad Beach following the communal riot in January, 2002 when informed by Muhammed Ali about his desire to avenge the killing of his brother should have in the normal course, intimated the authorities about that, rather than keeping quiet about that and asking the



Relief Committee to be more vigilant. I have referred to the evidence of FW3 that on one or two occasions, P.P. Moddeen Koya (H party No.2) had come to the police station accompanying Bijili and claimed that the latter is an I.U.M.L. worker and that there is no need to suspect Bijili or conduct any enquiry about him. It is difficult to think that AW3 was unaware of all these happenings inspite of his conceding that P. P. Moddeen Koya had come to him along with Muhammed Ali, that it was in the presence of P. P. Moddeen Koya that Mummedali revealed his desire to avenge and that according to AW3, he was having close contact with P.P. Moideen Koya (though, according to AW3, in connection with party affairs).

31. There is a case for the A parties that the arrest of some of the accused made by the C.B.C.I.D. Unit was stage managed and that AW3 had produced those accused before the C.B.C.I.D. AW3 denied that. But I found a report suggesting that, from the Central Intelligence Wing (the State Govt. may refer to the file initially marked as Ext.S19). It is revealed from Ext.X2 that 82 accused in Crime No.82/03 of Beypore police station (cr. 116.CR/03 of C.B.C.I.D.) were I.U.M.L. workers. It is in evidence that after the massacre, when the Police entered the Marad Juma Masjid Mosque and wanted P.P.Moddeen koya (H Party No.2) to come out of the Mosque. he wanted the I.U.M.L. leaders from the District Committee office of that Party to arrive at the scene before he came out of the Mosque. Certainly, P.P.Moddeen



Koya (H Party No.2) was soliciting, awaiting or expecting help from his Party leaders. Ext.S5, the statement of P.P.Modieen Koya (H Party No.2) shows that Muhammedali had atleast, sought the assistance of I.U.M.L. for the retaliation. Reports say that immediately after the incident on 2-5-2003, there was a telephone call from one of the accused to the Mobile phone of AW3. AW3, would however, say that the said Mobile phone, though belonged to him, was in the use of his business partner, Basheer during 2-5-2003. But Ext.A7 is the statement of AW3 to the police that the said mobile connection was transferred in the name of Basheer one month before the incident. AW3 denied making such statement. It is only reasonable to think, in the above facts and circumstances that AW3 had information about the conspiracy and the impending violence at Marad Beach. It is quite unlikely, in the facts and circumstances that such large number of I.U.M.L. workers including few of its local leaders were involved in the conspiracy without the blessings of their leaders atleast, at the local level. That is the reason for AW12 opposing the C.B.I. investigation and raising his own apprehension about the CBI investigation.

32. The above discussion leads me to the conclusion that the massacre at Marad Beach on 2-5-2003 was not merely a retaliation for the murder of the three Muslims at Marad Beach on 3/4-1-2002. Instead, the Muslim fundamentalist / terrorist elements, taking advantage of the communal divide in the area and the revenge some of the relatives of Aboobacker (killed on 4-1-2002) had in



his killing, attacked the Hindus at Marad Beach on 2-5-2003. Evidence, facts and circumstances revealed that (apart from the accused already booked) there are other forces behind the conspiracy and the massacre. The NDF and IUML activists are involved in the conspiracy and massacre. It is quite unlikely that those activists got involved in the conspiracy and massacre, without the blessings of their local leadership, atleast. Some of the Mahal Committee members of Marad Juma Masjid (H Party No. 1) were parties to the conspiracy. Sri P.P. Moideen Koya (H Party No. 2) was a Party to the conspiracy or had prior information about that. There is every reason to think that AW3 (H party No.3) had prior information about the conspiracy and the impending violence at Marad Beach. A Multi Agency consisting of the officers of the Central Bureau of Investigation, Central Intelligence Bureau and Directorate of Revenue Intelligence has to investigate into the larger conspiracy involving other forces behind the conspiracy and massacre, and fix the liability.



**THOMAS P. JOSEPH**  
COMMISSION OF INQUIRY

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## CHAPTER VIII

### *SUCH OTHER MATTERS AS ARE INCIDENTAL TO AND ARISING OUT OF THE ABOVE TERMS*

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I have referred to the oral and documentary evidence concerning the activities of the fundamentalist / terrorist elements (to whichever community they may belong) in the State. I adverted to the oral and documentary evidence regarding the links some of the terrorist / fundamentalist elements in the Country reportedly had with certain foreign organizations and the opinion of CW3 that it is not likely that such International affiliation of the terrorist / fundamentalist organizations is confined in their activities beyond the territory of the State. I have also adverted to Exts. A 84 (a), 85 (a) and 86 (a) containing the statement of Vice Admiral, Sureesh Mehta about certain elements smuggling drugs, arms and ammunitions into the Malabar region and that Kozhikode is the hub of such activities. AW24 stated how some of the fundamentalist elements are engaged in smuggling gold and purchasing lands spending huge amounts. The evidence of AW24 revealed how much half hearted, were the investigation conducted by the State Police into the cases involving grave offence including murder and even involving fundamentalist / terrorist elements.

He asserted that there was never any effective investigation into the communal activities of the communal organizations in Kerala. Ext. C14 is the records of Cr. No. 246./ CR/ KNR/ 99 of C.B.C.I.D., Kannur relating to the attempt on the life of none other than the then Chief Minister of the State (late), Sri. E.K. Nayanar by some fundamentalists. According to AW 24, the RSS, VHP and NDF are indulging in terrorist activities in the State. I find from the various reports that the Police at the District level had given some information to the State police headquarters about such activities. Ext. C18 is one such report. It contained startling informations Ext. C18 refers to some organizations allegedly having links with Iran and the ISI of Pakistan and contributions being received from the Gulf Countries. Locally, it is reported in Ext C18 about certain Ambulances, under the guise of carrying patients transporting weapons (I do not forget that the concerned persons denied the allegation in their evidence - but I do not also expect them to admit all those things before the Commission. It is only quite natural that they denied. But, prima facie, there is no reason why a false report like Ext. C18 should be prepared in the year 1998) Even the evidence of CW1 did not reveal that any action was taken in the matter, even locally against the reported transportation of weapons. I received the details of grave cases registered in the State from 1998 onwards and wanted the State Government to explain the action if any, taken on such reports. I received a communication from the Director General of Police, Kerala, in that regard but, that report only stated how, certain instructions were given to the subordinate officers and that to meet the situation,



the Kerala Police Act was amended. (to prevent physical training). But, did it yield result? Evidence revealed that even at Marad Beach, such physical training was going on. I did not find any information worthwhile, coming from the State Home Department to show that any effective action was taken on those reports. It is seen from a report that on 20-9-1995, the then superintendent of Police, Malappuram had intimated the Addl. DGP (Intelligence) about fundamentalist / terrorists activities in Malappuram District. It is understood that in Cr. No. 62/98 of the Kasaba Police Station involving serious allegations of one of the accused (BW29) being sent to Pakistan for I.S.I. training and two of the accused (BW.28 and 29) harbouring an Al-Uma leader involved in Coimbatore bomb blast case, chargesheet (Ext. C56 is the copy of draft chargesheet in that case) was submitted only very recently. It is revealed that in Cr. No. 390/01 of Manjeri Police Station regarding the explosion in the compound of the Green Valley Foundation which is revealed to be under the control of the NDF, the investigation is not completed even now, for some reason the investigation is left in the lurch and the concerned Investigating Officers are groping in the dark. Is it because even after investigating the case for about 5 years, the concerned officers were not able to get a clue. Or, are our Police officers so incompetent? (according to me, it is not so). Or, is it because the investigation is held up due to some reason? Forget about all other evidence, even the then Director General of Police (AW 21) claimed that his information was that the explosion was the result of somebody testing the explosive devise made by them.





Then why is the investigation not progressing? Ext.C51, statement of an NDF activist recorded by CW34 in connection with the investigation of Cr.62/98 of Kasaba PS states that BW29 had told CW34 that the NDF was helping the Al-Uma (of Tamil Nadu), he was aware that the NDF was getting money from foreign Countries as pipe money sent to Kerala and that the organization was acquiring weapons. Exts. C52 and C53, statements of two other NDF activists recorded by CW34 also made serious revelations. Ext.C64 to C67 and evidence of CW36 revealed, prima facie that certain SIMI activists had manufactured bombs in the haul of a Mosque for unlawful activities. Exts. C39 to 41 and evidence of CW33 prima facie shows manufacture of pipe bombs, Imam Ali (of Al-Uma) staying in Malappuram District and giving training in making pipe bombs. Imam Ali is said to have undergone training in POK (Pakistan Occupied Kashmir). Ext. A 88 and A 89 series refer to seizure of tube bombs from Kadalundi river in Malappuram District and the arrest of a three member gang engaged in setting fire to cinema theatres in the same district, exhibiting its photographs in the Gulf countries and collecting money from there. Evidence let in, revealed prima facie that certain Hindu elements are also engaged in such unlawful activities. Are our Intelligence Wings unaware of those happenings? What effective action has the State Govt. taken on such and similar other activities by the divisive forces, forget about their religion, caste and denominations? Could the State Govt. be satisfied with the filing of some final reports in such cases by the Police or some assurance made in the floor of the State Assembly that the Govt. is aware of ~~the~~ such activities and are looking into the matter or that stern action



will be taken? The State Govt. and the concerned department appeared to be lethargic in such matters, unmindful of the consequences. It is disturbing that no effective action was taken by the State Government on the activities of the fundamentalist / terrorist elements. FW1 who supervised the investigation of the cases relating to the incident on 3/4-1-2002 admitted that the police did not investigate into the source of the weapons used in the incidents. Ext. F 48 series show that large number of weapons were used by the miscreants during the riot on 3/4-1-2002. Even according to FW1, the different groups had collected and stockpiled weapons in such a way that they could come armed with short notice. Still, no investigation was conducted about the source of weapons! I referred to the evidence of AW15, Sri. Pinarai Vijayan that communal clashes and riot spurted in the State during the UDF regime. He claimed that 40 persons died in the communal clashes in the State during 1991-96 when the UDF was in power and that 18 persons died in such clashes after the UDF came to power in the year, 2001. It is his further claim that no single person died when the LDF was in power in Kerala. According to AW15, the spurt in communal clashes when UDF came to power was because, the UDF Government was appeasing communal forces for political gains. DW1, Sri. A.K. Antony was asked whether, he had reported in the State Assembly that there were 16 (sixteen) communal riots in Kerala during 2002. He replied that what is stated in the State Assembly is a public record and that it is true. I referred to the evidence of the Cultural / Literary figures and Ideologists that the successive Governments failed to prevent fundamentalist /



terrorist activities in the State. Some lamented that the Government was never sincere in its actions against such divisive forces. CW4, Sri. P. Govinda Pillai stated that the successive Governments, either did not take any action, or wholeheartedly, against such fundamentalist / terrorist elements. He was not prepared to say that even the Left Parties led Government also had taken strong action against such elements though according to him, the Left Parties had taken more initiative in that regard. Certainly, it was because there was no political will that the Government did not take effective action against the fundamentalist / terrorist elements. The successive State Governments, whether led by the UDF or the LDF were not effective in their action against the fundamentalist / terrorist elements in the State. It is quite unfortunate and disturbing that the successive Governments did not take effective action against the activities of such fundamentalist / terrorist elements in the State.

2. Going by the evidence of AW15, communal clashes and riots occurred when the UDF was in power. He gave the statistics also which I have stated in the foregoing paragraph. DW1, Sri. A.K. Antony, Chief Minister during the said time and leader of the UDF was not able to controvert the above statistics. According to AW15, such incidents occurred during the UDF regime since the UDF Government adopted the policy of appeasement of fundamentalist elements to come to power. When DW1 was confronted with that statement, he claimed that the UDF and the LDF had sought and obtained the support of the PDP in the elections. He

however, denied aligning with any fundamentalist groups. It is certainly a matter which the UDF led government should ponder why, during its regime, there occurred more communal clashes and riots in the State.

3. In Chapter VII, I referred to the failure / refusal of the CBCID, Kozhikode unit to investigate into the involvement of other forces behind the massacre on 2-5-2003. It is revealed from the evidence collected by the Commission that the Hindu organization have been consistently clamouring in unison, for CBI investigation into the massacre and the involvement of other forces in the incident. The Gandhian Organizations, the Press Club officials and others, who had initiated peace talks had also recommended CBI investigation since that was the one point agenda of the Hindu organizations as condition for the peaceful rehabilitation in Marad following the massacre on 2-5-2003 and since CBI investigation was necessary to bring out the 'dark forces' behind the massacre. AW1, Sri. N.P. Rajendran and AW13 referred to the attempts made by the Press Club, Kozhikode to bring about peace in the area. According to AWs1, 7, and 13, though the IUML as a Party was not against investigation by the CBI, the then Industries Minister, Sri. P.K. Kunhalikutty (AW12) turned round at the last moment and refused to agree for CBI investigation raising the apprehension that in case of CBI investigation, there was no guarantee that himself or even party leader, Sri. Panakkad Sihab Thangal will not be put behind the bars. AW3, local leader of the IUML stated that his party had not decided against CBI investigation. AW12, the then



Industries Minister Sri. P.K.Kunhalikutty stated that himself or Party had not stated that CBI investigation was not required but, the Cabinet decided that CBI investigation was not necessary in view of the legal opinion given by the Advocate General. According to AW1, AW7 and AW13, the then Chief Minister, Sri. A.K. Antony (DW1) was not personally in favour or against the CBI investigation, but he left that matter to the decision of the Cabinet. Going by the evidence of AW7, DW1 and others, in the peace talks under the leadership of Sri. Gopinathan Nair, noted Gandhian, it was agreed that investigation by the CBI into part of the incident (relating to the involvement of other forces in the incident) will be considered provided, such a course was sanctioned by law. Ext. X5 is the copy of report dated 19-1-2004 placed by the then Chief Minister (DW1) in the State Assembly showing the terms of the agreement. DW1 claimed that the agreement was presented before the Cabinet which approved the same and accordingly, the legal opinion on the point was sought from the Advocate General. The Advocate General opined that since the CBCID, Kozhikode Unit had already investigated the matter and filed chargesheet in the case, it was not permissible under law to entrust the investigation to another agency. Accordingly, the proposal for investigation by the CBI into the (alleged) involvement of other forces could not be accepted. The Hindu organizations claimed that the Government was not in favour of CBI investigation because, some leaders of the UDF partners would be in trouble if the CBI investigated the case.



4. There is evidence to show that inspite of the IUMML as a Party not opposing CBI investigation, the Hindu organizations demanding that, and even the Gandhian organizations and others who took part in the peace initiatives recommending CBI investigation, Sri. P.K. Kunhalikutty (AW12) was not in favour of CBI investigation. I stated from Ext. X2, the report placed by the then Chief Minister (DW1) in the State Assembly on 22-7-2003 that 82 accused in the case relating to the massacre on 2-5-2003 were IUMML activists. They included Sri. P.P. Moideen Koya, (A141), the IUMML leader of the locality and member of the Beypore Panchayat from the Ward including Marad Beach, and serial No. 71 (in Ext. X2), another local leader of the IUMML. AW3, the district level leader of the IUMML and Chairman of the CDA was under close watch by the CBCID. AW3 and AW12 admitted that some IUMML activists are involved in the case but not as much in number, as mentioned in Ext X2. AW3 and 12 or their Party cannot afford to contradict the statement made by DW1 in the State Assembly.

5. So far as the stand of the State Government as regards the CBI investigation is concerned, DW1, the then Chief Minister stated in answer to specific question by the Commission that the Government did not order CBI investigation (at the initial stage itself) since, following the 'Muthanga' incident (the alleged police action on Tribals in which one Tribal died), when the Government ordered CBI investigation, there was a clamour for Judicial Inquiry and hence, to avoid such a demand, Judicial Commission was appointed to inquire into all aspect of the massacre



investing the Commission with wide powers. It is difficult to think that to foreclose a demand for Judicial Inquiry following such a demand regarding the 'Muthanga' incidents, the Government decided in favour of Judicial Inquiry in this case. I cannot think for a moment that the Government decided in favour or against C.B.I. investigation otherwise than on the merits of each case. It is difficult to think that because some political parties / organizations demanded Judicial Inquiry into the 'Muthanga' incident, the Government led by DW1 decided in favour of Judicial Inquiry and against C.B.I. investigation into the massacre on 2-5-2003. It is not the case of the State Govt. or the version of DW1 that anybody had demanded a Judicial Inquiry into the massacre. I have to bear in mind for a moment that so far as the Muthanga incident was concerned, it was simply a police action (whether or not, there was excess by the police) against the Tribals who are said to have trespassed into the reserve forest while, in the case on hand, at the time the Government was considering the question of C.B.I. investigation, there were serious allegations that internal / external forces were involved in the massacre which resulted in loss of nine (9) valuable lives. Infact, I noticed from the file produced by the Chief Secretary that even Sri. K.K. Vijayakumar, the then Principal Secretary to the State Govt. (General Administration) who was entrusted with the responsibility of rehabilitation at Marad Beach had suggested in his report No. 11 for a <sup>CBI</sup> investigation if that was permissible. We have come across umpteen instances in this State where, in matters of far less seriousness, the Government have ordered investigation by the C.B.I. Why then, the refusal

in this case which involved very serious allegations including interstate and intra-state fundamentalism and terrorism which a State Agency like the local police or even the C.B.C.I.D. which is only a wing of the State Police may not be that much equipped to meet, even as opined by CW3, a Senior Police Officer? I am persuaded to think that the explanation given by DW1 for not ordering C.B.I. investigation was only a lame excuse. The Govt. may, in this connection refer to the report of one of the Intelligence Officers of the State Special Branch (Govt. may refer to the documents initially marked by the Commission as Ext. C19) that a person called "FM" (Finance Minister) who came to Kozhikode from the Gulf Countries on 2-5-2003 was the source of the money behind the massacre, that two Ministers in the Cabinet of DW1 had "unimaginable connection" with the 'FM' and that the Government may be in trouble if the C.B.I. investigated the case at a time when the B.J.P. was (then) in power at the Centre. (AW37, a journalist gave some details of the said report in the 'Mangalam' daily). I found from the records that the concerned Intelligence officer had also collected the travel documents of the said 'FM'. That report and documents were submitted to the Government by the concerned officer of course, much after the C.B.C.I.D. filed the charge sheet in the case. When that report was shown to DW1 when he was in the box, he was pleading ignorance about that. Quite unlikely that DW1 was not aware of such a serious report concerning two of his colleagues in the Cabinet and particularly as DW1 was also in-charge of the Home Portfolio. Or, am I to think that the senior Police Officer in the



Intelligence Head Quarters had not shown that report to DW1 (inspite of his periodical briefing on Intelligence Reports to DW1) ?

6. Now, I shall refer to the stand of the State Govt. that C.B.I. investigation in part was not ordered since that was not legally permissible. Exts. C96 to 99 are the photocopies of the relevant files collected from the file produced by the Chief Secretary. It is revealed that vide letter dated 9-10-2003 of the Principal Secretary to the Govt. (Home Department), the State Advocate General was requested to give his opinion in the matter of entrusting the investigation with the C.B.I. regarding *"the conspiracy, interstate connection and links with terrorist groups"* behind the incidents at Marad beach on 2-5-2003. In the meantime, AW7 placed before the State Govt. the legal opinion of some of the leading Lawyers on the permissibility of C.B.I. investigation after the C.B.C.I.D. filed the chargesheet. The Principal Secretary (Home Department) forwarded those legal opinions to the Advocate General for consideration while examining the issue. This fact, DW1 conveyed to AW7 also as per letter dated 13-10-2003 (Ext. C99 is the photocopy of that letter). Ext. C 98 is the photocopy of legal opinion rendered by Adv. (late) Sri. T.V. Prabhakaran, Ernakulam. Ext. C 98 (a) is the photocopy of legal opinion rendered by Adv. K. Ramkumar, Ernakulam. Ext. C98 (b) is the photocopy of legal opinion rendered by Adv. Sri. N. Bhaskaran Nair, Calicut. Ext C 98 (c) is the photocopy of legal opinion rendered by Justice Sri. Paravath Rao, (Rtd.) Ext. C 98 (d) is the photocopy of the legal opinion rendered by

M/s. Thottathil Radhakrishnan and Associates, Ernakulam. The Advocate General after considering the issue, gave his opinion on 26-11-2003. Ext. C97 is the photocopy of that Report. What the Advocate General considered, as seen from Ext. C97 are the following points:-

i. Govt. *wanted to collect further evidence if any, regarding the conspiracy aspect* which led to the commission of the offence; and

ii. Whether, the Govt. could under law, *entrust such an investigation* to a different agency (C.B.I)?

The Advocate General opined that the issue squarely fell under Section 173 (8) of the Code of Criminal Procedure, and after referring to certain decisions of the Apex Court (I went through all the decisions referred by the Advocate General in his report. Those decisions pertained to the '*further investigation*' in continuation of the investigation already conducted) opined that *none has come forward so far with a case that the accused mentioned in the chargesheet (Ext. C9) are not the persons who committed offence, if for any reason a different agency came to a different conclusion regarding the conspiracy, then the irresistible conclusion followed that the accused mentioned in the chargesheet (Ext. C9) are not the real accused* and hence, since, the C.B.C.I.D. has already filed the chargesheet, further investigation by the C.B.I. was not factually or legally permissible. The State Govt. accepted the opinion given by the Advocate General and closed the Chapter.

7. It is certain from Exts. X5 and C96 that the State Govt. was well aware even at the time of referring the issue to the opinion of the Advocate General that the Govt. was considering the permissibility of entrusting the *issue concerning the involvement of internal/external forces behind the massacre on 2-5-2003 and their links with terrorists*. The Advocate General was asked to give his opinion on that issue. Nobody wanted a further investigation into the involvement of the accused mentioned in Ext.C9 or the conspiracy among them as found by the C.B.C.I.D. The investigation by the C.B.I. was sought on a matter outside the matters investigated by the C.B.C.I.D., ie, on the issue of larger conspiracy, funding etc. involving other forces behind the incident. I found from the evidence how, the C.B.C.I.D. failed or refused to investigate into the involvement of other forces, the funding and collection of weapons behind the massacre and that the C.B.C.I.D. was purely concerned with the issue of murder and injury to certain persons. The bar u/s 173 (8) Cr.P.C., as far as my limited information goes and the Authorities on the point say, is only concerning "*further investigation*" ( ie., on the matter already investigated and concluded) into the same issue and not concerning an issue as in the present case, which was not investigated at all, by the C.B.C.I.D. This is clear from Ext. C98 series. In 'Ram Lal Narang V. State (Delhi Admin.) - AIR 1979 Supreme Court 1791- when a subsequent investigation revealed larger conspiracy involving more persons (than already charge sheeted), a second case for conspiracy was initiated in a different Court (and the earlier case for conspiracy was withdrawn). Here, if the



CBI investigated the larger conspiracy, source of all explosives and other weapons and large funding and that investigation did bear the fruits, the CBI could have filed a chargesheet for that larger conspiracy even in the same Court, as that had nothing to do with the final report already filed by the CBCID. It is difficult to think that the Govt. was unaware of the failure / refusal of the CBCID to investigate into the larger conspiracy. The Govt. did not bring that failure / refusal of the CBCID to the notice of the Advocate General. The Govt, without considering the real facts and real issue, closed the Chapter and ultimately, foreclosed for ever, an investigation into the involvement of other forces including fundamentalists / terrorists in the massacre on 2-5-2003 which, the Govt. was not justified and considering the fact that the State Govt. had at the initial stages and even before the CBCID filed chargesheet (on 31-7-2003)- at a time when concededly, the bar u/s 173 (8) of the Cr. P.C. could not come into operation at any rate - refused to order investigation by the CBI, cannot be understood as an innocent acceptance of the legal bar proclaimed by it. *It appeared that the State Governmnet wanted to avoid an investigation by the CBI into the involvement of other forces behind the massacre.* I stated earlier, on what lame excuse the State Govt. was avoiding an investigation by the CBI into the whole incident. One might think that the CBCID made a sincere effort to complete the investigation within the shortest time. But was that attempt, that much honest? Going by the version of CW28, a Dy.S.P. who was among the CBCID Investigation Team, they were constrained to file chargesheet (ie, to complete the



investigation) immediately, to avoid the accused being enlarged on bail (u/s.167 Cr. P.C.) as they apprehended the possibility of the accused getting enlarged on bail in case the investigation was not completed and chargesheet filed within 90 days of their arrest. These aspects taken along with the lame excuse given by DW1 for not ordering CBI Investigation and the report of the intelligence Officer which I have already adverted to, persuades me to say that the State Govt. without sufficient justification declined to order CBI investigation atleast into the involvement of other forces behind the massacre on 2-5-2003 which, even according to DW1, was an unparalleled incident. *What prompted the State Govt. to refuse CBI investigation into the issue? Was the fear expressed by AW12 (Sri. P.K. Kunhalikutty) a reason? Or, was there any truth in the report of the Intelligence Officer referred earlier and about which DW1 conveniently pleaded ignorance?* Only a further probe into that matter could reveal that.

8. I stated in chapter VII that the role played by AW35, Sri. MaheshKumar Singla on the issue of investigation (by the CBCID) into the involvement of other forces behind the massacre is quite suspicious. It is in that circumstance that notice u/s.8 B of the Act was issued to AW35. He has given a detailed explanation stating the role played by him in the matter of investigation. I have already adverted to his evidence and stated that his claim that he had not even seen the Intelligence Reports is simply false. The Commission examined CW26, Aboobacker, a businessman of Thrissur. It



has come in evidence through AW35 and CW26 that for some time atleast, AW35 stayed in the house of CW26 (on rental arrangement) when AW35 worked as D.I.G., Thrissur Range. It has come in the evidence that after AW35 was posted at Thiruvananthapuram, his father, Bhagvan Das entered into business partnership with CW26. This is proved by Ext. C20, the photocopy of the file summoned from the Sales Tax Office, Thrissur. It is revealed that Sri. Bhagvan Dás entered into partnership with CW26 for business in the products of Coco-cola. It is also seen from Ext. C20 that AW35 had issued a letter to the Sales Tax Authorities in his official letterhead, introducing his father, Bhagavan Das to whomsoever concerned. The business partnership is conceded by AW35 also. He stated that since the business was between his father and CW26, it was not necessary for him to obtain permission from his department. Fact remained that inspite of AW35 issuing a letter in his official letter head introducing his father for the business, he had not obtained the permission of the concerned department. May be, such permission was not required under law, but there is no case for him that he had atleast intimated that matter, to his department, since the letter of introduction issued by AW35 stated that Bhagvan Das was staying with him in his official residence. The A Parties have a case that CW26 is an NDF activist and has been funding the activities of the NDF. There is no evidence in that line. CW26 himself denied that. It came out in the evidence of CW26 that he is using a mobile phone bearing No. 9349822127. That mobile phone connection was issued from Reliance, Thrissur. Ext. C 26 is the call details of



that mobile phone. It is revealed from Ext. C26 that there were several calls from that mobile phone to the office/residence telephone of AW35 and further, that AW35 also had contacted CW26 on the same mobile phone. There is nothing wrong or doubtful in that apparently. But, though CW26 claimed that he took the mobile phone in his own name by sending an employee of his, it is revealed from Ext. C27, the letter issued by Reliance (in answer to the information called for by the Commission) that the mobile phone connection was taken in the name of one Tinoy. M.J. through M/s. V.S.V. Associates, Mannath Lane, Thrissur. Ext. C27 does not contain the details of the said Tinoy. M.J. Whatever that be, CW26 pleaded blissful ignorance about Tinoy. M.J. or V.S.V. Associates. He does not even know who is Tinoy. M.J. The mobile phone in question is still in the use of CW26. Evidence revealed that the mobile phone is not taken in the name of CW26, any member of his family or even any of his employees. Instead, proved circumstances persuade the Commission to think that for some reason whatsoever, CW26 has been using a mobile phone taken in a bogus name. For what purpose, is a matter to be probed into. It is on that mobile phone, that CW26 has been contacting AW35 in his office / residence phone and vice - versa. The Commission summoned the records of Crime No. 181/04 of Irinjalakuda police station registered for illicit manufacturing of liquor in large scale in the house of the accused therein. Ext. C24 is the copy of First Information Report and the connected papers in crime No. 146/04 of Irinjalakuda police station. The counsel for the Commission suggested to CW26 that some of the accused in those



cases are his close relatives. True, CW26 denied that. I am not prepared to say for a moment that because of the above telephone call, any adverse comment is to be made against AW35. *But, it is necessary for the State Government or other appropriate authority to investigate into the alleged connection of AW35 (Sri. Mahesh Kumar Singla) with CW26 and why, inspite of the State Govt. asking the CBCID to investigate into "all aspects of massacre including involvement of other forces if any" the CBCID refused to do that, why the CBCID under the supervision of AW35 failed or even refused to investigate into the involvement of other forces behind the massacre and the larger conspiracy and instead, AW35 who refused even to acknowledge the existence of the intelligence reports and refused to give any direction to the CBCID team to investigate into that matter, was proclaiming that investigation did not reveal the involvement of other forces in the incident. The role played by AW35, Sri. MaheshKumar Singla in refusing to investigate into the involvement of other forces is quite suspicious and is required to be probed the State Government or other appropriate authority.*

9. Notice u/s 8B of the Act was served on EW1, Sri. T.O. Suraj who was the District collector, Kozhikode during the relevant time. In answer to the Notice u/s 8 B, a detailed explanation was given by him stating the steps taken by him. While discussing Chapter No. V, I found that the steps taken by the Civil Administration to restore peace in the locality even after the communal riots in January, 2002 was not effective and did not bear



fruits. I also found that the Civil Administration failed to act in accordance with the dangerous situation that prevailed at Marad Beach inspite of Senior Revenue Officials visiting that place often and further, that the Civil Administration failed to take timely, preventive and remedial action to prevent violence in the Beach. The A parties alleged that EW1, Sri. T.O. Suraj was communal in his activities which resulted in resentment in the Hindu Community at Marad. They alleged that ~~the~~ EW1 was taking partisan attitude in favour of the Muslim community and as an instance, pointed out of the action of EW1 permitting the Union Minister, Sri. E. Ahammed to enter the Juma Masjid Mosque at Marad Beach at a time when prohibitory order was in force and the Mosque was in the custody of EW1, in his capacity as the District Magistrate. The suggestion made on behalf of the Civil Administration when EW1 was in the box was that EW1 granted such permission to Sri. E. Ahammed because, Sri. E. Ahammed was far and above EW1 as per the protocol. I do not take that suggestion as a valid explanation. But merely for the reason of EW1 permitting Sri. E. Ahammed to enter the Mosque, I am unable to say that it indicated any partisan attitude on the part of EW1.

10. None other than AW32 (Sri. SanjivKumar Patjoshi), the then Commissioner, Calicut stated in Ext. A112 that the SSB units at Calicut and Trivandrum said that EW1 was corrupt and communal in his activities. When questioned about that, AW32 mellowed his accusation and claimed that he did not think so, but learned that there was such a 'gossip' in the State Special Branch Units





at Kozhikode and Thiruvananthapuram. Though EW1 denied, fact remained that there was Vigilance Enquiry against him and presently, another Vigilance Enquiry is going on, into the alleged corruption and illegal activities of EW1 while he was the District Collector, Kozhikode. It is however, unnecessary for this Commission to go into the allegation of corruption against EW1 as that allegation prima facie, had nothing to do with the issues involved in this Inquiry

11. But, there is relevance for the issue whether, EW1 was communal in his activities since according to the A parties, that partisan attitude resulted in resentment in the communally divided Marad. 'Kadavu Committees' were formed at different places in Kozhikode District when EW1 was the District Collector, for the purpose of regularizing sand mining. It is revealed from the evidence of EW1 and the file relating to the Kadavu Committee produced from the Collectorate, Kozhikode that EW1 received letter dated 15-7-2002 from the Kozhikode District committee of the IUML recommending 21 persons (all belonging to the Muslim community) to be nominated as members of the 'Kadavu Committee', no other political party had made any such recommendation and that EW1 nominated all those 21 persons as members of the various Kadavu Committees. According to EW1, there is nothing unusual in that and that was because no other political party had made any such recommendation. From that conduct alone also, the Commission is unable to come to the conclusion that EW1 was communal in his activities. But, what enquiry did EW1 make about the suitability of the





said 21 persons for being included<sup>ed</sup> as members of the Kadavu Committee?. The file did not reveal that. Or, was EW1 simply obliging the recommendation of the IUML? For that, there is some relevance.

12. While discussing Chapter V, I observed that the Civil Administration failed in its peace initiatives after the communal riots in January, 2002 and in taking timely, preventive and remedial action to prevent the massacre on 2-5-2003. I stated that the version of EW1 and his subordinate officers/staff that AW30 and other officers had not reported the tense situation at Marad is quite unbelievable. I stated that his version that he was not provided with the Intelligence Reports could not be true and that, at any rate, that indicated his incapacity for effective administration. I received an affidavit dated 22-12-2005 (styled as a 'Confidential Affidavit') from EW1 (H party No. 4) by post at the fag and of this Inquiry. That affidavit while proclaiming EW1 to be secular, accused AW30 (Dy.S.P., Sri. RajMohan) to be communal and partisan. EW1 stated that *"Sri. Raj Mohan was picking out Muslim officers for making his adverse reports...the partisan attitude of Mr. RajMohan is clear from the fact that he had conducted enquiry and has kept profiles only on NDF activists and not in respect of RSS men. This has been done by him at a time when both the groups were equally involved in all troubles. All these points gives the motive of Sri. RajMohan and his possible links with Hindu Fundamentalist associations"*. If this is the attitude of an officer who was the District Collector, how could he



acquire the confidence of officers of other departments? Remember, the very same EW1 had given a clean chit to the SSB, Kozhikode unit under AW30 when examined on 29-12-2003, but after the S.8B notice was served on him, he tried to save himself by accusing the SSB, Kozhikode unit with inability. It is revealed from Ex.H9, the file relating to the meeting of the committee for Communal Harmony that such meetings were not regularly convened. Going by the evidence of HW3 and Ext.H9, there were only seven (7) such meetings between 24-4-2002 and 29-3-2003 and of those seven meetings, the deliberations on one occasion was only for 15 minutes and on two occasions, it was for ½ hour each. On other occasion, it was for about one hour. AW30 told the Commission in his evidence that he had attended all the meetings of the Communal Harmony (this is proved by Ext. H9 also) and that there was no effective or fruitful discussions in those meetings concerning the communal situation in the District, particularly regarding the areas prone to communal violence. He claimed that one or two meetings of the Communal Harmony were held simultaneously with other meetings. When questioned about that, he expressed difficulty to state those matters in detail in public. He was directed to file affidavit on that matter. Accordingly, AW30 filed affidavit wherein, it is stated that on one occasion, meeting of the Communal Harmony was held along with the meeting of the committee for Malabar Mahotsav. True, in his further examination EW1 denied that but, evidence of HW4, the then Additional District Magistrate, Kozhikode revealed that there were only some general discussions in the meeting



of the Communal Harmony concerning the situation at Marad. It is revealed from letter No. 18415/ SS.A3/02, Home, dated 10-5-2002 of the Addl. Secretary (for the Prl. Secretary to Govt), Home (S.S.A.) department and addressed to all the District Collectors and Superintendents of Police that the Govt. gave emphasis to the Manual of Guidelines to Prevent and Control Communal Disturbances and to Promote Communal Harmony and wanted the District Collectors and Superintendents of Police to "closely monitor the ground situation and take prompt and firm action at the slightest hint that a situation is turning communal". As per D.O. letter No. 11309/SSA 3/02/Home dated 5-4-2002, the Principal Secretary to the Govt. reminded the then District Collector, Kozhikode about the stipulation to hold the District Level Meetings as per the Manual referred above, twice in a month (later direction was to convene it once in a month) to review the working of the Intelligence Units. He was also informed that it had come to the notice of the Govt. that the meetings were not convened regularly. But, Ext. H9 shows that only 7 meetings were convened between 24-4-2002 and 29-3-2003. AW30 and AW32 have given evidence that the minutes of the Communal Harmony Meetings were not being prepared properly. I had observed in Chapter No. V, how the daily and weekly Intelligence Reports were being handled and maintained by Ew1. Thus, from the evidence on record, it is possible to conclude that the meetings on Communal Harmony were not being held regularly and at any rate, were held in a casual manner. Certainly, EW1 was responsible for that.



13. At the time of hearing, Counsel for the A Parties stated that the dependents of Askar, one of the assailants who was killed when an assault by his colleagues accidentally fell on him at Marad Beach on 2-5-2003 were awarded compensation of Rs. 10 lakhs on the report of EW1. This is admitted by Counsel for F party. On the question whether EW1 was communal in his activities which, according to the A parties had direct bearing on the communal flare up in the area, the following circumstances are relevant.

i. Constitution of Kadavu Committees with the members of a particular community suggested by the IUML

ii. Allowing Sri. E. Ahammed to enter the Juma Masjid Mosque, Marad Beach at a time when prohibitory order was in force, the Mosque was in the possession and custody of EW1, the communal divide at Marad Beach was at its peak and the said conduct was likely to intensify the communal flare up.

iii) The disclosure made by AW32 about the S.S.B. units at Kozhikode and Thiruvananthapuram reporting that EW1 was communal in his activities.

iv. The way in which EW1 described in his 'Confidential Affidavit' the official duty of AW30-accusing AW30 as communal, lamenting about AW30 allegedly preparing profiles of only NDF activists and not RSS activists also, and AW30 allegedly preparing adverse reports about Muslim Officers alone. The confidential affidavit indicated the mental make up of EW1 and upto what extent he can travel, to suite his defence.

On a consideration of the above aspects, I am of the opinion that the allegation of communalism against EW1 cannot be ignored as baseless and that is required to be probed as that could have had a bearing on the failure of the Civil Administration referred in Chapter V, above.

14. It is the case of AW32 that proceeding u/s 107 Cr.P.C. were registered against 342 accused after the communal riot in January, 2002 but, some of those cases were abruptly dropped by the Additional District Magistrate (AW2). This is denied by AW2, the then Additional District Magistrate. He admitted that proceedings u/s 107 Cr.P.C. was initiated after the communal riot in January, 2002 and further, that in sixteen (16) of those cases, proceedings were dropped after the period of interim bond. AW2 filed statement detailing the action taken by him u/s 107 Cr.P.C. It is revealed that 16 cases registered u/s. 107 Cr. P.C. were dropped on or before 2-5-2003 without any further action. To the question whether the proceedings were thus dropped (or had a natural death) because AW2 thought that there was no necessity or reason to continue the proceedings, AW2 stated, that alone was not the reason, but also since he was engaged in other official duties as well. In other words, AW2 did not also think that continuance of the S.107 Cr.P.C. proceedings were warranted. (I do not forget that AW2 produced a paper report appreciating his activities at Marad) It is pertinent to note from S.116 (6) Cr.P.C. that it was permissible for the Additional District Magistrate to continue the proceedings u/s 107 Cr.P.C. even beyond the prescribed period of six months, provided, there



existed special reasons for that, to be recorded in writing by the Addl. District Magistrate. Hence, it is not as if AW2 was helpless or, powerless to continue the proceedings beyond six months. If proceedings were not thus continued beyond six months, I am to conclude that either, as stated by AW2 there was no necessity to continue the proceedings or, AW2 and the concerned police did not apply their mind on the issue and were not alert. It is also to be born in mind that AW2 was a member of the Communal Harmony Committee. He could have brought the matter to the notice of the committee. AW2 being part of the Civil Administration and EW1 being the District Magistrate, the latter cannot absolve himself of responsibility in that matter. AW2 admitted from Ext. H9 that AW30, Dy.S.P. Sri. Raj Mohan had intimated the Addl. D.G.P. (Intelligence) with copy to then District Collector, Sri. Viswanath Sinha that the peace conferences conducted by the Revenue officials had not acquired the confidence of the people of Marad Beach at the grassroot level. EW1 would not have been unaware of that report. That should have alerted AW2 to continue the proceedings under S.107 Cr PC.

15. A further fact to be noted from Exts. A111 and A 112 is that EW1 and AW32, whatever be their present stand be, were not maintaining rapport or good relationship as expected of them. When AW32 did not attend the meeting of the Communal Harmony Committee, EW1 complained to the superior of AW32 without even checking up the reason for that, from AW32. AW32, in turn accused EW1 with corruption and communalism, may





be the gossip he heard. AW32 claimed in Ext. A112 that he is a member of the All India Service Batch of 1991 while, EW1 is a conferred IAS officer of 1996 Batch and hence, under the All India Services Protocol Rules, EW1 should have consulted AW32 before fixing up the meetings of the Communal Harmony. It is the further stand of AW32 that it was totally unbecoming of a District Collector to complain to his (of AW32) superior about him and that the Chief Minister had instructed EW1 to maintain better rapport with AW32. According to EW1, he was not bound to make any such consultation with AW32 before fixing the meetings of the Communal Harmony. Irrespective of the claim made by AW32 as per the Rules if any, or the stand of EW1, I think that for the proper and effective functioning of the Civil and Police Administration and for the proper co-ordination, it was necessary for EW1 and AW32 to have had good rapport. There was nothing wrong in EW1 ascertaining from AW32 and such other senior officers as to their convenience before fixing up the dates for the meetings of the Communal Harmony. AW32 could have informed EW1 about his inability if any, to attend the meeting. Circumstances revealed the egoism of both, EW1 and AW32. Thus, the lack of rapport between EW1 and AW32 whatever be the reason thereof, contributed to the lack of co-ordination between the Civil and Police Administrations which ultimately affected the effectiveness of the action to be taken by both the departments in the riot prone area. In the circumstances, the Commission comes to the conclusion that EW1 was not discharging his functions responsibly and effectively as expected of the



District Collector and District Magistrate. He also is responsible for the failure of the Civil Administration in taking timely, preventive and remedial action to prevent the recurrence of violence at Marad Beach, as stated in Chapter V. The Govt. has to enquire into the allegation of communalism made against EW1 (H party No. 4) which cannot be ignored as baseless, as that could have had a bearing on the failure of the Civil Administration stated above.

16. Now, I shall refer to the notice u/s 8 B served on AW32, the then Commissioner of Police, Kozhikode. I stated in Chapter V that the Police Administration under AW32 failed in taking all effective steps to prevent the massacre at Marad Beach on 2-5-2003 and even casually treated the specific Intelligence Reports on the matter. In fact, the failure of the City Police Administration is practically admitted by AW32 also, but he only blamed others for that. According to AW32, everything went smoothly and effectively until 19-3-2003 on which day, he vacated office as the Commissioner of Police, Kozhikode and after 19-3-2003, "the tight grip of the police over the situation at Marad Beach loosened which resulted in the massacre on 2-5-2003". I stated in Chapter V that this version of AW32 cannot be accepted for a moment and that it is difficult to believe that the situation at Marad became bad only between 19-3-2003 and 2-5-2003. I also stated from Ext. C9 that even according to the CBCID, the conspiracy for the massacre, collection of weapons and its stockpiling at Marad Beach and even in the Juma Masjid Mosque (at Marad, under the nose of



a police picket post) started much before 19-3-2003 and after 3/4-1-2002. Statement of some of the accused revealed that large quantity of weapons were transported to Marad Beach much before 19-3-2003. Ext. S1, the statement of the 2nd accused in Cr. 82 /03 of Beypore PS (Cr.116/03/CR of CBCID) revealed that the conspirators had planned to execute their plan even one month before ~~the~~ ~~the~~ 2-5-2003, but that was not carried out because the news leaked out. I further stated in Chapter V that there was no effective policing at Marad Beach and that the directions issued by AW29 in that regard were not properly or effectively carried out.

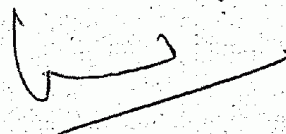
17. In answer to the notice u/s 8 B served on AW32, he produced several documents. Those documents are to the effect that the performance of AW32 as Commissioner was appreciated by some of his superior officers, other persons and some of the media. Exts. H21, 22 and 64 are letters of appreciation for the work done by AW32 in connection with the visit of the President of India. Ext. H23 is concerning the response of the Police in the Control Room to a particular incident. Exts. H26, 61, 62 and 63 concerned performance of the police on a 'hartal' day. Exts. H24, 25, 27, 28, 30, 65, 66, 67 are letters congratulating AW32 or the police under him for their performance in respect of a particular event. Exts. H10 and 11 are to the effect that the general policing in Kannur Range (including Kozhikode district) during the relevant period was good. Ext. H87 is the copy of the Service Profile of AW32 recording his performance as good/very good etc. Ext H17 is a letter dated 31-3-2002 from DIG (North), congratu-



lating AW32 for his display of good leadership during the operations at Marad Beach on 3-1-2002. But, the above did not necessarily mean that he was effective as regards the policing at Marad Beach (which alone the Commission is concerned with). Nor am I considering the question whether, AW32 was a total failure as Commissioner of Police, Calicut City. The Commission is not going into the details of the war of nerves between AW29 and AW32 whether, the latter had been or was bound to wear uniform while in office or, attended any private function during office hours. Those are matters for the concerned authorities to look into. Based on the above referred documents, AW32 cannot successfully plead that he was effective in his actions as regards Marad Beach.

18. As regards the various memos issued to AW32 by his immediate Superior Officer (AW29), the stand of AW32 is that it was vindictive. According to AW32, AW29 had interfered in the investigation of some cases including the rape in the Medical College Hospital, Calicut, bypassing him and issued illegal instructions to the Investigation Officers to benefit the accused in those cases, AW32 did not permit that and hence, AW29 turned vindictive to him. Certain specific cases were also cited by AW32 but, apart from some blunt, wild allegations, I find no material on record to conclude that AW29 had illegally interfered in any such case. Moreover, what I am concerned with is not the activities of AW29 as a police officer, but whether, AW32 carried out the directions issued by AW29 for the proper policing and to prevent violence in Marad Beach. What I could gather prima facie,

from the evidence and even the documents produced by AW29 is that he is an intelligent and responsible officer, capable of managing any situation and who had understood the real, tense situation in Marad Beach. When AW29 was in the box on the second occasion, it was suggested to him on behalf of AW32 that the Judicial Commission which inquired into the Sivagiri incidents had indicted him. AW29 denied that and claimed that the Commission had paid encomium to him. AW29 sent to this Commission by post the relevant extract from the report of the Commission. It is stated in page 343 about AW29 thus: "Sri. Sankar Reddy, then Superintendent of Police did a commendable job in rendering assistance to the Amien as directed by the Hon'ble High Court realising that he was standing on a dangerous precipice.. he has done a good job..." How could AW32 make such a scurrilous accusation so irresponsibly against his own superior (AW29) when the document said otherwise? Wherefrom did AW32 get the information he suggested to AW29? It was in the presence of AW32 that his Counsel put that suggestion to AW29. I remember that AW32 was giving instructions to his counsel even in the Court hall to cross examine AW 29. I find from Ext. C22 that AW32 even accused AW 29 as communal. AW32 accused EW1 of corruption and communalism when EW1 pointed out his failure to attend the Communal Harmony Meeting and later, turned round and said that it is not his version but, the gossip he heard from the Intelligence Units at Thiruvananthapuram and Kozhikode. Was AW32, the Commissioner of police going around making allegations on the basis of gossips he heard? If AW32 was sincere





enough in his comment, he should have brought to the notice of the concerned authorities what he heard about EW1, rather than keeping it in his mind and retorting when EW1 complained to AW29 that AW32 was not attending the meeting on Communal Harmony. I already referred to the egoistic stand of AW32 as revealed from Ext. A112. When his attention was drawn to the action of FW2 about not properly enquiring about Bijili, AW32 claimed that it may be that FW2 was shielding Bijili. I stated how AW32 accused AW29, his Superior officer about illegal interference in the investigation of cases in favour of the accused, without any material what-so-ever to support that. The cross examination of AW29 on behalf of AW32, certainly as per the instruction of AW32 shows that he even tried to drag in two Union ministers in the matter of investigation of an Abkari case. At a time when AW32 was almost sure that evidence revealed that the policing at Marad Beach was a failure and that encouraged the assailants and forces behind them to plan, operate and execute the massacre, he proclaimed that everything was in order till he vacated office on 19-3-03 but, "the tight grip of the police over the situation at Marad loosened after 19-3-2003" and that resulted in the massacre. He was blaming Sri. T. Vikram, IPS, who held additional charge of the Commissioner, Calicut, from 19-3-2003 till 30-3-2003 and FW6 who took over as the Commissioner on 31-3-2003. It is revealed from Ext. F 28, the weekly diary of FW 6 that between 31-3-2003 and 2-5-2003, he had visited Marad Beach on several occasions, and that FW6 had never attended any private function during the said period. The weekly diary of AW32 shows that he





had attended several private functions including, inauguration of shops etc. (I am not very much at that). Thus, it appeared that whenever AW32 had to explain some flaw, he was trying to pass on the blame to others, be it his superior, be it his subordinate. One wonders how, if this is his attitude, AW32 could acquire the confidence of his superiors or even subordinates!

19. I have referred to the documents produced by AW32 to show that he had conducted patrolling in Marad Beach and checked the picket posts. Exts. H37 to 43 are letters addressed by AW32 or the DGP to the concerned authorities for granting sanction for prosecution of the accused in the January, 2002 incidents without delay. Ext. H44 is the visiting remarks made by AW32 in the Beypore police Station on 4-9-2002 that he checked the picket posts in Marad Beach and directed posting of local PC's mixed with ARPCs. It further states that AW32 footpatrolled in Marad Beach, interacted with the people and learned that the situation there is peaceful (a very correct assessment indeed!). Ext. H54 is his weekly diary from 6-11-2002 to 10-11-2002. He visited Marad Beach and other places between, 7.30 pm and 10.30 pm on 8-11-2002. Exts. H68 series is the weekly diary from 3-1-2002 to 18-3-2003. AW32 is shown to have visited Marad Beach along with other places on different occasions and on some occasions, even checked the picket posts. Therefore, it cannot be said that AW32 had altogether ignored the law and order situation at Marad Beach or never went there. But, the question still remained whether, the steps he took were effective in



preventing recurrence of violence? I stated that some of the specific directions issued by AW29 to prevent violence at Marad Beach were not either carried out or effectively carried out by AW32 and instead, he was merely contended by passing on the responsibility to his subordinate, FW2 who in turn, did the same thing. I stated from the evidence that large cache of weapons including countrybombs and swords were freely brought to Marad Beach even under the nose of police pickets and stockpiled at convenient places. Weapons were brought in autorikshaw or other vehicles. Swords were taken in sacks to the Mosque at Marad Beach. I stated that there was no effective checking of vehicles /suspected persons passing through the picket posts. I stated how, the specific information regarding Bijili went unattended or casually treated. I stated from Ext. S18 that the Intelligence Wing had given information in advance about the activities of fundametalist/terrorist elements working in and around Marad Beach. Names of such persons (who included three of the accused in Cr. 82/03 of Baypore police station- Cr. 116/Cr/03 of CBCID) were given. There was no follow-up action. The information given by the Intelligence Wing concerning collection of weapons were described by the District Special Branch working directly under the supervision and control of AW32 as 'baseless and false'. There was no effective search for the weapons in spite of collection and stockpiling of weapons including countrybombs, swords etc. in such large quantity. In the much proclaimed searches conducted by the local police even using the bomb squad and dog squad, even as per Ext. F23 series only once, weapons could be traced and Ext. F23



series does not say what all weapons were seized. Thus, I found in Chapter V that the Police failed in taking all effective steps to prevent the massacre. AW32 who was in office from 12-11-2001 to 19-3-2003, was the Commissioner during the first communal riots and was aware of the communally high sensitive situation at Marad, is also responsible for the failure of the City Police Administration to take all effective steps to prevent the massacre on 2-5-2003. He did not carry out many of the directions issued by AW29 in the matter of prevention of recurrence of violence, apart from instructing his subordinates to do that. He did not checkup whether, his subordinates did carry out the instructions. It is revealed from Ext.H9 and the oral evidence that AW32 had not attended most of the Communal Harmony Meetings. *Ext.H9 shows that AW32 attended the Communal Harmony Meetings only twice, on 2-12-2002 and 10-2-2003 inspite of being in office as Commissioner from 12-11-2001 till 19-3-2003.* I am aware, AW32 has his own excuses for that. Either, he was busy with the meeting convened for the purpose of providing protection to the Grassim Industries as per the order of the Hon'ble High Court of Kerala, or he was allegedly asked by AW29 and others to accompany them to the college ground where the President of India was to address the meeting (AW32 even goes to the extent of saying that AW29, when told about the Communal Harmony Meeting asked AW32 to "ignore" it - quite unbelievable a story) or it may be that as pointed out by AW32 in Ext.S112, the District Collector who is a conferred I.A.S. officer of 1996 batch did not 'consult'

him (I.P.S. batch of 1991) as required under the Rules of Protocol. These are all lame excuses. And, there is indication in Ext. S112 itself that AW32 treated, not attending the meeting of the Communal Harmony as very trivial. He stated in Ext. S112 that EW1 (District Collector) complained about the *“Very minor issue of (his) not attending one monthly intelligence meeting”*. At the same time, he boasted that “the whole Calicut City People, media are all appreciating and Calicut City Police image has gone up very high” There is no justification in AW32 not attending the important meetings of the Communal Harmony. For the lack of confidence and rapport with EW1 (District Collector), AW32 is equally or more responsible. For, he was accusing EW1 of corruption and communalism and was even claiming superiority over EW1 who was the District Magistrate. *The conduct of AW32 exhibited lack of the quality and capacity to lead a team successfully, apart from his inept handling of the situation which ultimately resulted in the msassacre.*

20. Notice u/s.8 B was issued to FW2, Sri. M.Abdul Raheem (H party No.6) for his alleged connivance with the forces behind the massacre on 2-5-2003 and inept handling of the situation. He has given detailed explanation denying that. FW2 produced certain documents to prove that he acted sincerely and effectively. Ext. H13 is the copy of the Confidential Report of FW2 prepared by AW32 for the period from 17-6-2002 till 13-12-2002. FW2 is described as a very good officer. Ext.F26 is produced to show seizure of few tin bombs from the

terrace of the Govt. Veterinary Hospital, Beypore (those tin bombs were not detected by the police. Employee of the Hospital noticed that and informed the Police). Ext. F29 is produced to show that as on 2-5-2003, there were 9 (nine) picket posts at Marad Beach (with only one local P.C. all over Marad Beach from 1-8-02 onwards, the total number of local PCs were either three or even less than that on many occasion, only one local P.C. from 3-1-2003 onwards, that number was consistently only one for the whole Marad Beach except, on 21-1-03, 28-1-03, (3 each) and 1-2-03, 20-2-03, 1-3-03 (2 each). On 1-5-2003, the total number is stated in Ext.F17 as 40 but FW4 states, that was a mistake. On 2-5-03, the total number is stated to be 47- admittedly, another mistake. Only 12 A.R.P.C. (altogether, 13 policemen) were in the Control Room at Marad and 9 picket posts. Ext.F34 is produced to show that against 17 accused in Cr. 82/03 of Beypore police station, Rowdy History sheets were opened in 2002. (Bijili or Mohammedali, prime conspirators are not among them). Ext. F35 is produced to show that against 38 accused in Cr.82/03 of Beypore Police station, proceedings u/s 107 Cr.P.C. were initiated in 2002 (Bijili is not among them). But, I stated that those proceedings u/s.107 Cr.P.C. had a natural death after the initial period. While discussing reference No. (III) in Chapter V, I stated that the City Police Administration failed to take all effective steps to prevent the massacre. I also stated how the Intelligence Reports were ignored or casually treated by the City Police Administration. It is revealed from the evidence of AW29 and Exts. S11 and S12 that sufficient information was given to the City Police Administration



regarding the activities of the fundamentalist elements trying to instigate Bijili, son of late Aboobacker to retaliate on the Hindus. Specific information was given that Bijili was found active among fundamentalist Muslim elements and that he was being instigated by such elements for retaliation against the Hindus. Information was given that there was possibility of recurrence of violence at Marad Beach, enmity between the two sides still persisted and that certain elements were organizing training classes at Chakkumkadavu, north of Marad Beach. A list of 13 persons found in the area (of them, three are accused in cr. 82/03 of Beypore police station - Cr.116/CR 03 of C.B.C.I.D.) and were potentially dangerous was also given to the City Police Administration. The City Police was asked to keep close watch on the activities of Bijili. That letter is dated 24-1-2003 and addressed to AW32. It is revealed from the evidence that the same day, AW32 forwarded copy of Ext.S12 to FW2 (H party No.6) and the Circle Inspector, Cheruvanoor and directed them to take urgent steps. The same day, AW32 endorsed on Ext.S12 that according to FW2, there was no such person as Bijili and that the State Special Branch says that it may be Noufal. It is seen from Ext.X19, that FW2 had made such a remark in the register of the Beypore police station as well. But, there is no evidence to show that FW2 had contacted the State Special Branch, Kozhikode Unit or ascertained whether it was Bijili or Noufal. AW30, Dy.S.P., S.S.B Kozhikode during the relevant time denied that there was any such consultation. In fact, there was no necessity or occasion for FW2 to entertain any such doubt on the identity of the person



since from the words of FW2 himself, there was no difficulty for him to identify Bijili as the latter was properly described as son of late Aboobacker (who has killed in the first communal riot). Assuming that it was a genuine doubt, FW2 should have searched for Noufal atleast, which also he did not do for reasons known to him. FW3, the Circle Inspector, Cheruvannoor claimed that he questioned Bijili on 28-1-2003 and produced Ext. F21, his Weekly Diary to prove the same. Both FWs.2 and 3 claimed that the former also had questioned Bijili but claimed that FW2 had not recorded the statement of Bijili, according to him since FW3 had already recorded the statement. Ext.F22 is the statement of Bijili, said to be recorded by FW3 on 28-1-2003 but, it is doubtful whether even FW3 had traced or questioned Bijili on any day. For, he conceded that his weekly diary (Ext. F21) only mentioned that he had enquired about Bijili on 26-1-2003 and that Ext. F21 did not mention that he had questioned Bijili on 28-1-2003 (or on any other day). That document did not even mention that FW3 had ever met Bijili. Though according to FW3, the Beypore Sub Inspector had also questioned Bijili, no statement was recorded and no document is produced to prove such questioning. FW3, the local Circle Inspector says that he was not aware about FW2 informing the Commissioner (AW32) that there was no such person as Bijili and that it may be 'Noufal'. At any rate, FW3 was sure that FW2 had not consulted him in that matter. Then, what was the provokation for FW2 to tell AW32 (Commissioner) on 24-1-2003 itself, that there was no such person as Bijili, it may be Noufal and concededly, not

making any effort to trace Noufal atleast? (Noufal also is an accused in Cr.82/03 of Beypore Police Station - Cr. 116/CR/03 of C.B.C.I.D.). In the above backdrop, it is difficult to accept the version of FWS 2 and 3 that both or any of them had either traced or questioned Bijili, inspite of the fact that specific information was given by AW29 that Bijili is being instigated by Muslim fundamentalist elements to retaliate against the Hindus.


21. Assuming that FW2 or FW3 or even both had questioned Bijili as mentioned in Ext. F22, the question arose whether, that was effective or was only an eyewash? Going by Ext.F22 which is a short statement, Bijili claimed that he was not indulging any such activities (as feared), and it appeared that FW2 and FW3 were quite satisfied with that statement of Bijili as if, they expected Bijili to tell them truly that he was being instigated by the Muslim fundamentalist elements mentioned in Ext.S12. It is conceded by FW2 that no steps were taken by him to cross check the correctness of the alleged claim of Bijili. None questioned the relatives and associates of Bijili. None ascertained who are the associates of Bijili and who all are having contacts with him. None ascertained whether Bijili had a phone - land phone or Mobile. No search was conducted in the house of Bijili to trace any incriminating material. It is revealed from the evidence that Bijili is a fisherman having education only upto the primary standard. Was he so clever and intelligent enough to withstand such effective interrogation by an Asst. Commissioner, Circle Inspector and Sub Inspector on different days and withhold all information

regarding the conspiracy (which himself and other accused had already started by then, going by Exts.C9 and C10) from those police officers? Quite difficult to believe so. Even going by the words of Fws.2 and 3, they merely recorded the statement of Bijili and let him off. Bijili was not even kept under surveillance inspite of Ext.S12 directing that the police should keep close watch on him. No Police officer knew about the whereabouts and activities of Bijili even according to FWs.2 and 3, after 28-1-2003 and until he surfaced at Marad Beach with weapons and his Co-assailants at 6.30 P.M. on 2-5-2003 for that fatal assault. Bijili was not even included in the rowdy history list and the proceedings under S.107 Cr PC, inspite of direction. Going by the evidence of FW3, the local police could have had only a soft corner for Bijili as H party No.2 (A141), P.P. Moideen Koya, the local leader of the ruling I.U.M.L. had introduced Bijili to FW3 as his party man and had told FW3 that it was unnecessary to enquire about Bijili. It is also revealed from the evidence that few weeks before the massacre on 2-5-2003, FW2 was informed about the wordy altercation between the two section of Muslims in front of the Marad Juma Masjid mosque concerning retaliation. But, he ignored it as a rumour (see Ext.F5, the minutes of the meeting of KadalKodathi on 21-3-2003). It is difficult to believe that a Senior Officer in the rank of Assistant Commissioner like FW2 would have done that in the normal course, if he were sincere enough.

22. I do not forget that FW2 produced certain documents to show that he requested for further re-

enforcement and for providing infrastructure for the police at Marad. Exts. S6 and S7 related to that. He wanted additional police force for Marad from AW32. AW32 informed him (Ext. S7) that if necessary, FW2 can collect the necessary men from the South Sub Division itself. According to FW2, there was no sufficient men in the South Sub Division to be taken for further re-enforcement at Marad. I am inclined to think so, for the time being. I am also inclined to think for a moment that as requested by FW2, the infrastructure facilities were not provided at Marad. But, Police force cannot claim that their failure to act was because of lack infrastructure facilities or even lack of strength. They should act effectively with whatever facility and Men are available. That is the responsibility of a disciplined force. Hence, it is idle for FW2 to lament that without further reinforcement provided by AW32 or, infrastructure facility provided by the State Govt., the Police could not act effectively. FW4 says that the strength in the Beypore PS on the date occurrence was such that it was not sufficient to meet any urgent situation. Was FW2 as the Asst. Commissioner of a Sub Division unable to mobilise the force from elsewhere in his sub division? He was able to spare only one local PC for duty at Marad Beach on 2-5-2003? It is also pertinent to note that if the strength in the South Subdivision were so bad, FW2 did not intimate that fact to AW32, in reply to Ext. S7.

23. The Service Book of FW2 was summoned at his request. That was to show that throughout his career as a police officer for 31 years, the superior authorities



had appreciated his performance. I found from the Service Book that though during the initial stages of the service, adverse remarks were made against FW2 by his superior officers including repeated censures, reprimands, postponement of increment etc, during his later period of service, the authorities were 'satisfied' with his performance. But, I am not assessing the performance of FW2 during the whole of his career. I am concerned only with his activity so far as the Marad incident is concerned.

24. The greatest assault to FW2 came from his own boss, the then Director General of Police (AW21). AW21 stated that he reached Kozhikode in the morning of 3-5-2003, conducted a quick enquiry about the incident and got some adverse reports regarding the conduct of FW2. Thereon, he asked FW2 to report immediately at the P.H.Q. Trivandrum. According to AW21, FW2 was deputed (by his superior) to enquire into certain information received before 2-5-2003 and to take action but, FW2 did not properly enquire into that. FW2 had not intimated the real situation at Marad to his superior officers. Even after the case was transferred to the C.B.C.I.D. with which FW2 had no business and even after FW2 was asked to report at P.H.Q. Thiruvananthapuram, he was trying to stay back enquiring about the investigation of the case by the C.B.C.I.D. and even trying to impress upon them that some of the main culprits were not really involved in the incident. According to AW21, it was not as per his proposal that FW2 was posted at Kozhikode South Subdivision. He claimed that his enquiry revealed that the posting of FW2 at Kozhikode was to oblige a Muslim leader.





25. To counter the above version of AW21, FW2 (H party No.6) examined HW1 and HW2, recalled and further examined AW19 and AW21. AW19, HW1 and HW2 claimed that FW2 had not in any way interfered with the investigation of the case by the C.B.C.I.D. They claimed that FW2 had not tried to impress upon them that one of the accused is not involved in the incident. HWs.1 and 2 stated about the steps taken by FW2 to maintain law and order and arrest the culprits following the incident on 2-5-2003. There is however, no quarrel that after the incident on 2-5-2003 FW2 had acted as required from him. But, it is to be borne in mind that FW2 was not then acting on his own, but acting under and as per the direction of FW6, then Commissioner of Police (Sri T.K.Vinod Kumar) who, it is not disputed by anybody, had done a good job at Marad Beach following the massacre on 2-5-2003. Hence, the performance of FW2 cannot be assessed on the strength of what he did at Marad Beach after the massacre. The question is whether, the action of FW2 before 2-5-2003 were sincere, honest and effective ? In ascertaining that issue, it is necessary to refer to the evidence of AW36. He is a resident of Kinasseri in Kozhikode City though, born and brought up in Thiruvananthapuram. He is the nephew of FW2. He is associated with the I.D.B., (Islamic Development Bank). He is one of the trustees of the I.Y.C. (Islamic Youth Centre) which is associated with the WAMY. The N.D.F. leaders, viz., Prof. Koya, Aboobacker and E.M. Abdul Rahiman were also trustees of the Islamic Youth Centre along with him. He claimed that he is





associated with them in their capacity as trustees of the Islamic Youth Center. He denied that he is an N.D.F. activist. (the Govt. may refer to Ext.S15 in this regard). He admitted that he had attended the functions of the N.D.F., but as a representative of the Indian National League of which, he is the Secretary. Ext. C18, the report prepared in the year 1998 States that AW36 is an NDF activist. There is no reason why, it should have been stated so wrongly in 1998. Whatever be the denial of AW36 and FW2, I find from Ext.S18, report of the State Special Branch, Kozhikode unit, that AW36 had obtained the assistance of Fw2 in the matter of arrest of T.K. Aboobacker Koya, a director along with AW36 in the Beypore Steels Private Ltd., and accused in Crime No.419/02 of Neyyattinkara police station. AW36 admitted that there was such a case involving T.K. Aboobacker Koya but denied that he had obtained the assistance of FW2 in any manner. But, prima facie there is no reason to discard Ext.S18 which was prepared much before the massacre on 2-5-2003. Though, FW2 pleaded ignorance about the organizational connection of AW36, I am unable to accept that plea as true and correct.

26. I stated how, the information regarding Bijili was either ignored or causally taken by FW2 and his subordinates. Going by the final report (Ext.C9) of the CBCID, Bijili played active role in the conspiracy and the massacre on 2-5-2003. I also stated that certain Muslim fundamentalists instigated Bijili to retaliate on the Hindus. Ext. C22 contained copy of the letter dt. 24-1-2003 sent by

AW29 to AW32 (Concededly, AW32 gave its copy to FW2 on 24-1-2003 itself). In that letter, it has been specifically stated that NDF/PDP elements were instigating Bijili to retaliate on the 'Hindus' FW2 was thus aware of the activities of the NDF at Marad Beach. The information on Bijili was later proved to be correct. Had FW2 and his subordinates properly enquired about that report on Bijili, they could have definitely busted the conspiracy and prevented the massacre. When Bijili was later shown to be involved in the conspiracy and the massacre and AW21 stated that FW2 stayed back at Kozhikode even after he was asked to report at PHQ, Thiruvananthapuram trying to impress upon the CBCID that one of the accused is not really involved in the incident, it is quite possible that FW2 did so and possibly, concerning Bijili. I do not forget that AW21, inspite of claiming to be aware of the name of that accused, declined to disclose that. That was because according to AW21, the case relating to the massacre on 2-5-2003 is pending trial in the Special Court and hence, it was not proper for him to state that. I do not forget that AW19 and other officers connected with the investigation of the case denied that FW2 made any such interference. But, I do not also expect them to state explicitly before me that FW2 did so, particularly when the Sessions Case itself is under trial, and give the advantage of such a statement to the accused.

27. It is true that AW21 did not initiate any departmental action or prosecution against FW2 for trying to screen an offender. AW21 stated that it was because,



whenever such irregularities are detected, it was not the policy of the Department to immediately initiate legal action against the officer, but try to discipline him by appropriate measures and since he retired on 31-5-2003. AW21 stated that immediately on returning to his office from Kozhikode, he recommended transfer of FW2 on 'public interest'. Ext. C95 is the photocopy of the letter dated 15-5-2003 sent by AW21 to the Principal Secretary to Govt. (Home Department) stating that the continuance of FW2 as Asst. Commissioner (S), Kozhikode is not in 'public interest' and hence, FW2 may be transferred. There is no reason to discard the evidence of AW21. Why was FW2 soft on the information given concerning Bijili? Why, ~~did~~ inspite of specific direction to that effect, FW2 did not include Bijili in the Rowdy list or the proceedings under section 107, Cr.PC?

28. The very appointment of FW2 as Asst. Commissioner (S), Kozhikode was made under suspicious circumstances. Going by the evidence of FW2 himself, he had no interest at all in the posting at Kozhikode and wished to be posted elsewhere. One thing is sure that FW2 did not on his own ask for a posting at Kozhikode. Then, how did that posting occur? AW21 stated that it was not as per his proposal. Evidence of AW21 is that on his checking up the matter after the incident on 2-5-2003, he learned that the posting of FW2 at Kozhikode was to oblige a Muslim leader. In the light of that statement, DW1 (then Chief Minister) was directed to explain his stand by an affidavit. DW1 filed an affidavit claiming that it was a routine posting and that there was nothing

unusual in that. Quite expected a reply from DW1 with all the political compulsions he has! I remember, on what flimsy ground the Government led by DW1 stood against a CBI investigation. I do not think that AW21 who was the Director General of Police, made an illmotivated or irresponsible statement about the posting of FW2 at Kozhikode South Sub Division. I do not find reason, in the broad circumstances discussed above to prefer the evidence of DW1 to that of AW21. Certainly, there was somebody interested in the posting of FW2 as Asst. Commissioner (South) Kozhikode. And, who was that somebody? Who was that Muslim leader behind and stated by AW21? What was his interest in getting FW2 posted at Kozhikode South Subdivision which took in Beypore and Marad which are communally and politically so sensitive? It is difficult to believe the words of FW2 that he was not aware about the organizational connections and activities of AW 36 at Kozhikode. *The very appointment of FW2 at Kozhikode South Subdivision is shrouded by suspicious circumstances.* These facts also could have dissuaded the Govt. from ordering the CBI investigation. A deeper probe is required to unravel that. There is evidence to show that FW2 was ignoring or, causally treating all informations given to him regarding the possibility of violence at Marad Beach. Why? Was it merely an irresponsible act? From the broad circumstances beginning from his very posting as Asst. Commissioner (S), Kozhikode till his transfer as per the report of AW21 (Ext. C95) that his continuance as Asst. Commissioner (S),



Kozhikode is not in "Public interest", including how he treated all information regarding the possibility of violence at Marad Beach and how he tried to shield one of the prime accused in the case, *there is reason to think that FW2 (H Party No, 6) was not that much innocent in the matter, as claimed by him.* Not only that FW2 is also responsible for the failure of the City Police Administration to take all effective steps to prevent the massacre at Marad Beach on 2-5-2003, his conduct throughout in the matter of preventing violence and his very appointment at Kozhikode South Sub Division are shrouded in suspicious circumstances and the allegations about his connection with the forces behind the conspiracy for the massacre cannot be ignored as baseless. Instead, that is required to be deeply probed.



THOMAS P. JOSEPH  
COMMISSION OF INQUIRY

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## CHAPTER - IX

### *TO SUGGEST SUITABLE MEASURES TO AVOID SUCH UNFORTUNATE INCIDENTS IN FUTURE?*

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I am called upon to suggest suitable measures to avoid such unfortunate incidents (like the communal riot in January, 2002 and the massacre, at Marad Beach on 2-5-2003) in future. Since I am required to suggest measures to avoid such incidents, it has become necessary for me to refer to the root cause for such incidents since, without referring to the root cause, no suitable measures could be suggested to avoid such incidents. With that in mind, I sought the views of eminent personalities from different walks of life-politicians, religious leaders, social activists, writers, lawyers, historians, ideologists, psychologist, psychiatrist etc. I shall narrate their views in short, hereunder :-

2. AW.15, Sri. Pinarayi Vijayan (State Secretary of the C.P.I.(M) was of the view that the root cause for such incidents is the absence of a strong, secular society and some of the political parties appeasing or trying to appease religious fundamentalist/terrorist elements to create vote banks for them. Such political parties are maligning



the political, social and cultural field by allowing such fundamentalist/ terrorist organizations to intervene. He therefore, suggested that the secular society must be strengthened and that the society must be purged from communal influence. Secular political forces should avoid aligning with the communal forces. Communalism has to be removed from all walks of life. He suggested that there must be arrangement to dispose of cases relating to communal clashes at any rate, within one year from the date of the incident.

3. AW. 20, Sri. Suresh Babu who worked as Chief Editor of Mathrubhumi from 1987 till 19-4-2004, has conducted a study on communal riots in Kerala. Ext.A87 is the book published by him. He opined that Kerala had the largest percentage of communal clashes/riots in the Country. According to AW.20, the reasons are vote bank politics, peculiarity of the State - geographically and population wise, ineptness and partiality of administrative leadership and international and inter-state terrorist links. He had occasion to interview political leaders as well, in connection with the study. He had gone through the Judicial Inquiry Commission Reports concerning the riots at Thalassery, Poonthura etc. and complained that the successive Governments did not implement the recommendations made in those Reports. For eg, the Aravindaksha Menon Commission which inquired into the Poonthura incidents had reported that weapons were transported in a white Maruthi van bearing No.KL- 01/718 and that if that vehicle was traced, the source of the weapons could be detected. But, the successive Government made no effort



to trace that vehicle. Such lukewarm attitude of the Government ultimately helped the fundamentalist/terrorist elements. The study conducted by the witness revealed that in Kerala, communalism occurred more often in the coastal areas; the reasons being the attempt for communal polarization in the coastal areas particularly, north of Thrissur and the peculiar nature of the people of the coastal areas who are more sensitive and less educated. Vested interests are exploiting such people with oblique motives. As a remedial measure, the witness suggested that politicians should stop interfering in such incidents and that stringent action should be taken against the culprits.

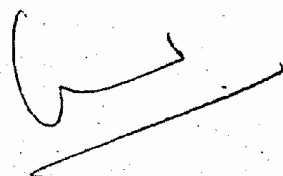
4. AW. 21, the Director General of Police during the relevant time stated that the police cannot always maintain peace at a particular area. The police can only handle the erupting situation for some time. For permanent solution, there must be a social mechanism beyond political considerations. Along with that, the police must be non-political and communally neutral. He referred to the long delay in Government granting sanction to prosecute the accused involved in the communal riot in January, 2002. The witness also stated about the growing, unhealthy trend in the Association of the Kerala Police and doubted whether, the Association should continue in the present style.

5. AW.24 who retired as Superintendent from the Kerala Police Department and had occasion to work in Kozhikode District for several years in various capacity, suggested that there must be a special police team in the State which



consisted of investigation as well as intelligence work. AW 24 stated about the lack of interest shown by the State Govt. in the investigation of major crimes involving fundamentalists / terrorists and the flow of funds to the State which ultimately reached the fundamentalists / terrorists. The witness also referred to the activities of the fundamentalists /terrorists in the State. Evidence of AW25 revealed the lack of police strength, weapons in the Control Room at Marad Beach and the inability of the available policemen to use even the available weapons at the time of the massacre on 2-5-2003. He stated that no vehicles were provided for the Control Room at Marad. It is also revealed in the evidence that there was no proper policing of the riot prone area. There was no effective and proper search for weapons. Intelligence Reports were not taken on its face value. There were no immediate action on such reports. FW.6, the Commissioner of Police at the time of massacre says that his office had not given him any of the Intelligence Reports concerning possible violence at Marad, after he took chgarge on 31-3-2003 and before 2-5-2003.

6. It is unfortunate that the Intelligence Wings were not able to collect better and more specific information regarding the possible violence at Marad Beach. AW.27, a former A.S.I in the District Special Branch, Kozhikode referred to the inadequacies of the Intelligence Wing in the State Police Department. They are not provided with sufficient vehicles for field work. There is no facility for them to hire a vehicle for intelligence work. If they do so, they may have to shell out money from their purse.



In order to convey an urgent message to their respective Units, they have to depend on private/public telephones. No funds are allotted for intelligence work. It is revealed from his evidence that there is no such thing as special recruitment to the Intelligence Wing and instead, officers from local police are being deputed for intelligence work whether or not, they have the skill, aptitude and intelligence for such work. The Commission directed the Commissioner of Police, Kozhikode to state the method adopted by his department to understand the intelligence and aptitude of the police personal deputed for intelligence work. He gave a reply that men with sufficient intelligence and aptitude are deputed for the work. I am sure, he was not able to inform the Commission about any such methodology because, there were none.

7. AW.30, the then Dy.S.P. of the State Special Branch, Kozhikode suggested that the Intelligence Wing must be given operational power to arrest the culprit, seize material objects and even register the case, if found necessary. It is revealed from the evidence of AW30 that the local police did not act quickly on the reports given by the SSB and hence, it did not yield result. Ext. H9 and the evidence of EW.1, AWs 30 and 32 revealed that the Communal Harmony Meetings were neither regular nor effective. The Manual of Guidelines for Communal Harmony was not strictly complied. The evidence revealed the lack of trust, co-ordination and interaction between the top level officers of the Civil/Police Administration in the district atleast, during the relevant time.



8. BW.1, the Member of the Legislative Assembly from Beypore Constituency is of the view that at Marad, the predominant communities - Hindu and Muslim - are controlled by the Arayasamajam and the Mahal Committee, respectively. He referred to the socio-economic and educational backwardness of the people of the area. The Arayasamajam and Mahal Committee should therefore, ensure religious harmony at Marad. B.W.6 is Dr. T.K. Ramachandran, Professor of English Department in the Calicut University. He is a writer and has participated in several international seminars. He had occasion to visit several riot sense and referred to the infiltration of the religious fundamentalist/terrorist elements into the different walks of the society. He suggested that to prevent such riots, the rule of law must be strictly enforced.

9. CW.4 is Sri. P. Govinda Pillai, the ideologist and writer. According to him, the influence of religious fundamentalism/terrorism is fast growing in Kerala. Communal clashes and riots occurred since there was either no action or no effective action taken by the Government against such religious fundamentalist/terrorist elements. In answer to the question whether the successive Governments were taking effective steps to root out communal riots from the State, the witness opined that though everybody deprecated such acts by words, often there was no effective action. Political parties in Kerala used religion for their gain. That encouraged communal clashes and riots in the State. The witness suggested ideological, political and legal measures to prevent such communal clashes and riots in the State. In short, what the witness suggested is that



the political parties must have secular outlook. Secular education must be given to the younger generation particularly, the students. The secular nature of the socio-cultural and educational organizations must be ensured. As a political measure, the witness suggested that secular political parties shall have no truck with non - secular political/non-political organizations. On the legal side, the witness suggested that if necessary, special law must be enacted to deal with communal clashes and riots. Investigation, prosecution and trial of such cases must be speeded up so that, such cases are disposed of within six months and at any rate, within one year. There must be a separate wing in the Police Department to deal with communal clashes and communal riots. CW6, Dr.Rajan Gurukkal, Director and Professor of School of Social Science in the Mahatma Gandhi University had occasion to conduct study on the religions in Kerala and allied matters. He is of the opinion that division on communal lines is on the increase in the State. That is not because of any difference in religious ideology or belief, but on account of illwill and spite arising from disputes on resources for existence. On the question as to how Marad became a tense area, the witness opined that there was long standing dispute on resources for existence among the people of Marad, who depended on fishing operations for livelihood. They depended on the fishing harbours at Parappanangadi, Tanur, Chaliyam, Puthiyappa and Koyilandy. Communalism crept into such disputes. The witness referred to the long history of communal clashes and riots at Marad right from the Naduvattom incident in the year, 1953 and till the massacre on 2-5-2003. He complained



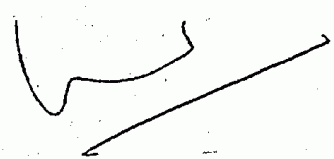
that when such clashes and riots occurred, political leadership was only concerned with the temporary remedial measures in connection with the law and order maintenance and did not address on the deep issues involved. He opined that the Marad incidents in short, are the result of economic tension of the oppressive life of the coastal poor, carried forward to religious divisiveness and expressed as inter-religious competitions of the communally divided settlements with the background of the political culture of violence perpetrated through communal organizations and exploded as a chain of retaliation and counter retaliation. In the acute problem of competitive co-existence in a constructed space of scarce resources, that encouraged the people to seek communal identity in the struggle for better access to the resources. The witness made certain recommendations to prevent recurrence of such incidents.

10. CW.7, Dr. D. Babu Paul retired as Addl. Chief Secretary, Government of Kerala and had occasion to work as Secretary of the State Fisheries Department. He had occasion to tour various Countries and learn the fishing operations in those Countries. He referred to the advanced techniques employed in foreign Countries for fishing operations as against the conventional method of fishing in the State of Kerala and claimed that such advanced techniques reduced the stress in the mind of people who are engaged in fishing operations. The witness is of the opinion that since the people of Kerala living in the coastal areas, mostly taking fishing as the resource for livelihood are susceptible to be provoked due to their mental stress, vested interest are exploiting that mental



condition for their hidden agenda. He referred to certain incidents in the coastal areas which were settled by political leaders of yester years with social acceptability. Attempt must be made to remove the subconscious stress in the mind of the Society (in the coastal areas).

11. CW.8 is Sri. Hameed Chennamangallur, a Post Graduate in English Literature and retired as Lecturer from Government Arts and Science College, Meenchanda. He attributed socio - economic problems of the individuals as the one aspect which trasformed into communal riots. He referred to certain incidents from the coastal areas of Kozhikode district which ultimately led to communal divisions and then, to riots. The witness claimed that at Marad, a social division among the people started when migrants from Tanur set up residence there. Since both the communities were in absolute poverty, there was no occasion for any economic division then. Later, the Mahal Committee organized the Muslims while the Arayasamajam organized the Hindus and lent financial assistance to them. Slowly, economic division appeared at Marad. The political parties whether having Left or Right ideology, are not fully committed to secularism. The mainstream political parties are the main villains in the communalization of the society, their only agenda being 'how to win the next election'. The political parties, with that objective in mind adopted appeasement policy towards the religious fundamentalist/terrorist elements. The Government adopted a soft approach to them. According to the witness, it is absolutely necessary to spread secularism to prevent such unfortunate incidents. There could be a coastal secular



force (not a police wing) to spread secularism in the coastal areas. He suggested that the rule of law must be enforced and persons indulging in communal clashes/riots should be strictly dealt with.

12. CW.9 is Sri. K.E.N Kunhahammed, Professor and Head of the Department of Malayalam in Calicut University. He referred to some of the political parties in the State as prone to fundamentalism/terrorism and suggested secularism as the way out.

13. CW.10 is Fr. (Dr). Francis Alappat, an M.B.B.S Graduate from Calicut Medical College, and Director and Chief Executive Officer of Jubilee Mission Medical College, Trichur. The witness was of the view that communal amity existed in this Country since long back. He referred to various religious leaders attending the Durbar of Emperor Akbar, while the Mugal dynasty was ruling that part of the Country. Later, political parties tried to make capital from religious groups. Consequently, there developed division on communal lines. The witness was of the view that the religious heads should spread the message of love and mutual respect among their followers. They should be able to make bridges between the members of their own religion and between members of the different religions. The witness is of the view that though the religious heads in Kerala had succeeded in that venture earlier, developments during the last 2-3 decades indicated that they failed atleast partially, in that matter. There is a recent trend of religion - politics relationship from which, many persons reaped favours but ultimately, that proved to be disastrous to the society. He suggested certain remedial measures.

14. CW.11 is Sri. O. Abdulla, formerly Associate Editor of 'Madhyamam', daily and presently, a free-lance journalist working in 'Mathrubhumi', 'Chandrika', 'Deshabhimani' etc. He is of the view that there is no division among religions in Kerala but, there is division among different groups in the same religion and organizations using religion for political ends. Clashes occurred between religions because, almost all political parties used religion for political gains. CW11 suggested remedial measures, the substance of his suggestions being that the political leadership should stop approaching religious heads and leaders for political gains.

15. CW.12 is Sri. T.K. Jose, I.A.S, Executive Director of 'Kudumbasree'. He had occasion to work as Managing Director of 'Matsya Fed' and visited almost all the coastal areas of the State. 'Kudumbasree' is the poverty eradication mission of the State Government. Their attempt is to eradicate absolute poverty in the State. The witness spoke on the various units of 'Kudumbasree' and how they functioned. The witness claimed that a study revealed that Beypore Panchayat is the most densely populated area in the State, the density being 8 times higher than the State average. The average population in the State is 818 per sq. k.m, while the average population in Beypore Panchayat is 6889 per sq. k.m. According to the witness, the density of population has to be reduced since in such densely populated areas, there is bound to be problems due to the scarcity of land, drinking water, transportation, sanitation etc. CW. 13 is the Secretary of the Kerala Sarvodaya Mandal. CW.21 is



a retired Judge of the Hon'ble High Court of Kerala and presently, Chairman of the Kerala Santhi Samithi and Kochi Unit of Gandhi Peace Foundation. They are of the view that political parties are using religion for making gains in the elections and suggested that politics must be separated from religion. According to them, the students and the youth must be taught the culture of peace and Gandhian thoughts. Problems should be solved using Gandhian techniques. Nobody should be permitted to gain advantage under the label of religion.

16. CW.15 is a retired Headmistress and noted novelist. CW. 19 is a renowned writer and recipient of several awards including the Kendra Sahitya Academy Award. They are of the opinion that the spurt in communalism is due to the political parties adopting policy of appeasement towards the religious fundamentalist/terrorist elements eying on vote banks. CW. 15 opined that the high density of population in coastal areas must be reduced and economic facilities should be provided for the people of such areas. CW.19 stated that communal illwill was high in Kerala long back, which made Swami Vivekananda lament during the middle of the 19th Century that this place is a lunatic asylum. Later, situation changed due to the work and influence of great men like SreeNarayana Guru and others. To CW. 19, it appeared that things are again going back to the earlier state of affairs. Hence, steps must be taken by the various religions to teach their followers communal amity, religious tolerance and humanity. Along with that, stringent and immediate action should be taken against the perpetrators



of violence. CW.19 referred to the reports that the chargesheets against the accused involved in the communal riot at Marad during January, 2002 were filed only after the massacre on 2-5-2003. He cautioned that such delay shall not happen.

17. CW.14 is a historian and retired as Professor from the Department of History, Calicut University. He is of the view that right from the time Vasco Da Gama landed in Kerala, there was division on communal lines but, that was to prop up economic interests by monopolising trade. There are immediate and basic causes for communal riots. Among the immediate causes are the desire of the relative of victims to take revenge on the opponent, the desire of the people of one sect or community to take revenge on the opponents belonging to the opposite sect or community, the apprehension that the opposite group might monopolize the resources for existence and about the inequality in opportunities. The basic cause is lack of resources. He suggested that communal activities must be banned and that excessive exploitation of resources using mechanized methods (as regards coastal areas) should be stopped. Along with that, there must be equality in opportunities.

18. CW.17 is a Psychologist by profession. He secured PostGraduation in Psychology from the Aligarh Muslim University. He is also a PostGraduate in History. CW.20 is the Associate Professor of Psychiatry, Medical College, Kottayam. Both expressed their views in the psychological and psychic point of view. CW.17 referred to





the psychology behind the communal riots and opined that people living in coastal areas have a peculiar psychology which is different from the psychology of a businessman or farmer. The psychology of the people is related to their avocation of life. As regards the people living in the coastal area and depending on fishing for livelihood are concerned, their mind will always be stressful. They are by and large, innocent and simple but, susceptible to be easily provoked. As a Psychologist, CW.17 opined that there must be schemes intended at inculcating love among the people of the coastal areas. They should be made to involve in new programmes. CW.20 stated that certain crimes, apart from its communal dimensions, have psychological dimensions as well. The theory behind that is 'frustration aggression'. People who suffer frustration are more prone to aggression. Violent incidents result in trauma (catastrophic stress) not only to the victims and offenders but also to their relatives and even to those who happened to see the incidents. Such trauma led to Post Traumatic Stress Disorder (P.T.S.D) which resulted in numbness, social withdrawal, unresponsiveness etc. leading such persons to depression, anxiety and addiction to drug, liquor etc. Persons suffering from P.T.S.D. can be easily influenced. Such persons must be given psychiatric counselling and treatment. CW.20 is of the view that the media has a great role in creating P.T.S.D. For eg. when incidents are exhibited in the media, certain persons might treat such incidents as a model. Certain others may be de-sensitized, while certain others are disinhibited by such exhibition of incidents. CW.20 recalled, ~~which~~ he was in London, during the recent bomb blast that rocked that



city. But, the media there, did not carry a single picture of the bomb blasts or its victims. That was a self-restraint made by the media in that Country. He claimed that disinhibition can influence mob psychology. So also, religion, caste, politics etc. and particularly, when the mob is educationally backward. CW.20 gave his suggestions to prevent recurrence of such unfortunate incidents. He is of the opinion that to give psychiatric counselling and treatment, atleast the Medical Colleges in the State must be equipped with crisis intervention centres set up on permanent basis and the police should make arrangement to provide psychiatric help when incidents like 'Marad' occurred. That certainly, would help prevent further violence.

19. CW.23 is Sri. P. Parameswaran, R.S.S. activist since 1946 and Director, Bharatiya Vichara Kendra. His definite opinion is that division on religion/caste lines is increasing everywhere, not only in Kerala and there are historic reasons for that. The division of the Country itself was because of a claim based on religion. Following the partition, there was communal clashes and riots on large scale. After the independence, there was competition and spite in sharing power and opportunity. That was supported by the political parties in the Country. Persons in power used religion/caste either, to gain or retain such power. CW.23 blamed the political parties for creating such a situation by appeasing religion and caste to create vote banks for them. He suggested constant dialogue among the various religious leaders so that, many of the misunderstandings among them could be cleared. He



referred to the R.S.S-Christian dialogue at various places and claimed that it helped both sides to clear many misunderstandings between them. He produced Ext.X58, "R.S.S - Christian Perspective Meet 20-8-2002" published by Indian Institute of Christian Studies. Himself and other R.S.S leaders wanted dialogues in similar lines with the leaders of Muslim Community and with the help of Sri. John Joseph, then a member of the National Minority Commission, had almost arranged such a dialogue to be held at Thrissur by the end of April, 2002. Sri. Panakkad Thangal and Sri. Savankutty, member of the Public Service Commission had agreed for the dialogue. But, that dialogue was aborted by the Union Minister, Sri. E. Ahammed by announcing at a Press Conference on 10-4-2002 that "dialogue has no significance in the State. Muslim community in the State was not looking for mediators to hold talks with the R.S.S". The witness produced Ext.X59, the report in the New Indian Express to the above effect and claimed that if that dialogue had taken place, that would have certainly helped, ease the tension between the two communities and create friendly atmosphere. Possibly, that would have averted the massacre at Marad Beach on 2-5-2003. According to the witness, Sri. E. Ahammed had ulterior motives in aborting the dialogue. He claimed that the protection the perpetrators believed to get from political/administrative leadership and the failure to hold dialogues between the two communities was one of the causes for the Marad incident and suggested remedial measures which in substance, is that political parties must stop appeasing religious fundamentalist/terrorist elements and that the political/administrative leadership should take stringent



action against perpetrators of the crime. He wanted constant dialogues between different religions and communities. Education to the children of tender age should be transparent.

20. Dr. James Vadakkumcherry (CW18) is a leading Criminologist. He has conducted study on the communal clashes in Kerala since 1956 onwards and has published several books on the subject. His study revealed that there was no communal clash during 1955-56. There was enviable communal harmony during 1956-1966. After 1966, the situation started changing. By 1967, there was one communal clash per 73 days but, that being occasional, was not seriously taken note of. By 1974, there was one communal riot per 11 days. By 1989, it became one communal riot per 7 days. The State saw several communal clashes after 1990. The study revealed that silly and insignificant reasons resulted in communal clashes and that it involved no religious philosophy or value. The cause for communal riots in Kerala was that associations/groups based on religious parochialism, caste, sub caste, denomination, sect etc., tried to make gain for them and gave whole hearted support for riots. Certain political parties also did the same thing for their gain. They even politicized communal clashes. According to CW.18, the districts of Trivandrum, Quilon, Ernakulam, Alleppey and Kozhikode are more riot prone (in Kerala) while in Wynad and Idukki districts, it is less. There are more communal clashes during September and October. The witness stated that religious tolerance is not being taught among the children. Children are born into and brought up in the

religious background of their parents whether or not, they liked it. The religious intolerance of the children are misused by religious fanatics and fundamentalists. That must be stopped. Though religion and religious organizations are inevitable in the society, they should not inject communalism or fundamentalism. The witness referred to certain religious groups giving physical training in the State and opined that it should be stopped. He also suggested to set up a State Bureau of Investigation in the lines of the C.B.I for investigation of major cases.

21. Sri.U. Kalanathan, a resident of Malappuram district, formerly a political activist, retired as a school teacher and now, President of the Kerala Rationalist Society gave evidence as CW. 24. He stated at length, how the infirmity in religion transformed into fanaticism which in turn, transformed into fundamentalism and then, to terrorism. The object of the Kerala Rationalist Society is to promote rationalism, humanism and spirit of enquiry among the people and liberate them from bad customs. CW.24 and other workers of his Society had visited Marad Beach several times. Ext.X60 is a leaflet published by the Society on the Marad incidents. CW.24 learned that people of Marad irrespective of caste, creed and religion lived peacefully like brothers, one of the reasons being that on account of their absolute poverty and avocation of life, they had no time left to think about caste, creed, religion etc. He claimed that the incident at Naduvattom in the year 1953, started as a dispute between two businessmen belonging to the Hindu and Muslim communities. Later, in order to gain support, they brought





respective religion/community into that dispute. That resulted in the police firing and the death of few persons. The witness, referring to Ext.X60 adverted to the report of the Union Home Ministry and stated that during 2000-01, non- Governmental organizations had collected 4,538.5 crores of rupees as foreign funds while during 2001-2002, that amount swelled to Rs 4,871.9 crores. In 2002, the Hawala money said to have reached Kerala through different banks is 336 crores. The Government has no idea which organization collected that amount and used it for what purpose. The witness claimed that Pakistan is supplying counterfeit currency notes and explosives to religious fundamentalists working in this State. He claimed that to purge politics from religion, his Society had prepared a draft Bill and circulated it among some of the Members of the Parliament but, that was not cared even. The witness opined that the Indian secularism must be enforced in its true, historic sense and for that, religion must be separated from State, politics and education. He is of the view that the registration of the political parties engaged in or promoting communal clashes/riots, religious illwill etc., has to be cancelled. CW.3, Sri C.M Pradeepkumar also stated how some of the religious fundamentalist/terrorist groups are receiving foreign funds and even raised money by smuggling gold into the State.

22. AW 26, Sri Kanthapuram Aboobacker Mussaliyar stated that the Samastha Kerala Matha Vidyabhyasa Board is providing religious text books in all the Madrassas under it for teaching religion, but it had no control over the religious training imparted in the Madrassas or on persons engaged in that.





23. In the preceding paragraphs, while discussing other aspects, I stated how the activists some of the major political parties in the State were involved in the communal riots at Marad during January 2002. The documentary/ oral evidence received by the Commission shows that the first major communal riot in Beypore Panchayat occurred at Naduvattom, in 1953. Evidence revealed that it originated as a private dispute between two businessmen belonging to Hindu/Muslim communities. Avoiding the usual route, the members of the Hindu community took out a procession along the front side of the Naduvattom Mosque and in front of the Mosque, they raised certain slogans which was objected by certain persons belonging to Muslim community and there occurred a clash. In the police firing that followed, few persons belonging to the Muslim community lost their lives. Following that, there was occasional clashes in Beypore Panchayat limits. The riot at Marad in January, 2002 was occasioned by a person's foot accidentally falling on the foot of another person belonging to another community. Going through the oral and documentary evidence received by the Commission, it is certain that such clashes were not because of any difference between the religions or the religious beliefs. Some political parties, with the sole agenda of winning elections had been misusing the religion and caste for creating vote banks for them and for the said purpose, adopted policy of appeasement towards such religions /caste/groups. Certain other vested interests were also engaged in creating communal divide. Vice versa, the religious/caste leaders and heads started using politics or even spreading illwill towards other religions for their ends.



Religious rivalry and intolerance destroyed the basic concept and structure of democracy. The real dispute between the people were on account of the economic or natural resources but, the vested interests used such disputes to create communal division. That exactly is the reason for the communal clashes and riots in the State. I find from the Religious Institutions (Prevention of Misuse) Act, 1988 that it did not disqualify the political party or person connected with it for procuring religious favours for political ends and thus violating the provisions of the Act.\* So also, though the State had prescribed guidelines in the matter of conduct of religious festivals/processions (see Manual of Guidelines To prevent and Control Communal Disturbances And To promote Communal Harmony), those guidelines does not appear to be strictly adhered to and at any rate, do not have statutory force and merely remained to be 'guidelines'.

24. There are reports prepared by the Intelligence Wing that some organizations said to be spreading fundamentalist ideology has been imparting training to its members in 'Karate' and such other martial arts. Going by the suggestions made by the contesting parties before the Commission, it would appear that many of the cases concerning major communal clash / riot though chargesheeted, were either settled between the parties or, for other reasons acquitted by the Courts. Certainly, that emboldened the perpetrators of the crime. It was suggested that the cases were settled with the blessings of the political leadership. If that were true, certainly, those political leadership were not acting in the better interest of the Society.



25. It is a fact revealed by the oral and documentary evidence before the Commission that there is Communal divide in the State, in existence since long. It is a fact that certain religious fundamentalist/terrorist groups are active in the State and that they are creating further communal divide among the people particularly, the poor and illiterate for their vested interests. It is also a fact that certain groups/persons are conniving with such fundamentalist/terrorist groups to prop up their interest including business interest. There is reason to think that uncontrolled and unauthorised money is being pumped into the State. Going by Ext.X60, the extent of such money pumped into the State in the Year, 2002 is 360 crores. But, the State Govt. has no idea about it or who used it for what purpose. Possibility of such money or atleast a major portion reaching the fundamentalist/terrorist groups for their illegal and divisive activities cannot be ruled out. I found from the evidence that provisions of the Religions Institutions (Prevention of Misuse) Act, 1988 were not effectively carried out. There is no case or evidence that the authorities ever had called for information regarding storage of weapons from the concerned Religious Institutions inspite of the intelligence reports about such storage. No raid was conducted in such premises in spite of specific direction in that regard. I had occasion to see that even in certain riot prone areas of Kozhikode district, still, the notification under S.4 of the Arms Act is not extended and consequently, the accused are discharged. The Govt. does not even have any idea about the religious education being imparted by various religious groups. Any religious education has to be subject to public order, morality and



health. The State could not plead ignorance about that. Presently, the State does not appear to have any machinery to ascertain whether, the religious education given conformed to public order, morality or health. To prevent fundamentalism being inculcated in the minds of the children, it is necessary that religious education is imparted by people having modern education. The Govt. has to evolve a consensus in this matter among the various religious groups. The Commission has not gone deep into the various communal/religious fundamentalist/ terrorist groups or their activities in the State. The State Government should take this matter in right earnest and seriousness, conduct a deep study into the matter and take necessary steps to root out such activities. The records revealed that the State Government has not effectively acted even on Intelligence Reports regarding the activities of fundamentalist/terrorist groups and their arms collection. Communal clashes and riots are on the increase in the State. I referred above from the evidence that study revealed that often, such clashes and riots occurred in the coastal areas certainly because, vested interests are able to exert influence among the poor, illiterate people living in the coastal areas. It is a naked but, distressing fact that atleast some political parties in the State are aligning with such fundamentalist/terrorist groups. Politics and religion have become intermixed inspite of the fact that in State matters, religion has no place. No political party can simultaneously be a religious party. Politics and religion cannot go together. It has to be separated to maintain a secular State. An evaluation of the evidence let in before the Commission also indicates that there was no proper

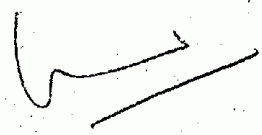


investigation and follow up action on the various communal clashes and riots or even grave crimes including murder, involving fundamentalists/terrorists. Recommendations of the various judicial Inquiry Commissions in that regard were either ignored or, not effectively carried out. The Police Administration also has not taken effective steps. In spite of the activities of the fundamentalist/terrorist groups being brought to the notice of the Home Department as early as in 1998, no effective action was taken except giving instructions to certain officers at certain level at some of point of time or making an amendment to the Kerala Police Act. The reason is that there was no political will to initiate action based on such reports. Evidence revealed that there was long delay in prosecuting the culprits of the communal riot at Marad in January, 2002. There was no investigation into the sources of weapons collected by the assailants. It is revealed from the evidence that the Kozhikode Civil Administration and City Police Administration were not having proper co-ordination mainly due to the lack of good rapport between the heads of those departments. The District Collector who was also the District Magistrate dared to plead that he had no information about the Intelligence Reports on the tense situation at Marad and the collection of arms there. The Police Commissioner, in his turn accused the District Collector of communalism and corruption. The Commissioner of Police on the date of the massacre claims that his office had not even shown him the file concerning Intelligence Reports after he assumed charge on 31-3-2003. As regards the manner of investigation conducted by the Crime Branch C.I.D, Kozhikode





into the massacre on 2-5-2003 also, the Commission has come to the conclusion that there was no investigation (as regards the involvement of other forces behind the massacre) and that the investigation into that aspect was derailed for reasons to be further investigated and found out. It is a fact that in many communal riots/clashes and even major crimes, the investigation is not being conducted in the proper, effective manner and completed within the expected time which ultimately helped the culprits to escape from the arms of law. On many occasions, an excuse - lame or just given by the Investigating Officers is that they had no time for investigation since they were concerned with maintenance of law and order. Even the Crime Branch Units take up investigation of the Case only after the local police investigated it for long time and by then, all sorts of loopholes are created. Another unfortunate thing is that after either a local police or the Crime Branch investigated the case for quite long, the case is handed over to the C.B.I for investigation at a time when it is almost spoiled. One is reminded of the proverb that "too many cooks spoiled the cake". While disposing of S.C. No.151/97 of the Sessions Court, Thalassery, I had occasion to refer to this sorry state of affairs in the judgement pronounced on 10-11-2004. In para 63 of that judgement, I recommended to the State Government that there must be special investigation teams constituted at appropriate levels in the State for investigation of major crimes. Such special investigation team must be delinked from the law and order maintenance wing of the police and there must be guidelines for the transfer and posting of officers of the special

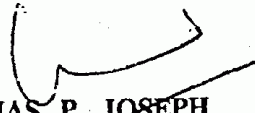




investigation team such as, except for compelling reasons, they shall not be transferred in the course of investigation of the case. Immediately on the local police registering the crime (relating to major crime), the case must be transferred to such special investigation team. That alone can save the sorry State of affairs in the State. I do not know, what action the Government took on that recommendation. It is high time that atleast now, the Government acted if it is sincere in its responsibility to protect the life and property of the people of the State. There must be a State Bureau of Investigation in the manner the C.B.I is constituted and special investigation teams under it for investigation of the major crimes including communal clashes and riots. During the course of the discussion, I pointed out that the Intelligence wing could have collected better information about the impending violence at Marad Beach. I also referred to the inabdequaciess of the Intelligence wing. The State Intelligence wing is to be revamped and revitalised. Our police force has atleast to some extent become indisciplined and unaccountable. Their Associations have great contribution in that. AW21, the then D.G.P stated that at one time (atleast), the Associations affected the discipline of the force and there was political alignments in the Constable /Head Constable level (then why not, at the officer level?), the freedom for association has been taken away in some States and that in Kerala, even though the Senior police officers recommended that, the Govt. have not considered that so far. The Constabulary should be given continuous and effective training to save them from lethargy. The functioning of the constabulary should be effectively



monitored and in case of dereliction of duty, strict action has to be taken. The weaponry should be improved. Evidence revealed that except few lathes and few tear gas shells, there were no other weapons in the Control Room at Marad at the time of massacre on 2-5-2003. Even the available Constable/HC in that Control Room did not have the state of mind to use even those available weapons. A scheme itself should be prepared for the riot prone areas. Investigation and prosecution of the cases relating to communal clashes / riots should be expedited. If necessary, Special courts for trial of the cases relating to the communal clashes/ riots must be set up. Law officers with integrity, efficiency and knowledge of law must be appointed in such courts. The Political parties should mean their ways and be secular not only in ideology but also, in their activities. Steps must be taken by the Government to spread secularism and the message of religious tolerance and communal amity in the younger generation, particularly the students. Though not exhaustive, the Commission wishes to make certain suggestions which the Commission believed, would help prevent recurrence of unfortunate incidents like the communal riot and massacre Marad saw in January, 2002 and on 2-5-2003 (See the suggestions given in Chapter IX)



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## CHAPTER -X

### FINDINGS

*I. The facts and circumstances which led to the incident at Marad Beach, Kozhikode on 2-5-2003 resulting in the death of 9 (Nine) persons, serious injuries to many others and damage to properties?*

1). A minor, insignificant incident that occurred at Marad Beach, a communally divided and most sensitive area, during the New year celebrations in the evening of 31-12-2001 and which was almost settled by the elders of the locality, transformed into a major communal riot at Marad Beach on 3/4-1-2002 due to the intervention of the C.P.I.(M), I.U.M.L. and B.J.P./R.S.S. activists for their gains and that resulted in the death of five persons, injuries to several others and damage to property. It is quite unlikely, those activists indulged in that act without the blessings of their respective leaderships, at least at the local level.

2). The communal division that existed in Marad Beach, the communal riot in that area on 3/4-1-2002 resulting in the death of five persons including

Aboobacker, an N.D.F. activist coupled with the divisive activities of the Muslim fundamentalists and other forces also contributed to the massacre at Marad Beach on 2-5-2003.

3) The unjustified delay in the State Government granting sanction for prosecution of the accused involved in the crime cases relating to the incidents on 3/4-1-2002, the consequent delay in prosecuting them and their getting enlarged on bail enabled the fundamentalist elements to ignite the fire of revenge in the mind of the close relatives of the Muslims killed on 3/4-1-2002 which also contributed to the massacre on 2-5-2003. (See Chapter VI)

*II. Whether, there was involvement of any external/ internal organization or organizations in the planning and execution of the incident (on 2-5-2003)?*

1. The massacre at Marad Beach on 2-5-2003 was not merely a revenge for the killing of the three Muslims at Marad Beach on 3/4-1-2002. Instead, that was a one sided attack on the Hindus without any provocation, by the Muslim fundamentalists/ terrorists capitalizing the revenge the close relatives of Aboobacker, Kunhikoya and Yunus who were killed on 3/4-1-2002 had.

2. Apart from the conspiracy reported by the C.B.C.I.D., Kozhikode in its final report in Cr. No. 82/ 03 of Beypore Police Station (Cr. No.116/CR/03 of C.B.C.I.D), there was a larger conspiracy involving Muslim fundamentalists /terrorists and other forces in the planning and execution of the massacre at Marad Beach on 2-5-2003.



3. There is no sufficient evidence before the Commission to show that any international agency is directly involved in the massacre at Marad Beach on 2-5-2003.

4. The N.D.F. activists are actively involved in the planning and execution of the massacre at Marad Beach on 2-5-2003. It is quite unlikely that the N.D.F. activists were thus involved, without the blessings of their leadership atleast, at the local level.

5. The I.U.M.L. activists are actively involved in the planning and execution of the massacre at Marad Beach on 2-5-2003. It is quite unlikely that the I.U.M.L. activists were thus involved, without the blessings of their leadership atleast, at the local level.

6. Some members of the Mahal Committee of Marad Juma Masjid Mosque (H Party No.) at Marad Beach were involved in that conspiracy or had prior information of that conspiracy which resulted in the massacre at Marad Beach on 2-5-2003.

7. Sri. P. P. Modieen Koya (H party No.2), local leader of the I.U.M.L. is involved in the conspiracy for the massacre at Marad Beach on 2-5-2003. or had prior information about that conspiracy and the impending violence at Marad Beach.

8. There is every reason to think that Sri. Mayin Haji, S/o. Kunhali (H party No.3) Chairman of Calicut Development Authority and leader of the I.U.M.L., had prior information about the conspiracy which resulted in the massacre at Marad Beach on 2-5-2003.



9. The C.B.C.I.D., Kozhikode had not investigated into the larger conspiracy involving other forces, the source of all explosives, large quantity of weapons collected for the massacre and the source of the large funds used in the planning and execution of the massacre at Marad Beach on 2-5-2003. *A Multi Agency consisting of the officers of the Central Intelligence Bureau, the Central Bureau of Investigation and the Directorate of Revenue Intelligence has to investigate into that larger conspiracy and fix liability.* ( See Chapter VII )

III. *Whether, there was any lapse on the part of the Police or Administrative Machinery in taking timely, preventive and remedial action and in dealing with the situation?*

1) The Kozhikode District Civil Administration, failed in taking timely, preventive and remedial action to prevent the massacre at Marad Beach on 2-5-2003.

2) The Kozhikode City Police Administration failed in taking all effective steps to prevent the massacre at Marad Beach on 2-5-2003.

3) The City Police Administration led by Sri. T.K.Vinod Kumar, the then Commissioner of Police, Kozhikode acted effectively after the massacre at Marad Beach on 2-5-2003 in arresting the culprits who took asylum in the Marad Juma Masjid Mosque, recovering weapons from them and in preventing the spreading of violence. The action taken by the then Commissioner, Sri. T.K.Vinod Kumar in that regard is quite commendable.





4) But, it is quite unfortunate and disturbing that the police were not able to prevent the damaging or removal of household articles or even damaging the houses at Marad Beach following the massacre on 2-5-2003 (See Chapter V)

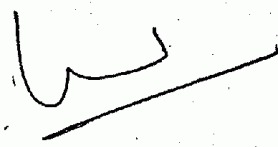
***IV. Such other matters as are incidental to and arising out of the above terms?***

1) The lethargic attitude or the policy of appeasement adopted by some political parties has encouraged and emboldened religious fundamentalism and terrorism even involving external forces, which is a reality in this State.

2) The successive Government after 1996 (which alone is taken into consideration here) failed in taking effective steps to prevent the growth of religious fundamentalism and terrorism in this State. That also led to the communal clashes and riots in this State.

3) The State Government, unjustifiably refused to order investigation by the C.B.I. into the unparalleled incident at Marad Beach on 2-5-2003 or at least, about the larger conspiracy involving other forces, source of all explosives, large quantity of other weapons collected and the funding in the planning and execution of that incident.

4) The failure / refusal of the C.B.C.I.D., Kozhikode (which investigated the massacre on 2-5-2003) to investigate into the larger conspiracy involving other forces, source of all weapons and the source of the large funding in



the planning and execution of the massacre at Marad Beach on 2-5-2003 is quite suspicious and disturbing. The State Govt. or other appropriate authority has to enquire into the role played by H. Party No.7, Sri. MaheshKumar Singla, Inspector General of Police (who supervised the investigation by the C.B.C.I.D ) in that regard.

5) Sri. T.O.Suraj, the then District Collector (H Party No.4) is also responsible for the failure of the Civil Administration in taking all timely, preventive and remedial action to prevent the massacre at Marad Beach on 2-5-2003. The allegation of communalism raised against Sri. T.O.Suraj cannot be ignored as baseless and is required to be enquired into by the State Govt. or such other Authority as that could have had bearing on the failure of the Civil Administration, referred above.

6) Sri. SanjivKumar Patjoshi, former Commissioner of Police Kozhikode (H Party No.5) is also responsible for the failure of the City Police Administration in taking all effective steps to prevent violence at Marad Beach on 2-5-2003. He did not effectively carryout many of the directions issued to him in that regard by his superior officer. He did not maintain good relationship with the then District Collector, Kozhikode who was also the District Magistrate.

7) The lack of good rapport between Sri. T. O. Suraj and Sri. SanjivKumar Patjoshi, the administrative



heads of the Civil Administration and City Police Administration, Kozhikode and consequent lack of co-ordination between the two departments affected the effective preventive and remedial action by both the departments in preventing violence at Marad Beach on 2-5-2003.

8) Sri.M.Abdul Raheem, the then Asst. Commissioner of Police ( South Sub Division ), Kozhikode has not discharged his duties in preventing violence at Marad Beach on 2-5-2003 sincerely and responsibly. He had not effectively, sincerely and honestly carried out the directions in that regard, issued by his superiors. His very appointment at Kozhikode South Sub Division is shrouded by suspicious circumstances. The allegation that he had connection with some of the forces behind the massacre at Marad beach on 2-5-2003 cannot be ignored as baseless and hence, is to be enquired by the State Govt. (See Chapter VIII)

*V. To suggest suitable measures to avoid such unfortunate incidents in future.*

#### **A. IDEOLOGICAL MEASURES**

1) The Government should, with consensus among the religious groups and without ofcourse, violating the fundamental rights if any in this regard, ensure that religious instruction is not imparted and religious symbols are not exhibited in educational institutions and at any rate, ensure that the religious instruction (where, it is permissible under law) is imparted beyond the school hours and appropriate changes in that regard is made in the Kerala Education Act and the Rules.



2) Secularism, moral values, communal amity and religious tolerance should be taught in the educational institutions. Morality and value clubs should be started in schools. Constitutional provisions, ethical principles and human rights laws required for communal amity should be part of the curriculum for T.T.C.B.Ed., M.Ed. Courses and in the inservice courses for teachers.

3) The Government should, by appropriate measures, ensure that religious instruction wherever given is transparent did not in any way violate or tend to violate public order, health and morality.

4) The Govt. should ensure by consensus among various religious groups that persons engaged in giving religious instruction are equipped with modern education so that, they could give instruction regarding public order, morality, religious tolerance and secularism which in turn, would prevent the growth of religious fanaticism, fundamentalism and terrorism.

5) Films, serials etc, promoting religious co-existence are to be encouraged. Those creating chaos and disharmony are to be banned. If necessary, appropriate changes in that regard should be made in the law relating to censorship.

6) Non-Governmental organizations should be encouraged to promote religious and communal harmony. Such organizations should act in co-operation with the police authorities in this regard.



7) There should be reasonable restrictions without affecting fundamental rights if any, in the matter of taking out processions on the basis of caste/religion etc., along public place/road. There must be a code of conduct evolved among the religious/caste leaders in this regard, bearing in mind that any fundamental right to propagate religion is subject to public safety and order. Sufficient security deposits should be taken from the organizers of the religious festivals and processions along public places/roads. They should execute guarantee for the peaceful conduct of the processions/festivals in public roads/places. In case of disturbance by the processionists, the deposit should be forfeited and action should be taken against the organizers of the festival / procession.

8) Religious processions should be accompanied by sufficient police force to prevent disturbances. Organizers should be held liable to pay the charges for deployment of sufficient policemen.

9) Religious observances by any community in open, public places so as to cause obstruction, annoyance or inconvenience to the people at large should be discouraged and action should be taken against those who defied the instruction of the police in that regard.

10) The provisions in the Manual of Guidelines to Prevent and Control Communal Disturbances and to Promote Communal Harmony regarding conduct of religious festivals/processions and religious observances should be modified as above, given statutory force and enforced strictly.



11) Religions must teach communal amity, religious tolerance and humanity. Any religion crossing the limits should be disciplined by the arms of law.

12) There should be constant dialogues between different religions/communities which will enable clear misunderstandings.

#### **B. POLITICAL MEASURES.**

1. Religion must be separated from State matters, politics and education. There should if necessary, be a special enactment separating religion from State matters, politics and education.

2. Government and political parties should be strictly secular, not merely in words but also in deeds. They should desist from appeasing and /or aligning with communal forces. Registration of political parties promoting or helping in any manner, riots, religious illwill, etc. should be cancelled.

3. Government should conduct deep study into the causative, developmental, control, reduction and preventive aspects of communal clashes, the growth and activities of the religious fundamentalists/terrorists in the State, identify such elements and organizations and take steps to prevent such activities.

4. Government should implement the recommendations made in this regard by the Judl. Inquiry Commissions which went into cases of communal riots.





5. Government should study the inflow of foreign funds and unaccounted money into the State, its use by fundamentalist/terrorist groups or non-governmental organizations and take necessary steps in that regard.

6. Government should ensure the economic sustainability of people living in the coastal areas. Steps should be taken to improve and diversify the peoples' means of subsistence. Kudumbasree projects must be started in the coastal areas. Government should adopt measures for poverty alleviation and diversification of strategies of income and its generation in the coastal areas (specially for Marad, a fishing harbour may be established, apart from immediately enforcing and carrying out the Marad Package).

7. Government should take appropriate and necessary action step by step, to reduce the density of population in the coastal areas by rehabilitation in other areas which will avoid/reduce problems due to scarcity of land, economic and natural resources.

8. Since eve teasing and molestations (I found some Intelligence reports about eve teasing at Marad Beach before 2-5-2003) have the potentiality for starting riots, there should be proper illumination in the lanes and bye-lanes of such riot prone areas.

9. Government should provide facility in coastal areas for psychiatric counselling and treatment.

10. Attached to every Medical Colleges and District Govt. Hospitals at least, crisis intervention centers consisting



of psychiatrists and specially trained staff should be opened as a permanent arrangement. The police should provide psychiatric help when major incidents which are likely to create psychic problems to the perpetrators of violence, victims and witness to such incidents occurred.

11. Government should set up Coastal Security Guard in the coastal areas of the State to prevent smuggling and transportation of narcotic drugs, unauthorized and unaccounted money, arms etc. through the sea.

12. Secular bodies should be formed in coastal areas- such bodies should have the poor people of the village as its members. Such bodies can be used for resolution of conflicts in the conventional form (like the Kadalkodathi formed at Marad).

13. The Govt. should ensure that officials appointed in key posts in riot prone areas and districts are persons capable of acquiring the confidence of different communities.

14. Permanent Peace Committees should be set up at appropriate levels. Such committees should consist of non - controversial and respected persons of the locality belonging to all communities, professionals and social workers. The members of the Peace Committee shall not have political affiliations. Such Peace Committees should endeavour to bring peace in times of conflicts.

### C. LEGAL MEASURES

1. Special enactment should be made to stringently deal with communal clashes/riots. Such special enactment should provide for special rules regarding the burden of



proof and acceptability of statements of accused/witnesses recorded before the Judl. Magistrates.

2. The provisions of the Religious Institutions (Prevention of Misuse) Act, 1988 should be strictly enforced. The concerned authorities should periodically call for information from the concerned persons about storage of weapons / use of funds etc. as stated therein and reports regarding that must be placed in the meetings of Communal Harmony Committee, periodically. Police should, when found necessary, search such places for tracing weapons.

3. The notification under S.4 of the Arms Act should be issued in respect of all sensitive, politically and communally riot prone areas and strict action should be taken against the violators.

4. A State Bureau of Investigation at the State level and Crime Investigation Units under it at the district level separated from the law and order maintenance wing must be established. Persons having skill, intelligence and aptitude for intelligence collection, crime detection and investigation should be posted in that Bureau and Units strictly on merit basis, after conducting aptitude test, personality and intelligence test. Cases involving major crimes should be investigated by the State Bureau of Investigation and the Units under it. Modern equipments for investigation (for eg., narco analysis, brain finger printing etc.) should be made available for the investigation units.

5. Special Rules must be framed for the posting and transfer of officers of the State Bureau of Investigation, District Crime Investigation Units and Intelligence Wings. An officer investigating the case shall not be transferred during



the course of that investigation except for very compelling reasons. Transfer of key officers must be done only on extremely good grounds after sufficiently long time.

6. Just as some other States now have, specified officers of the Intelligence Wing should be given operational power to search places, arrest the accused, seize the material objects and even register the case. This would help speedy action and prevent incorrect information being given by the Intelligence Wing.

7. Intelligence Officers should undergo professional training under the Central Agencies periodically, to equip themselves with new methods collection and dissemination of intelligence.

8. Separate fund should be provided for the Intelligence Wings to be operated by certain designated officers. Modern equipments must be made available for collection and dissemination of intelligence.

9. Special cells at the State and lower levels must be formed under Senior Police officers of proven integrity and ability, to collect information and detect communal, fundamentalist and terrorist activities in the State. Those Units should monitor potentially riot prone areas and take immediate action. Under such Units, there should be special operation wings with officers having secular, impartial credentials and they should be given special training to deal with communal violence. Such Units must have a riot control scheme.



10. A pre-planned scheme should be made in advance for communally/politically riot prone areas earmarking places, men, officers etc. with respect to their duties and action to be performed in the event of a communal incident. They should have periodical simulative exercises to ensure that the system is fool - proof.

11. Modern riot control equipments must be provided in the Control Rooms with reserve force consisting at least two platoons, available in the Control Rooms round the clock. The strength of the police in the communally sensitive and notified areas should be sufficiently increased by creating new posts.

12. There should be strict and effective policing of the riot prone areas. Police picket posts/Patrolling teams should necessarily have sufficient number of local Police Constables for efficient policing while using the Reserve Police men for reinforcement. There should be an effective checking system of the personnel detailed in the field day and night, with a system for cross checking. Any irregularity when noticed in the field duty or checking must be strictly dealt with.

13. Units of Rapid Action Force with high mobility, striking power, fully trained to handle communal riots and equipped with appropriate weapons, equipments for communication and vehicles in top condition must be established in all the three Ranges in the State.

14. Police Control Rooms should be equipped with computers (if it is not already there), which should contain all relevant informations including intelligence information regarding riot prone areas, fundamentalist / terrorist

elements etc. so that, the succeeding officers could collect such information and initiate action. There should be meticulous documentation of the inputs for its effective analysis, assessment and follow-up action.

15. The lethargy, indiscipline and unaccountability in police force has to be removed by strict, intense and constant training. Strict standards of physical fitness should be prescribed and enforced. Training should be given in existing legal provisions which affect policing and also subjects like criminology, sociological behavior and interaction with the people.

16. The Government should ensure that the Police force is non-political and communally neutral. The political affiliation of the police should be stopped. The Government should consider whether, Police Associations should continue, at any rate in the present form affecting its discipline and accountability.

17. Provisions in the Kerala Police (Amendment) Act regarding conduct of training in weapons by organizations/ persons should be strictly implemented. Violation of the provision must be made a non-bailable offence.

18. The Government shall not permit withdrawal from prosecution of communal offences which results in demoralization of the police and gave wrong signal to the offenders that they can somehow, escape the arms of law.

19. There must be proper interaction and co-ordination between the Civil/Police Administrations at district level. The Special Branch Dy.S.P./Asst. Commissioner, can be posted as Liaison Officer to the District Administration, for the purpose.





20. Guidelines issued by Government regarding communal harmony should be strictly followed. Participation of all members of the Committee in its meetings must be strictly ensured. State level officers should conscientiously examine the minutes of the meeting on Communal Harmony and ensure that the meetings are not an empty formality.

21. Police should have public relations machinery (if it is not already there) at appropriate levels through which, authentic versions and informations regarding incidents or such other matters connected with the investigation should be revealed to the media. This is required to prevent publication of rumours and contradictory statements. Investigating Police Officers should be prevented from making public statements or informing the media on incidents or matters under investigation.

22. There must be appropriate restraint on the media against publishing unauthenticated information regarding incidents which tend to promote violence.

23. Special Courts must be set up for speedy trial of cases arising from communal clashes/riots. There must be a time frame for the investigation, trial and completion of such cases. Law officers with integrity, impartiality, efficiency and knowledge of law should be appointed in the Special Courts to conduct the prosecution of cases (See Chapter IX).



THOMAS P. JOSEPH  
COMMISSION OF INQUIRY

## CHAPTER-XI

### MY GRATITUDE

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My endeavour is coming to an end. It is time, that I expressed my gratitude to all who helped me in performing this task. I thank the Hon'ble High Court of Kerala and the Govt. of Kerala, for selecting/appointing me to perform this great task.

2. I also take this opportunity to extend my thanks to the Lakshadweep Administration as well as the District Judge, Lakshadweep for permitting the Commission to use its premises in Kozhikode Court Complex. I remember the assistance given to me by the ld. Advocates who appeared for the parties impleaded before the Commission. All of them rendered great assistance to me in conducting the proceedings properly and effectively. I take this opportunity to extend my sincere gratitude to all of them.

3. I have to mention about Sri. P.V. Hari, counsel for the Commission. Immediately on the State Government announcing my appointment as the Judicial commission to conduct this Inquiry, I addressed the Government seeking the assistance of Sri. P.V. Hari, Advocate as counsel for

the Commission since I was quite confident about his integrity, knowledge and efficiency to render assistance to the Commission. I had occasion to watch his performance while I was the Additional District and Sessions Judge, Kozhikode during 1995-98. The Government were kind enough to allow my request. I may say, Sri. P.V.Hari conducted himself in the course of Inquiry in a manner befitting that impression of mine and justifying the confidence I had in him. I thank him for his services to this Commission.

4. Now comes Sri. P. P. Unnikrishnan, Circle Inspector at the time of his appointment as Special Officer to assist the Commission and later, promoted as Dy.S.P. I had occasion to conduct the trial of some cases investigated/chargesheeted by this officer, while I worked as the Additional District and Sessions Judge, Kozhikode during 1995-98. I was quite impressed by his integrity, efficiency and promptness. On appointment as the Commission of Inquiry, I requested the State Government to appoint Sri.P.P.Unnikrishnan on deputation to assist the Commission. The Government were pleased to allow my request. The hazardous job of conducting enquiry into various aspects was entrusted to Sri. P.P. Unnikrishnan. I remember with thanks that he performed that job sincerely, effectively and promptly. Certainly, Sri. P. P. Unnikrishnan is an officer about whom, the Police Department can feel proud of.

5. Sri. P. V. Velayudhan, A. S. I. and, Sri. C.H. Sukumaran (H.C.No.5061) worked on deputation with this



Commission and retired on 31-1-2004 and 30-6-2005, respectively. Sri. J. Joseph (H.C.No.4117) of Medical College Police Station, Kozhikode, Sri. K. K. Sasindran (H.C.No.3649) of Town Police Station, Kozhikode, Sri. K. Balan (H. C. No.5024) of Traffic Police Station, Kozhikode, and Sri. P. Ratheesh (P.C.No. 7388) of A.R.Camp, Kozhikode City worked on deputation with this Commission. I requested the State Government not only to appoint Sri.P.P.Unnikrishnan on deputation, but also allow him take subordinate officers of his choice. He chose a team consisting of the above said police officials. I was confident about the selection. I may say that all of them performed excellently, discharging their duties effectively, promptly and honestly. Their performance is appreciated and remembered with thanks. I am sure that such honest and efficient men will add colour to the Police Department.

6. Next, I come to office staff. Sri.K.T.Chandran, the Secretary for the Commission was working as the Sheristadar, Sub Court, SultanBattery at the time he was appointed as the Secretary for the Commission. Though, the Commission could avail the service of an Officer in the rank of the Sheristadar of the District Court, I was concerned with efficiency and integrity. That is how, the choice fell on Sri. K.T.Chandran whose performance as Senior Superintendent of the District Court, Manjeri, I had occasion to watch and assess while I worked as the District and Sessions Judge there. He is thorough with all relevant rules relating to office procedures. That certainly helped me very much. I was always confident about the integrity and efficiency of Sri. K.T. Chandran. He discharged



his responsibilities in accordance with the confidence I reposed. I thank Sri. K. T. Chandran for his services.

7. Sri.C.Varghese though, had retired as Sheristadar of the Family Court, Ernakulam was humble enough to work as the Bench Clerk-cum-Typist. Sri.Varghese is quite efficient and sincere and discharged his duties accordingly, to the best of my satisfaction. I thank him too.

8. Sri.K.P.Hussain was my peon while I worked as Additional District and Sessions Judge, Kozhikode during 1995-98. Later, he retired from service. I was impressed by his selfless service. Hence, I had no other choice when I wanted to appoint a peon in the Office of the Commission. He worked with devotion. I thank him for that selfless service.

9. I also thank Smt.T.P.Latha, Sweeper, who worked on daily wages in the office of the Commission from 28-11-2005 for her services.

10. Sri. V.C.Babu, though not attached to the Office of the Commission but, as the care-taker of the Lakshadweep Camp Court rendered grate service to the Commission. I take this opportunity to extent my gratitude to him also.

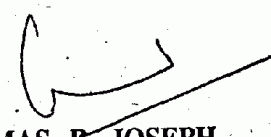
11. I extent my gratitude to the Confidential Assistants who took dictation of this lengthy Report, Memorandum of Evidence and have typewritten the same.

12. It will be ingratitude if I do not mention here, the service rendered by late Smt. M Rajitha, who worked as sweeper on daily wages in the Office of the

Commission from the beginning. It was quite unfortunate that she died on 25-11-2005 though, even on the previous day, she had rendered service in the Office of the Commission. I remember her with gratitude.

13. The Print and Electronics Media have given wide coverage to the proceedings of the Commission. I extend my gratitude to all of them for the assistance rendered by them.

14. I also take this opportunity to express my sincere thanks to Vimala Offset Press, Thalassery for undertaking and carrying out the DTP, Layout and binding work of this Report and the memorandum of Evidence beautifully, within the shortest time.



THOMAS P. JOSEPH  
COMMISSION OF INQUIRY

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## CHAPTER-XII

### *EPILOGUE*

While going through the materials collected in the Inquiry, I noticed that division on communal lines which has become a curse on the Society was one of the root causes for the communal clashes and riots in and around Marad. I also noticed that such division was not on account of the difference in religious beliefs or ideologies but because, vested interests were trying to take capital by creating divisions on the ground of religion. Even private disputes ultimately were transformed into communal clashes and riots. If all of us are the children of God, there is no reason why, we should fight with each other on the ground of religion.

2. Attempts to gain, regain or retain political up<sup>er</sup>prehand was found to be one reason for major communal clashes. It is high time, if not too late for the political parties to have an introspection atleast now. The incidents at Marad, the Commission hopes, will serve as an eye opener to all concerned.

3. It is high-time that we stopped such divisions and thinking on communal lines. It should be the endeavour of all of us to think and work together, for the welfare of the whole Society. It is relevant to quote the exhortion from Rikveda:-

“Sam Gacchhadhvam Sam Vacchhadhvam;  
Sam Vo Manansi Janataam  
Deva bhagum Yatha Poorve:-  
Sanjanana Upasat”

(Let us talk and walk together,  
Let our thoughts be one,  
Let us worship and be blessed together,  
Let our wisdom work together in unison).

4. There had been many communal clashes/riots in this small State-God's own Country. The Government were prompt to appoint Judicial Inquiry Commissions to inquire into those clashes/riots. The Commissions gave Reports but, it is worth while to remember whether, the Government carried out the recommendations made in such Reports. Some of the witnesses examined before this Commission stated that the recommendations in those Reports were not carried out, and that was one of the reasons for the communal clashes/riots continuing in the State. As desired by the Government, this Commission has made recommendations to prevent recurrence of such unfortunate incidents. I remember the apprehension and hope expressed by one of the witnesses examined before the Commission. He stated thus:-



“Even as it is possible for the decisions of the Supreme Court to go wrong, I do not insist that whatever findings made by the Judicial Commissions should be correct. But, there cannot be doubt that a study into those Reports would throw light on matters which were unravelled. Therefore, it is culpable whether it is the Government, or anybody else, to ignore the Reports of Judicial Commissions obtained spending huge amount and giving hope to the people. I wish, that situation did not befall on this Commission”.

KOZHIKODE

18<sup>th</sup> FEBRUARY, 2006



THOMAS P. JOSEPH

DISTRICT & SESSIONS JUDGE

(JUDICIAL COMMISSION OF INQUIRY)