

# Mecca Masjid blast: Andhra High Court recalls stay order on minority compensation

Tag: [Mecca Masjid blast](#), [Andhra High Court](#), [Minority Compensation](#), [Muslims](#), [Andhra Police](#)

Last Updated: Thursday, September 19, 2013, 11:56

Zee Media Bureau

Hyderabad: The Andhra Pradesh High Court on Thursday recalled its stay order on the compensation given to 70 Muslim youngsters wrongly arrested in connection with Mecca Masjid blast and other terror related cases.

The Andhra High Court had on Tuesday cancelled the compensation given to them and asked the state government to recover money from them.

The high court also made these Muslim youngsters respondents in the case and directed them to file their reply in two weeks.

The High Court, while setting aside a 2011 state government order offering compensation to 70 Muslim youngsters who were wrongly detained and later acquitted in the 2007 Mecca Masjid blast case, said on Tuesday that there was no legal basis for it.

The High Court while the passing the verdict said the government went beyond its jurisdiction while awarding the compensation.

The order was passed in response to a citizen's petition which challenged the government's authority to pay such compensation.

The complainants were free to file a civil case for compensation, the High Court said.

A large number of Muslims youths had alleged that they were tortured in custody.

In 2011, on the recommendation of the National Minorities Commission, the state government had offered Rs 20,000 to 50 Muslim youngsters and Rs 3 lakh each to 20 others who were arrested and allegedly tortured in police custody.

The state government also decided to implement the recommendations made by the National Commission of Minorities to undo the injustices done to these youths. Fourteen people were killed and 118 injured in the blasts and subsequent police firing on agitators.

As most of the amount has already been disbursed, the state government said that it will file an appeal.

First Published: Thursday, September 19, 2013, 11:56

..... A rough draft to make Help Hyderabad is appended below for approval pl:

The petitioners have filed this petition to get them impleaded in the appeal petition no. ----- filed by the State of Andhra Pradesh as the impugned judgment has thrown open a big question of State accountability and an authoritative and well considered judgment of this Hon'ble Court is of vital importance for every citizen of this country. The judgment exposes every citizen of this country, particularly those belonging to the weaker sections, to the State terrorism for which there shall be no accountability.

That Help Hyderabad, the petitioners is a registered nongovernmental organization which is working for the welfare of the Muslim community & seeking legal remedies on any issue of citizen rights.

That since this judgment directly affects the legal rights of every citizen particularly Muslims illegally arrested and likely to be arrested, the petitioner seek to implead in this appeal.

The petitioner respectfully submits as follows:-

1. That the judgment is prima facie misconceived and against the principles laid down by the Apex court in matters of State accountability in cases of mala fide arrests, harassment, torture and wrongful prosecution of hapless citizens.

2. That the Hon'ble High Court failed to appreciate that the Writ petition was untenable for misjoinder of parties and the Writ Petitioner deliberately did not make M/s Help Hyderabad on whose petition the action was initiated by the National Minorities Commission and the National Minorities Commission on whose direction the State Government awarded compensation as respondents so as to obtain a judgment on the basis of misrepresentation and mis-articulation of facts.

3. The impugned judgment is bad in law as it directs the State Government to recover the compensation paid to the victims of illegal and mala fide arrests, without giving an opportunity to those persons who are directly affected by this direction, which is against all canons of natural justice.

4. That the Hon'ble High Court failed to appreciate that it is not the question of doling out charities but a question of State's accountability for the torts and crimes committed by

its instrumentalities.

5. That the Hon'ble High Court erred in holding that the compensation was paid simply because the persons were acquitted by the trial court and failed to appreciate that the compensation was paid because it was established by the trial court judgments and enquiry report of the Advocate Commissioner that innocent Muslims were picked up, arrested and prosecuted with a malafide and the State accepted its responsibility to little compensate them for wrong done to them by the agents of the State.

6. That the Hon'ble High Court failed to appreciate that False Arrest:

is a tort (a civil wrong) that consists of an unlawful restraint of an individual's personal liberty or freedom of movement by another purporting to act according to the law. And it is settled law that an action can be instituted for the damages ensuing from false arrest, such as loss of salary while imprisoned, or injury to reputation that results in a pecuniary loss to the victim. Ill will and malice are not elements of the tort, but if these factors are proven, Punitive Damages can be awarded in addition to Compensatory Damages or nominal damages. In view of this, it is clearly known that if illegal arrest is made, punitive damages in addition to compensatory or nominal damages can be awarded.

7. That in In Boya Nallabothula Venkateswarlu and Ors Vs. The Circle Inspector of Police, Nandikotkur PS and Ors (2010 (3) U.P.L.J 19 (HC)), the Hon'ble Andhra Pradesh High Court Held. "Despite having sufficient material to reach a finding that the arrest and detention caused by the police are illegal, if we direct further enquiry to be made into the allegations leveled against the investigation agency, it is

nothing but diluting the issue and it may also afford an opportunity to the police to harass the witnesses to speak on their behalf. Therefore, we think it just and proper to record a finding since the material available on record in the facts and circumstances of the case, enables us to record a finding that the investigation conducted by the police is false to their own knowledge and that the arrest and detention of the appellants caused by the police are illegal.”

8. That in *Boya Nallabothula Venkateswarlu and Ors'* case (Cited supra), 2010 (3) U.P.L.J 19 (HC), the appellants were deliberately and purposely implicated in a grave charge of murder. Therefore, in this case, the Hon'ble Division Bench of A.P. High Court directed the State to pay compensation at the rate of Rs 1,000/- per day to each of the appellants for causing their illegal arrest and wrongful detention for a period of 32 days. And held that the compensation shall be in addition to the compensation for which the appellants are entitled under private law remedy. It is also directed to recover the compensation paid, from the police personnel who are responsible for illegal arrest and wrongful detention of the appellants. It is further directed to the State to pay an amount of Rs.9,000/- to the appellants towards expenses defrayed by them in prosecuting the writ petition and the writ appeal.

9. That the Hon'ble High Court erred in holding that there was no provision of grant of compensation for illegal arrest. That in *Nilabati Bahera's* case , it was held : Adverting to the grant of relief to the heirs of a victim of custodial death for the infraction or invasion of his rights guaranteed under Article 21 of the Constitution of India, it is not always enough to relegate him to the ordinary remedy of a civil suit to claim damages for the onspicu act of the State as that remedy in private law indeed is available to the aggrieved party. The citizen

complaining of the infringement of the indefeasible right under Article 21 of the Constitution cannot be told that for the established violation of the fundamental right to life, he cannot get any relief under the public law by the courts exercising writ jurisdiction. The primary source of the public law proceedings stems from the prerogative writs and the courts have, therefore, to evolve 'new tools' to give relief in public law by molding it according to the situation with a view to preserve and protect the Rule of Law.

10. That while concluding his first Hamlyn Lecture in 1949 under the title "Freedom under the Law" Lord Denning warned:-

"No one can suppose that the executive will never be guilty of the sins that are common to all of us. You may be sure that they will sometimes do things which they ought not to do : and will not do things that they ought to do. But if and when wrongs are thereby suffered by any of us what is the remedy? Our procedure for securing our personal freedom is efficient, our procedure for preventing the abuse of power is not. Just as the pick and shovel is no longer suitable for the winning of coal, so also the procedure of mandamus, certiorari, and actions on the case are not suitable for the winning of freedom in the new age. They must be replaced by new and up-to date machinery, by declarations, injunctions and actions for negligence... This is not the tasks of Parliament.... the courts must do this. Of all the great tasks that lie ahead this is the greatest. Properly exercised the new powers of the executive lead to the welfare state; but abused they lead to a totalitarian state. None such must even be allowed in this country"

11. That the Learned Chief Justice O' Dalaigh in *The State (at the Prosecution of Quinn) v. Ryan* [1965] IR 70 (122) said:

"It was not the intention of. The Constitution in guaranteeing the fundamental rights of the citizen that these rights should

be set at naught or circumvented. The intention was that rights of substance were being assured to the individual and that the Courts were the custodians of those rights. As a necessary corollary, it follows that no one can with impunity set these rights at naught or circumvent them, and that the Court's powers in this regard are as ample as the defence of the Constitution requires."

12. That in *Byrne Vs Ireland* (1972) IR 241, Walsh J opines at p264: " In several parts in the constitution duties to make certain provisions for the benefit of the citizens are imposed on the State in terms which bestow rights upon the citizen and, unless some contrary provision appears in the Constitution, the Constitution must be deemed to have created a remedy for the enforcement of these rights. It follows that, where the right is one guaranteed by the State, it is against the State that the remedy must be sought if there has been a failure to discharge the constitutional obligation imposed."

13. That in *Bhim Singh, MLA Vs State of J&K And others*, the Hon'ble Supreme Court held that " the police officers should have greatest regard for personal liberty of citizens, their mala fide, high handed and authoritarian conduct in depriving the personal liberty of person has to be strongly condemned." In this case, the Hon'ble Supreme Court directed the Respondent no.1, the State of Jammu and Kashmir to pay to Shri Bhim Singh a sum of Rs 50,000/- within two months.

14. That in *Lucknow Development Authority Vs M.K.Gupta*, it was held that " when public servant by mala fide, oppressive and capricious acts in performance of official duty causes, injustice, harassment and agony to common

man and renders the State or its instrumentality liable to pay damages to the person aggrieved from public fund, State or its instrumentality is duty bound to later recover the amount of compensation so paid from the public servant concerned.”

15. That - In Sanganagouda A. Veeranagouda and others Vs State of Karnataka, in this case, “ one “V” was arrested in a murder case on the direction of Office-in-charge of the police station and subsequently died by hanging himself in the police station, the Hon’ble Supreme Court considering the undisputed facts viz that at the relevant time A.1 was in charge of the police station, A2 to A5 were working as police constables in the said police station, the injuries sustained by the deceased Guddappa to his death was caused in the said police station, the fact that the IO did not produce “V” before the nearest Magistrate within 24 hours by his arrest as required under Code of Criminal Procedure, held that the death of the deceased has since occurred beyond 24 hours it would amount to wrongful confinement as contemplated under Section 348 of IPC and accordingly upheld the order passed by the Hon’ble High Court.”

16. That i Hindustan Transmission Products Ltd Vs. State of Kerala,, a petition filed under Article 32 of the Constitution of India for issuance of a writ of Habeas Corpus to produce two persons, the Hon’ble Supreme Court directed the Hon’ble District Judge, Ludhiana to conduct an enquiry into the allegations made in the affidavit and counter affidavits and submit a report as to the veracity of the statements made by either of the parties particularly in relation to the illegal detention of the aforementioned two persons. Thereafter on receiving the report of the District Judge, the Hon’ble Apex Court held that the two persons were wrongfully deprived of their right to personal liberty by the police authorities of the State of Punjab during the period from 09-08-1993 to 02-10-1993 and directed the State of Punjab to pay each of them a

sum of Rs 10,000/- by way of compensation within a period of one month. The Hon'ble Supreme Court onspic made it clear that the payment of this amount by way of compensation would not preclude Dalit Saini and Omprakash from pursuing the remedy, civil as well as criminal, that is available to them in law in respect of their wrongful confinement during this period.

17. That the Hon'ble High Court erred by not going into the issue that whether the arrested persons to whom compensation was paid were arrested bonafidely or the arrest were illegal.

18. That as per Apex Court ruling Shri D.K. Basu Vs State Of West Bengal, following requirements are to be followed in all cases of arrest or detention till legal provisions are made in that behalf as preventive measurers : (1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register. (2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by atleast one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest. (3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested an is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee. (4) The time, place of arrest

and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest. (5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained. (6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the, police officials in whose custody the arrestee is. (7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee. (8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory. Director, Health Services should prepare such a panel for all Tehsils and Districts as well. (9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the Illaga Magistrate for his record. (10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation. (11) A police control room should be provided at all district and State Headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on conspicuous notice board. (Para 36). B. These requirements are in addition to the constitutional and statutory safeguards and do not detract from various other directions given by the courts from time to time in connection with the safeguarding of the rights and dignity of arrestee. (Para 39).

19. That the Hon'ble High Court failed to appreciate that none of these directions were followed in the case of arrest of these innocent persons and the arrests were illegal and malafide from every angle.

20. That the Hon'ble High Court failed to appreciate that the judgment is bad in law because it is violative of the express directions and principles laid down by this Hon'ble Court in such matters.

21. That the Hon'ble Court failed to appreciate that the judgment will take the society back to the eighteenth century where the dictum was that the King can do no wrong and hence can perpetrate any illegality on its citizens with impunity.

22. That the law has evolved much from the days of that dictum and the Courts not only in India but world over have recognized and upheld the principle of State accountability in cases of crimes and torts committed by its agents.

23. That to appreciate the gravity of situation and of the impugned judgment it would be desirable to recapitulate the background of the whole case and series of events.

24. That during the last several years in every terrorist activity, muslims were paraded as accused. In every such case, within minutes even before the sound of explosion had

died down, the investigating agencies and media pronounced the names of the suspects and their organization which were invariably muslims. The pattern became so predictable and obvious that media started concluding that every muslim is not terrorist but every terrorist is a muslim.

25. That the terrorist incidents in its wake brought the indiscriminate arrest of muslims on baseless suspicions. The indiscriminate arrest of muslim youth, without any basis what so ever, as a witch-hunting exercise created a fear psychosis among the whole community that any of their members can be arrested by police anytime anywhere. Being young muslim with a beard was enough to arrest a person on charges of terrorism.

26. That surprisingly, even in cases where the muslim shrines and muslim population were targeted, blame was put on 'muslim terrorists' only and in that background again the midnightknock at muslim houses by the police started and whole community was put to a state of siege and humiliation.

27. That in this particular case, there were blasts in Mecca Masjid on 18-5-2007 during Friday prayers, in which --- -- number of Muslims were killed and subsequently when the Muslims came out of the mosque after the prayer----- Muslims were killed by the Police in firing without any provocation.

28. That in the wake of Makkah Masjid blast, by the Police own admission 82 people almost all Muslims, were arrested out of which 50 persons were left after interrogation and 32

persons were charge sheeted. (List enclosed)

29. That on the allegations of serious torture and inhumane treatment of the arrested persons, A.P.State Minorities Commission appointed an enquiry commission under the renowned advocate of the High Court, Mr. Ravi Chandra who after detailed enquiry and personal visit to the Jail, found the allegations not only true but much more than the actual allegations. The heart rending report of Mr. Ravi Chandra is enclosed.

30. That almost all the persons who were charge sheeted were finally acquitted by the Courts.

31. That in three cases of acquittal on which the M/S Help Hyderabad could lay down their hands upon, it was found that the trial court passed severe strictures on the Police.

32. That in spite of the strictures and faults found by the trial court, the State did not initiate any action against the erring Police officers.

33. That because of the continuous inaction on the part of the government rather tacit encouragement of some of the tainted Police officers, Help Hyderabad filed a complaint to the National Minorities Commission, who after going through all the materials on record gave direction to the State Government to (i)----- (ii)-----

34. That the Government constituted a Committee under Finance Secretary and including representative of Police department, to examine the report of the National Minorities Commission and make recommendations to the Government.

35. That the Committee examined the report in detail and gave its recommendation, and on the recommendation of the Committee only, the State Government decided to pay compensation to the innocent victims and issued the G.O.

36. That the petitioner filed the impugned Writ petition obviously without bringing these facts to the notice of the Hon'ble High Court and perhaps with the change of regime, the State Government was also not enthusiastic in defending its action and did not bring these facts to the notice of the Hon'ble High Court.

37. That the Hon'ble High Court failed to appreciate that it was a collusive Writ Petition by the petitioner and the State as respondent to thwart the action of the earlier regime.

38. That the Hon'ble High Court failed to appreciate that the issue was not of provision but of accountability of the State and its officers.

39. That the Aseema Nand confession that Mecca Masjid blast was done by his Hindu organization and Police totally closing its eyes from that possibility not a case of their lack of professionalism but a case of their communal bias.

40. That it would be naïve to think or argue that the 'Muslim suspects' were arrested and tortured out of bonafide belief about their involvement. Announcing the names of 'Muslim suspects' within minutes of such terrorist acts betrays not only the lack of professionalism on the part of the Police but also the widely prevailing communal bias in the rank and file of the police force which sees all such incidents with a jaundiced eye.

41. That the three judgments of the trial court disclose a very disturbing trend of the modus operandi adopted by the police in apprehending the muslim youth.

42. That in every cases the police officers either on unidentifialbel information or during the routine rounds, find the muslim youth moving in suspicious circumstances, confront them where by they try to flee and then police chases them and they voluntarily admit to their involvement in 'jehadi activity'; whereupon police secures the presence of some panchas and recover incriminating materials in the form of 'jehadi literature or jehadi cassettes' from them. In most of the cases this is the set procedure and in the court invariably the panchas and witnesses turn hostile and give statement contrary to the Police version.

43. That This is the story on record. Beyond the record story is that young muslims are arrested indiscriminately as a routine to improve the career graph of the concerned police officers and also to fulfill their communal agenda, detained illegally for weeks together illegally without any record, taken to private farms in the outskirt, tortured brutally, given electric shocks on their private parts, their religious beliefs are abused,

sometimes taken to jungle covering their eyes with a threat to kill them in encounters and finally either let off psychologically scarred or framed in fake charges to toil for long years in a state of mental turmoil.

44. That In Joginder Kumar Vs State of U.P And Others, the Hon'ble Supreme Court of India held that " the arrest should not be merely on suspicion about the person's complicity in the crime and the police officer must be satisfied about necessity and justification of such arrest on the basis of some investigation and the reasons for arrest must be recorded by the police officer in his diary and the arrest should normally be avoided except in cases of heinous crime."

45. That Jehadi literature' is nowhere defined in either IPC or Cr. P.C. and no provision of law prohibits possession of or dissemination of 'Jehadi literature' and hence its possession cannot be a legal basis for a valid arrest. This is causing a fear psychosis in the mind of the Muslim community that any of their members can be arrested on the basis of any piece of paper written particularly in Urdu or Arabic on the ground that it is 'jehadi literature'. Even if for the sake of argument, possession of 'jehadi literature' is a valid ground for arrest, non definition of its contours is causing a situation of great uncertainty whereby the members of the community do not know what type of literature they are prohibited by law from possessing.

46. That the Hon'ble High Court failed to appreciate that the recommendation of the National Minorities Commission was not based on mere allegation of bias and malafide against the Hyderabad Police but was based on the findings of the trial court and enquiry report of the Ravi Chandra Commission.

47. That the Hon'ble High Court failed to appreciate that the Police officers in this case, **without knowing and understanding the contents of any written, published or taped article branded the material as jihadi literature and arresting and charge sheeting the innocent Muslims under serious sections of mutiny and terrorism.**

48. That in [C.C.No. 131 of 2007](#), the hon'ble Additional Chief Metropolitan Magistrate, Hyderabad held as follows:-

*“Accused No.1 was found in the possession of MO1 which is said to be seditious CD. The alleged provocative speech was made in Arabic and Urdu under MO1. The investigating officer PW7 himself stated that he translated the same into English.”*

*“PW7, the Investigating Officer clearly admitted in the corss-examination that the Urdu and Arabic are different languages and it is very difficult to understand those languages and the usage of language and ascent differ from place to place and country to country. Under these circumstances, it is the duty of the prosecution to place the correct and accurate translation of MO1 speech. PW7 proclaims that he himself translated the speech into English in the present of PW6 and other. But it is not explained as to how PW7 is able to translate the Arabic language into English correctly and accurately without any proficiency in the languages.-----*

*He studied upto Intermediate with Telugu Medium and he does not know Urdu or Arabic languages.-----  
-----*

*Under these circumstances, it cannot be said that the efficiency of the languages of Arabic and Urdu was such that PW7 could translate the true meaning of the speeches contained in the MO1 CD into English correctly and accurately.”*

49. That similarly in [S.C.No. 544/2007](#), the learned Addl. Metropolitan Session Judge had this to say,

*“ That apart, though PW 13 claims he seized Xerox copies of Urdu literature, admittedly cannot read or understand what those papers contain. That apart, it is not known what the Cds and cassettes contain. Admittedly those were not being played either in the court or at the time of arrest and seizure from the accused person in the presence of panchas and transcriptions were also not prepared at the time of their seizure. They were also not sealed and kept in tact after their seizure from the possession of the accused.”*

50. That the Hon’ble High Court failed to appreciate that **Just to clothe the case with stringent sections like mutiny and waging war against the State, the Police is fabricating stories and incorporating in the Charge sheet and at the time of trial not only that they are not able to sustain these stories but are also not adducing any evidence on those counts which shows their malafide.**

51. That the Hon’ble High Court failed to see that the **Police is obtaining some literature or some C.Ds. from somewhere and fastening them on the accused without any proper panchnama and without any evidence.**

52. That in [C.C.No. 131 of 2007](#), the hon’ble Additional Chief Metropolitan Magistrate, Hyderabad held as follows:-

*“Though PW7 tried to say that, he seized MO1 he did not say clearly as to from which place he seized the MO1.-----  
-----*

*It is already held by me that the recovery is not proved beyond doubt.”*

Similarly in [S.C.No. 544/2007](#), the learned Addl. Metropolitan Session Judge had this to say,

*“The translation version of Urdu literature contained in Xerox copies seized from the accused were also not filed into the court so as to know whether these literature in fact were provocative in nature or not.”*

**53. That the Hon’ble High Court failed to appreciate that the police, malafidely filed complaints in the police stations without jurisdiction where they felt the I.O. would be sympathetic to their cause and action and would support their legal and illegal actions, and that the police conducted investigations and arrests of the innocent Muslims without registering a formal case and without valid sanction orders for criminal prosecution as required under law.**

**54. That in [C.C.No. 131 of 2007](#), the hon’ble Additional Chief Metropolitan Magistrate, Hyderabad had this to say:-**

*“Apart from weak type of evidence, I also noticed two disturbing features in the case of prosecution. In this case, PWs.1 and 5 Complainant and Investigating-Officer admitted in the cross-examination that the place of arrest of accused No.1 comes under the jurisdiction of Saifabad Police Station. But they admit that they have not forwarded the complaint to the Saifabad Police. PW7 tried to say that under the instructions of their Deputy Commissioner of Police, he investigated the case, which is not acceptable. The legal course open to him was in the event of complaint, he has to forward the same to the concerned police-station for the needful so that proper and legal authority could be exercised and the case could be registered and investigated if at all any offence as alleged was made out, it is relevant to refer to a case Omkar Vs.Commissioner of Police, Hyderabad reported in*

1996(4) ALT 733(DB), wherein it is held that the investigation without jurisdiction is illegal.

The another discrepancy in this case is, even as per PW1 he interrogated accused No.1 and seized Mos.1 to 3 in the presence of LWs.8 and 9 and then only he gave complaint in the Panjagutta Police-Station. Admittedly, by that time, no case was registered. Strangely PW7 also stated that he also interrogated the accused and seized CDs. The Section 153-A and 120(B)IPC are cognizable offences. In respect of a cognizable offence, police cannot investigate into a crime, unless and until the offence is registered under Section 154 Cr.P.C. case in Golla Ravindranath Babu Vs. Commissioner of Police, Visakhapatnam reported in 2002 (2)ALD(CrI), 258 (A.P.), wherein the police cannot investigate in respect of cognizable offence without registering the case. Any statements recorded are illegal and do not form record U/Sec.161, Cr.P.C. In my view, the above defects pointed out by me are inherent defects, which cannot be cured.

-----Ex.p8 the copy of the Government order said to have been issued by the Andhra Pradesh Government for sanction of criminal prosecution, it is admitted by PW7 Investigating-Officer that the same is signed by only a Section –Officer. The defense counsel clearly gave a suggestion to PW7 that the Section-Officer is not competent person to issue Ex.P8.”

55. That in [S.C.No.](#) 192/2006, the learned Addl. Metropolitan Session Judge had this to say,

“The prosecution failed to produce any satisfactory evidence with regard to the previous sanction of Central or State Governments to prosecute the accused for the alleged offences under Sections 121, 121-A, 124-A read with Section 120-B IPC as rightly contended by the learned Advocate for the accused.”

56. That no doubt the courts are acquitting such accused on the basis of flawed evidence, flawed investigation and frame ups but unfortunately, such acquittals only free a man from prosecution but do not wash away the scar put on his social status and standing. He might be acquitted by the court but in the eyes of society he remains a terrorist for ever. And more so in the eyes of police who permanently keeps their names in its records and leaves no opportunity to round him up again on slightest provocation.

57. That the acquittals do not lead to any compensation to the victims for the physical and mental torture they have gone through and for the loss of reputation and suffering of their family members in the society; nor to any punishment to the police officers who have played this mischief and caused untold trauma to the victims and the whole muslim community because of their communal bias.

58. That this raises the most important question of State's accountability in all such cases. State cannot absolve itself of its responsibility by such acquittal and the demand of justice cannot be met by only acquittals unless all those who falsely fabricated the charges and put the innocent people in harms way are adequately punished.

59. That the world over the trend is to compensate the victim and punish the guilty. That is the reason in a small country like Australia, when it was found that Dr. ----- was falsely implicated in charges of terrorism, the State not only tendered apology to the victim and paid exemplary compensation but also initiated action against its officers.

60. That similarly, in Kuala Lumpur, the Malaysian High Court awarded more than 57 lakh rupees in damages to two ethnic Indian men who sued the authorities for torturing them during interrogation.

Truck driver B Prabakar, 33, and crane operator C Solomon Raj, 23, claimed that they were beaten up and splashed with hot water by seven policemen when they were arrested more than five years ago. Justice John Louis O' Hara held the defendants were liable for the pain and suffering undergone by the two plaintiffs and the Government was liable for vicarious liability. The two men claimed they were arrested from a parking lot here on Dec 23, 2008 and were tortured by seven policemen for two days. They were forced to admit to various criminal offences and were released after five days. They said the policemen had beaten them with a rubber hose, splashed hot water onto their bodies as well as kicked and stepped on them, local newspaper Star reported. Prabakar even claimed he was hung on a ceiling fan with a rope.

61. That actually the Police are responsible for alienating one whole community from the State and should be prosecuted for waging a war against the State.

Hence it is essential that:-

- 1. That in all such cases the victim are adequately compensated by paying them monetary compensation.**
- 2. They should be given state employment in Police Department because they cannot gain any other employment in private sector because of the stigma of**

**terrorist tag.**

**3. They should be given a special certificate of character by the government.**

**4. Police should be directed that they shall not be arrested on any terrorism charges again merely on suspicion and unless there is verifiable prima facie evidence against them.**

**5. There shall be a regular training programmed for sensitization of police officer in lessons of secularism by outside independent faculties like NGOs. Etc.**

From the above it would be clear that the Police is fabricating false cases against the Muslim youth indulging mass scale State terrorism against the Muslim community at large for fulfilling their communal agenda and improving their career graph, and they are not producing any evidence in support of their charges nor even pressing the charges.

The State government shall file prosecution against the concerned police officers.

**2. There should be judicial pronouncement on the Issue**

**that whether possession of 'Jehadi literature' is a valid ground for arrest.**

**3. And also that if yes, what is the definition of 'Jehadi**

**literature'**

- 4. State may be asked to frame guidelines regarding  
'suspicious movement' and as to how to  
proceed in  
such circumstances**