

REPORT OF THE AMICUS CURIAE

[A] BRIEF BACKGROUND:-

- (i) Mahatma Gandhi; Father of the Nation was assassinated on 30.01.1948 at 5.15 PM in broad daylight in presence of large number of people. The assailant was arrested at the spot and FIR was registered at 5.45 PM at Tuglaq Road Police Station, New Delhi. In total there were 12 accused persons. They were charged and prosecuted for 120-B r/w 302 IPC and under various other provisions of the Indian Penal Code, Indian Arms Act, Explosives Substances Act, etc. In a nutshell, the position of the accused before the Trial Court and after appeal in the Hon'ble High Court, is as follows:-

S. No	Accused	Ld. Trial Court Judgment dtd	Hon'ble High Court Judgment dtd
[1]	Nathuram	10.02.1949 Convicted	21.06.1949 Convicted

	Godse		(Death sentence)	
[2]	Narayan D. Apte		Convicted (Death sentence)	Convicted
[3]	Vishnu Karkare		Convicted (Lifer)	Convicted
[4]	Madanlal Pahwa		Convicted (Lifer)	Convicted
[5]	Shankar kistayya		Convicted (7 years)	Acquitted
[6]	Gopal Godse		Convicted (Lifer)	Convicted
[7]	Vinayak Savarkar		Acquitted	No appeal
[8]	Dattatraya S. Parchure		Convicted (Lifer)	Acquitted
[9]	Digambar R. Badge		Turner approver	
[10]	Gangadhar S. Dandawate		Absconding	

[11]	Gangadhar Jhadav	Absconding
[12]	Suryaao Sharma	Absconding

- (iii)** One of the accused, Digambar R. Badge was granted pardon on 21.06.1948 and was made approver (PW 57). He disclosed the conspiracy to murder Mahatma Gandhi. His statement was duly corroborated by independent witnesses.
- (iv)** Vishnu Karkare, Madanlal Pahwa and Gopal Godse were released after serving their respective sentences in 1964. Thereafter, a statement was made by grandson of Late Bal Gangadhar Tilak, Dr. G.V. Ketkar to the effect that he had prior knowledge of the danger to Mahatma Gandhi's life. His statement led to public furore which resulted in the setting up of a Fact Finding Commission under the Chairmanship of Mr. Gopal Swarup Pathak, an eminent lawyer. However, he became a Minister of Union of India and thereafter Hon'ble Mr. Justice Jivan Lal Kapur, a retired judge of the Hon'ble Supreme Court was appointed to head the one man commission in

November, 1966. The mandate of the commission was to find if anyone in general and Mr. G.V. Ketkar in particular had prior information of the conspiracy of Nathuram V. Godse and others to assassinate Mahatma Gandhi. A large number of witnesses were examined by him. They were also cross-examined and after giving a detailed analysis of the evidence adduced before the Commission, the Commission gave its report on 30.09.1969. Thereafter a quietus was given.

[B] PRESENT PROCEEDINGS:-

- (i)** Dr. Pankaj Kumudchandra Phadnis, Engineer, Management Graduate, Ph.D and a Researcher with passion, filed a Writ Petition in the Bombay High Court asking for re-investigation of the Mahatma Gandhi's murder case and also to re-visit the findings given by the Kapur Commission with respect to the conspiracy. The said Writ Petition was dismissed by the Hon'ble High Court vide order dated 06.06.2016 on the ground of finality of judicial proceedings and on the ground of delay.
- (ii)** Undeterred, the petitioner carried the proceedings to

the Hon'ble Supreme Court by filing a Special Leave Petition bearing Diary No. 15103/2017. When this matter was listed before this Hon'ble Court and considering the historical importance of the matter, this Hon'ble Court decided to appoint the undersigned as Amicus Curiae vide order dated 06.10.2017.

[C] MAIN SUBMISSIONS BY THE PETITIONER:-

- (i)** I have gone through the Writ Petition and the Special Leave petition as well as the several letters and additional documents sent by the Petitioner.
- (ii)** Though the Writ Petition as well as Special Leave Petition has been loosely drafted but after going through the petition and the submissions made therein, as well as the additional affidavits, I could gather that the petitioner has raised a doubt on the conclusions reached by the courts in Mahatma Gandhi's murder trial as well as the findings of the Kapur Commission on the following grounds:-
 - (a)** That there were 4 bullets involved in the assassination of Mahatma Gandhi. According to the

Petitioner, when the body of Mahatma Gandhi was given last bath on 30.01.1948, one bullet was found from the shawl of Mahatma Gandhi and that this 4th bullet did not match the pistol recovered from Nathuram V Godse. The said claim was buttressed by the report published on the day after the murder in three Newspapers, namely: The Loksatta Mumbai, Times of India, New Delhi and, The Dawn, Karachi wherein it was stated that 4 shots were fired at Mahatma Gandhi. According to the Petitioner, this probabilies the presence of 2nd assailant and a 2nd weapon of assault. He also said that the photograph published contemporaneously in the newspaper showed there were four bullets marks on the body of Mahatma Gandhi.

- (b)** According to the writ petitioner, there was a larger conspiracy involving the British Secret Service called Force 136 and some diplomats had told the then Indian Ambassador to USSR in Moscow that the British had a hand in the murder of Gandhi. According to him, the British had a motive for killing

Mahatma Gandhi because, had he been alive, he would have gone to Pakistan and this would have improved the relationship between India and Pakistan, injuring British exports.

- (c)** Additionally, the petitioner places reliance on the testimonies of Ms. Sarla Barve (w/o Collector of Pune at the relevant time) and, Ms. Manuben Gandhi made to the Kapur Commission to reinforce his contention of prior knowledge to others about the assassination of the father of the nation and the presence of a second assassin.
- (d)** Furthermore, the petitioner doubts the veracity of the pre and post assassination investigations indicating that since, the King of England was the Sovereign head of the Dominion of India at the relevant time, a free and fair investigation could not be expected indicating further the need for the Apex Court of Independent India to once again sit in Judgment of the Judgments of the courts below and decide the issues forthwith.

- (iii)** Fully appreciating the importance of this case that murder of Mahatma Gandhi, Father of the Nation, was a part of our history, I examined the relevant papers on the basis that no amount of 'legalese' or technical principles of issue estoppel or limitation should be taken into consideration while submitting a report to this Hon'ble court, as the nation, has a right to know the truth.
- (iv)** Keeping this principle in view, I started collecting the relevant material and investigating the facts. The files relating to Mahatma Gandhi's murder case, including all the deposition of witnesses, 313 CrPC statement made by all the accused persons, relevant exhibits, Trial Court and High Court judgments were made available to the undersigned by the National Archives of India, New Delhi.
- (v)** The Kapur Commission report was made available to us by the Indian Law Institute, New Delhi. However, the depositions made before the Kapur Commission could not be obtained inspite of best efforts.

(vi) On a visit to Gandhi National Museum, Rajghat, the shawl, dhoti, watch, one used cartridge and one spent bullet were also looked into by the undersigned. The clothes were completely blood smeared.

[D] Analysis and study of the available material with respect to the issues raised by the petitioner are as follows:-

RE: 4th bullet theory:-

(i) This is the crucial submission made by the petitioner that if 4 shots had been fired at the time of assassination and one of the bullets recovered at the place of occurrence was not fired from the weapon of the assault, then it would certainly require a new Fact Finding Commission. However, the assailant of Mahatma Gandhi was arrested with the murder weapon at the spot. The weapon of assault was a semi automatic Beretta pistol which could load 7 cartridges at a time. The pistol along with the 4 live cartridges were recovered by PW31 (Amar Nath, ASI, P.S.-Tughlak Road) and kept in a sealed envelope. Ex. P/63 is the

recovery memo as regards the same. True Typed Copy of Ex. P/63 dtd 30.01.1948 is appended hereto and marked as **ANNEXURE A/1 from Pages ___ to ___**.

The chain of witnesses confirming that the seal was always intact and not tampered upon are:-

- PW31 (Amar Nath) → PW 33 (Qabul Singh, Head Constable, Tughlak Road, P.S.).
- PW 33 (Qabul Singh) → PW 35 (Dhaluram, S.I. Karol Bagh P.S.).
- PW 35 (Qabul Singh) → PW 58 (Dr. D.N. Goyle, Director, Scientific Laboratories, East Punjab, Phillaur).

(ii) 2 empty cartridge-cases and 2 spent bullets were found at the place of occurrence and were taken into custody. True Typed Copy of the seizure memo Ex P/31 dtd 30.01.1948 is appended hereto and marked as **ANNEXURE A/2 from Pages ___ to ___**. They were duly sealed and deposited with the Malkhana P.S. Tughlak Road, New Delhi, from where it was forwarded to PW 58 for examination.

The chain of witnesses confirming that the seal was always intact and not tampered upon are:-

- PW 117 (Sardar Jaswant Singh, DSP-New Delhi) → PW 116 (Daswanda Singh, Police Inspector-IB, New Delhi).
- PW 116 (Daswanda Singh) → PW 33 (Qabul Singh, Head Constable, Tughlak Road Police Station);
- PW 33 (Qabul Singh) → PW 35 (Dhaluram, S.I. Karol Bagh Police Station);
- PW 35 (Dhaluram) → PW 58 (Dr. D.N. Goyle, Director, Scientific Laboratories, East Punjab, Phillaur).

(iii) At 1 AM in the intervening night between 30.01.1948 and 31.01.1948, while giving the last ritual bath to the body of Mahatma Gandhi, in his shawl an empty cartridge was recovered, which was handed over by Shri Devdas Gandhi, (s/o Mahatma Gandhi), to PW117 Sardar Jaswant Singh, DSP of Delhi Police. True Typed Copy of seizure Memo (Ex P/80) dtd 31.01.1948 is appended hereto and marked as **ANNEXURE A/3 from**

Pages____**to**____. This empty cartridge was kept in a sealed envelope and deposited with Malkhana P.S.- Tughlak Road and was further sent for examination to PW 58.

The chain of witnesses confirming that the seal was always intact and not tampered upon are:-

- PW 117 (Sardar Jaswant Singh, DSP-New Delhi) → PW 116 (Daswanda Singh, Police Inspector-IB, New Delhi);
- PW 116 (Daswanda Singh) → PW 33 (Qabul Singh, Head Constable, Tughlak Road Police Station);
- PW 33 (Qabul Singh) → PW 35 (Dhaluram, S.I. Karol Bagh P.S.);
- PW 35 (Dhaluram)→ PW 58 Dr. D.N. Goyle, Director, Scientific Laboratories, East Punjab, Phillaur).

Note: *In order to reduce the bulk of the report, the depositions of the witnesses detailing the transfer of sealed package from place of occurrence to PW 58 have not been annexed. However, the same has*

been checked and found to be correct from the original record by the undersigned.

i. A death report was made by PW-117 Sardar Jaswant Singh (DSP, Delhi Police, New Delhi) on 30.01.1948. The death report makes a mention of the following injuries:-

(a) One injury on the right side of the chest near nipple.

(b) One injury below the chest right side.

(c) One injury on the right side of the abdomen.

(b) And (c) injuries, i.e. last two bullets passed through the body.

True and typed copy of the Death Report (Ex P/66) dtd 30.01.1948 is annexed herewith and marked as **ANNEXURE A/4 from Pages ___ to ___**.

ii. Thereafter an Inquest report was prepared by Lt. Colonel B.L. Taneja, Additional Civil Surgeon, Irwin Hospital, New Delhi on the morning of 31.01.1948 at 8:30 A.M. True Typed copy of the Inquest Report (Ex P/69) dtd 31.01.1948 is annexed herewith and

marked as **ANNEXURE A/5 from Pages___to___**.

True Typed Copy of deposition of PW 38 Lt. Colonel B.L. Taneja, (Additional Civil Surgeon, Irwin Hospital, New Delhi) dtd 12.07.1948 is appended hereto and marked as **ANNEXURE A/6 from Pages___to___**. In the Inquest report as well as in his deposition, he noted the following injuries:-

- 1)** Punctured wound oval in shape 1/4" x 1/6" size penetrating in nature on the right side of chest in the fourth intercostal space 1" above the nipple and 4" from the mid-line. **There was no evidence of any exit wound in connection with this injury.** The wound was dangerous to life and possibly inflicted by a shot from a pistol-a dangerous weapon; (*emphasis supplied*).
- 2) & (3)** Punctured wound oval in shape 1/4" x 1/6" size penetrating in nature on the right side of Xiphisternum in the seventh intercostal space 1" to the right side of the mid-line. Direction of the wound was obliquely downward and outwards making an exit wound oval in shape 1/3" x 1/4" in size situated 2

½” above the right iliac-crest and 2” to the right of the spinal column. The wounds were dangerous to life and possibly inflicted by a shot from a pistol- a dangerous weapon;

4) & (5) Punctured wounds oval in shape ¼” x 1/6” in size penetrating in nature on the right side of the abdomen 2 ½” above the Umbilicus and 3 ½” to the right of the mid-line. The direction of the wound was obliquely downwards and inwards making an exit wound oval in shape 1/3” x ¼” in size situated 1” above the right iliac-crest and 2” to the right of the spinal column. The wound was dangerous to life, and possibly inflicted by a shot from a pistol- a dangerous weapon.” It was further his opinion, that the death was caused by shock and internal hemorrhage due to the above mentioned injuries inflicted on him by bullets fired from a pistol.

iii. No post-mortem of the dead body was conducted.

iv. Only 3 empty cartridges and 2 spent bullets were found at the place of occurrence. No fourth spent bullet or empty cartridge was found there. One

bullet which did not have a corresponding exit wound remained inside the body of Mahatma Gandhi.

- v.** Three empty cartridges and two spent bullets recovered at the place of occurrence along with the weapon of assault were sent to PW 58 (Dr. D.N. Goyle, Director, Scientific Laboratories, East Punjab, Phillaur). He deposed that he received the aforementioned articles in perfect sealed condition. The pistol showed evidence of having been fired. The 3 spent cartridges and 2 spent bullets were fired from the same pistol. True Typed Copy of deposition of PW 58 (Dr. D.N. Goyle, Director, Scientific Laboratories, East Punjab, Phillaur) dtd 02.08.1948 is appended hereto and marked as **ANNEXURE A/7** from Pages ____ to ____.

- vi.** A fourth bullet was recovered in Gwalior from the courtyard of Dr. Parchure, Accused no. 8 on 27.02.1948 when Co-Accused No.2 Narayan D. Apte was taken to Gwalior. True Typed copy of the seizure memo (Ex P/79) dtd 27.02.1948 in this regard is

annexed herewith and marked as **ANNEXURE A/8** from Pages ____ to _____. Thereafter the Bombay Police sent it to Delhi Police and the Inspector General of Delhi Police sent the same for forensic examination to PW 58 (Dr. D.N. Goyale) on 06.05.1948. True Typed copy of the letter (Ex D/3) dtd 06.05.1948 forwarding the same is annexed and marked as **ANNEXURE A/9** from Pages ____ to _____. Thereafter PW 58 (Dr. D.N. Goyale) gave his report (Ex D/4) on 16.05.1948. True Typed copy of the report (Ex D/4) dtd. 16.05.1948 is annexed herewith and marked **ANNEXURE A/10** from Pages ____ to _____.

[It is pertinent to mention herein that, this recovery of bullet and the report was declared as inadmissible by the trial court on the insistence of the defence that, the same had no connection with the Mahatma Gandhi's murder case].

RE: Firing of four shots and presence of Second Assailant:

- (i) The FIR was registered at 5.45 PM and it mentioned about firing of three shots. The death report prepared

by PW117 (Sardar Jaswant Singh) and the Inquest report prepared by Lt. Colonel BN Taneja, Additional Civil Surgeon, Irwin Hospital, New Delhi, discussed above and already annexed, showed that only three bullets had been fired. Mahatma Gandhi had suffered injuries from 3 bullets only.

- (ii) During trial, 6 eyewitnesses were examined. They are as follows:

Witness	Name / Occupation
PW 31	Mr. Amar Nath, ASI, PS- Tughlak Road, New Delhi.
PW 32	Nandlal Mehta, Businessman, New Delhi.
PW 34	Ratan Singh, Foot Constable-491, PS- Tughlak Road, New Delhi.
PW 37	Mr. Dharam Singh, H.C. No. 1676, PS- Tughlak Road, New Delhi.
PW 76	Raghunath Naik, Gardener, Birla House.
PW 82	Sardar Gurbachan Singh, Businessman, New Delhi.

They all mentioned about 3 shots having been fired by

the sole assailant Nathuram V Godse only. They were offered for cross-examination and some of them were cross-examined. It has not been suggested to any witness that there was a second assailant or four shots were fired at Mahatma Gandhi, nor was it brought on record by either the Defence or the Prosecution.

True typed copy of the statement of all the 6 eye witnesses is collectively appended hereto and marked as **ANNEXURE A/11 (colly) from Pages ___ to ____.**

- (iii)** It would be pertinent to mention herein that relevant extract from the Manuben's diary which has been annexed by the petitioner himself (**@ Pgs 36-40 of the paper book**) and which was written on the same day, records as follows:-

“Bapu was hit with 2 bullets on stomach and, 1 bullet on chest. As soon as the second bullet came, Bapu's head came into Bhabhi's hand and Bapu slipped from Bhabhi's hand and fell down. ... The assailant was trying to run off but the gardener and other people caught him.”

- (iv)** The photograph of the body had been made available by Gandhi National Museum, Rajghat. These photographs are black and white in color and are insufficient to determine / confirm the details of the injuries (with respect to their character, size, shape, site etc.). Further, exit wounds were not visible in any of the photographs. These photographs do not aid in arriving at a decisive conclusion and thus, cannot be treated as reliable / substantive piece of evidence.
- (v)** From the above documents, it is clear that there was no 4th bullet which was fired upon Mahatma Gandhi on the fateful day of 30.01.1948. Additionally, the other bullet alleged to be the fourth bullet was recovered from Gwalior and not from Delhi. Therefore, if the same was not recovered from the place of occurrence, then the theory of there being a 2nd assailant and existence of 4th bullet is unsustainable in view of the clear, cogent and consistent evidence available on record.
- (vi)** Thus, on the basis of the material available on record, the existence of a second assailant or the firing of 4 bullets on Mahatma Gandhi is completely ruled out.

RE: Conspiracy to kill Mahatma Gandhi:-

- (i) Charge of 120-B IPC was levelled against all the accused.
- (ii) The evidence with respect to conspiracy comprised of one failed attempt on 20.01.1948, which did not deter the accused to carry another successful attempt on the life of Mahatma Gandhi on 30.01.1948. PW 57, Digambar R. Badge (the approver) unveiled the conspiracy to kill Mahatma Gandhi right from its inception. True Typed Copy of deposition of PW 57 Digambar R. Badge (the approver) dtd 30.07.1948 is appended hereto and marked as **ANNEXURE A/12 from Pages ___ to ___**. His testimony comprising of arranging arms/ammunitions and carrying out the failed attempt on the life of Mahatma Gandhi on 20.01.1948 is duly supported by the following witnesses:-

PW 14 (Surjit Singh, Taxi Driver, New Delhi), **PW 15** (Smt Sulochana Devi, Servant, Birla House), **PW16** (Chotu Ram, Car Cleaner, Birla House), **PW 17** (Bhur Singh, Guard, Birla House), **PW 67** (Professor Jagdish

Chandra Jain, Bombay), **PW 72** (Mr. Angad, Neighbour of PW 67), **PW 77** (Goswami Dixitji Maharaj, Bombay) and **PW 78** (Shri Morarji Desai, the then Hon'ble Home Minister, Government of Bombay).

Note: *In order to reduce the bulk of the report, the depositions of the aforesaid witnesses have not been annexed. The same has been checked and found to be correct from the original record by the undersigned.*

- (iii)** However, this failed attempt did not deter the accused to carry out the acts in furtherance of the conspiracy.
- (iv)** Thereafter, Nathuram V Godse & Narayan Apte travelled from 20.01.1948-28.01.1948 from Delhi to Gwalior via Kanpur, Bombay and Thane in search for a suitable weapon of assault. This is the evidence of the following witnesses (which has been corroborated in material particulars): **PW 45**, Shiv Pyarelal Dixit (Senior Enquiry Clerk at Kanpur Central Railway Station); **PW 46**, Anand Beharilal Saxena, (Enquiry Clerk at Kanpur Central Railway Station); **PW 47**, Angelina Coleston (Matron at the Kanpur Central Railway Station); **PW63**, Gaya Prasad Dube (Manager, Aryapthik Ashram,

Bombay); **PW61**, Kashmiri Lal (Partner, Hotel Elphinstone Annexe, Bombay); **PW64**, Govinda Malekar (Employee at the Hotel Elphinstone Annexe, Bombay); **PW79** Vasant G Joshi (s/o GM Joshi, Thane); **PW69** Goswami Dadaji Maharaj, Bombay; **PW 77** Goswami Dixitji Maharaj; **PW43**, Ghariba (Tongawala @ Gwalior); **PW44**, Jumma, (Tongawala @ Gwalior).

- (v) They finally succeeded in obtaining the murder weapon at Gwalior on 28.01.1948 from PW 39 (Jagdish Prasad Goel). True Typed Copy of deposition of PW 39 (Jagdish Prasad Goel) dtd 12.07.1948 is appended hereto and marked as **ANNEXURE A/13 from Pages___to___**.
- (vi) Thereafter, On 29th and 30th January 1948, Narayan Apte, Nathuram Godse and Vishnu Karakre booked a retiring room at the Delhi Junction Rly. Station Lodge and stayed there from 29.01.1948 to 30.01.1948 and finally executed the plan by assassinating Mahatma Gandhi on 30.01.1948. This is proved by the evidence of the following witnesses (which has been corroborated in material particulars): **PW26**, Sundari Lal, (Booking Clerk, Delhi Junction Railway Station); **PW27**, Hari

Kishan (Bearer Retiring Room, Delhi Junction Railway Station); **PW28**, Jannu (Boot Polisher, Delhi Junction Railway Station).

Note: *In order to reduce the bulk of the report, the depositions of the aforesaid witnesses have not been annexed. The same has been checked and found to be correct from the original record by the undersigned.*

(vii) The statement of approver was accepted by the courts below on the points on which it had been reliably corroborated. Where it had not been corroborated, benefit of doubt was given to the accused.

(viii) It is pertinent to mention here that, during the entire episode of the unveiling of the conspiracy to murder Mahatma Gandhi, no suggestion has been put by any of the advocates either from the defence or prosecution or by the Ld. trial court that there was a larger conspiracy involving others apart from those accused.

RE Role of Savarkar and remarks of Kapur Commission therein:-

(i) Vinayak D. Savarkar who was the former president of the Hindu Mahasabha and was the foremost ideologue

of the right wing Hindutva philosophy at the relevant time. His close relationship with both Nathuram V. Godse and Narayan Apte is well documented. However, Godse and Apte drifted apart from Savarkar on the issue of Savarkar supporting the Nehru led government in 1947 and hoisting of the national flag on 15.08.1947.

(ii) Vinayak D. Savarkar was acquitted of the charges of conspiracy by the Ld. Trial Court because the statement of the approver, PW 57, Digambar R. Badge with respect to his role remained uncorroborated. Further, no appeal against his acquittal was filed before the Hon'ble High Court.

(iii) However, the Kapur Commission, which was set up in 1965 in its report dated 30.09.1969 has dealt with the role of Savarkar in detail and has made the following remarks (**@ Pg 317 Volume II**):-

- *“The statement of Appa Ramchandra Kasar, Bodyguard of V. D. Savarkar (Ex. 277) which was recorded by the Bombay Police on 4th March 1948 shows that even in 1946 Apte and Godse were frequent visitors of Savarkar and Karkare also*

sometimes visited him. During the period when the question of Partition of India was being discussed all these three used to visit Savarkar and discussed with him the question of the Partition and Savarkar was telling Apte and Godse that Congress was acting in a manner detrimental to the Hindus and they should carry on propaganda through the agency of the Agrani against the Congress, Mahatma Gandhi and his dictatorial policy.

- *In August 1947 when Savarkar went to Poona in connection with a meeting Godse and Apte were always with Savarkar and were discussing with him the future policy of the Hindu Mahasabha and told them that he himself was getting old and they would have to carry on the work.*
- *In the beginning of August 1947, on the 5th or 6th, there was an All India Hindu convention at Delhi and Savarkar, Godse and Apte travelled together by plane. At the Convention the Congress policies were strongly criticised. On the 11th August Savarkar, Godse and Apte all returned to Bombay together by*

plane.

- *In the month of November 1947 there was a conference of All India State Hindu Mahasabha at Mahim and Dr.Parchure and Surya Dev of Gwalior also attended that meeting.*
- *In the middle of December 1947, Badge came to Savarkar to enquire after his health but he could not see him. But two or three days later he again came and had a 15-minute talk with Savarkar. Karkare, Apte and Godse also met him during that month twice or thrice.*
- *Gajanan Vishnu Darnle. Secretary of Savarkar was also examined on 4th March 1948 by the Bombay Police. He said that he had known N.D. Apte of the Agrani for the last four years. Apte started a, rifle club at Ahmednagar and also was an Honorary Recruiting Officer during the war. Apte was a frequent visitor to Savarkar's house and sometime came with Godse. Savarkar had lent Rs. 15,000 to Apte and Godse for the newspaper when security was demanded from the Agrani. That paper was*

stopped and the new paper called the Hindu Rashtra was started. Savarkar was one of its Directors and Apte and Godse were the Managing Agents. He knew V.R. Karkare who was a Hindu Mahasabha worker at Ahmednagar for about three years and occasionally visited Savarkar. Badge was also known to him for the last three years. He also used to visit Savarkar.

- *The statements of both these witnesses show that both Apte and Godse were frequent visitors of Savarkar at Bombay and at conferences and at every meeting they are shown to have been with Savarkar. In January 1948 they were travelling with him both from Delhi to Bombay and back. This evidence also shows that Karkare was also well-known to Savarkar and was also a frequent visitor. Badge also used to visit Savarkar. Dr. Parchure also visited him. All this shows that people who were subsequently involved in the murder of Mahatma Gandhi were all congregating sometime or the other at Savarkar Sadan and sometimes had long interviews with*

Savarkar. It is significant that Karkare and Madanlal visited Savarkar before they left for Delhi and Apte and Godse visited him both before the bomb was thrown and also before the murder was committed and on each occasion they had long interviews. It is specially to be noticed that Godse and Apte were with him at public meetings held at various places in the years 1946, 1947 and 1948.”

(iv) After analysing all the evidence before it, the commission at @ **Pg 303 of Volume II**, returned a finding that:-

“All these facts taken together were destructive of any theory other than the conspiracy to murder by Savarkar and his group.”

(v) To be fair, Shri Vinayak Savarkar died in 1966 and had no opportunity to present his case before the Kapur Commission or, to cross examine the witnesses who had appeared before Kapur Commission.

(vi) However, since the late Vinayak D. Savarkar had been acquitted, at this stage, it would neither be advisable/ desirable nor possible to come to a definitive finding

with respect to Vinayak D. Savarkar's role in the assassination of Mahatma Gandhi.

RE Conspiracy of the British / CIA / Role of 'Force 136':-

- (i)** The claims of influence of the British either in the investigation or the trial have not been substantiated in any manner whatsoever and thus are mere surmise. A bare perusal of the record of the case establishes beyond doubt that an independent judiciary adjudged the crimes of Nathuram Godse and others and, justice was served. There is no documentary evidence in contemporary literature to prove that, there even existed such a secret service by the name of 'Force 136' and that, it was mandated to carry out the murder of Mahatma Gandhi. Thus, any reliance upon such theories would be unwarranted.
- (ii)** Furthermore, It is difficult to give any evidentiary value to the submissions regarding apprehension of Nathuram Godse by a CIA Agent named Herbert Reiner at the place of occurrence. Nor, any evidentiary value can be given to the statement made to Mrs. Vijaya

Laxmi Pandit (the then Indian ambassador to USSR) by the ambassadors of the various other countries regarding the involvement of the British. Further, these cannot derogate the solid evidence laid before the court in the Gandhi murder case comprising of oral and documentary evidence and material exhibits.

RE Testimonies made to the Kapur Commission:-

- (i)** Ms. Manuben Gandhi in her deposition to the Kapur Commission stated that, Nathuram Godse had come at noon time before the assassination of Mahatma Gandhi on 30.01.1948 at Birla House.
- (ii)** This statement however of Ms. Manuben Gandhi was rejected by the Kapur Commission on the following grounds (@ Pg 204-205, Volume I):-
- *“This statement was never made by this lady anywhere before although she could have done it at the earliest opportunity on the 30th January when she was examined by the police after the murder.*
 - *She has said that she mentioned this fact to Pandit Nehru and Sardar Patel the next day, but neither of these facts are mentioned in her book published in*

1962 but written before September 12, 1961.

- *The fact that Nathuram Godse came to the Birla House on the 30th at noon time was so important that in the course of ordinary events it should have been mentioned in her book which was written at a time when she had more time to think and which, according to her, is based on her diary giving a record of the events as they happened.*
- *She has said in the preface "In this book I have mainly given a day-to-day account of Bapu's life up to the great event of his departure from this world". In the context it was and should have been treated as a great event.*
- *The statement of Nathuram in court shows how determined he was to put an end to the life of the Mahatma. And it is rather difficult to believe that with those feelings in his heart which are disclosed in his written statement in court, he should have let that opportunity go. He had no compunction at the evening prayer time; it is difficult to find any reason for his having it at noon. A determined assassin*

does not go for darshans of his victims even if they happen to be Gandhi.

- *This witness had all the earnestness and moral faith and simplicity which characterised the Mahatma's camp but that is no safeguard against mistaken identities or lapsus memoriae.”*

(iii) There is no reason to disagree with the aforementioned findings arrived at by the Kapur Commission.

(iv) Ms. Sarla Barve in her deposition before the Kapur Commission has stated that, 2-3 days before the assassination of Mahatma Gandhi, a man called Sathe came to their house but as her husband was not present he told her that some Poona people had gone to Delhi to take the life of Mahatma Gandhi and that Baburao Sanas and Vasanttrao Deshmukh, other Maratha goondas, had made preparations to burn down houses of Brahmins who were vitally afraid of Maratha goondas.

(v) However, this testimony of Mrs. Sarla Barve was rejected on grounds of lack of corroboration.

(vi) Similarly the issue of the case diary entry dated

February 8th 1948 of Mr. UC Malhotra (Chief of Police, Alwar State) wherein, he makes a mention of a foreigner disguised as a Sadhu who came to Alwar and brought printed letter giving the news of assassination of Mahatma Gandhi. This news was out at 3:00 P.M. at Alwar whereas the assassination actually took place at 5:00 PM at Delhi, was brought before the commission.

(vii) However, this remains totally unsubstantiated and thus, no reliance can be placed on the same.

(viii) Thus it is apparent that, the petitioner has not been able to bring to light any substantive evidence which could displace the clear, cogent and consistent evidence available on record.

[E] CONCLUSION:-

(i) The bullets which pierced Mahatma Gandhi's body, the pistol from which it was fired, the assailant who fired the said bullets, the conspiracy which led to the assassination and the ideology which led to the said assassination have all been duly identified. No substantive material has come to light to throw any doubt on any of the above requiring either a re-

investigation of the Mahatma Gandhi murder case or, to constitute a fresh fact finding commission with respect to the same.

I am thankful to my younger colleagues Mr. Sanchit Guru (Advocate) and Mr. Samarth Khanna (Advocate) for their tireless work and valuable assistance in the matter.

I am also grateful to this Hon'ble court for appointing me as the Amicus Curiae in this matter.

**(AMARENDRA SHARAN,
SR. ADVOCATE,
AMICUS CURIAE.)**

[F] EPILOGUE

After having prepared the report, the undersigned received a letter and an affidavit dated 02.12.2017 on the 4th of December 2017. The affidavit was of one Dr. Nene who claimed to have treated an individual in the late 1950's who was allegedly the second assassin of Mahatma Gandhi. However, the undersigned submits that, this affidavit is of no reliance since, statements contained therein are mere hearsay and hence carry no evidentiary value. Furthermore, the incident complained of, is of late 1950's whereas, Dr. Nene had full opportunity to appear before the Kapur Commission set up in 1966 and put his case before the same. Similarly, he did not make a statement to similar effect when the matter came up before the Hon'ble High Court of Bombay in June 2016. Thus, the belated statement of Dr. Nene made after a period of sixty years has no evidentiary value in the eyes of law. Secondly, the letter regarding the comments of a Senior Advocate *vis a vis* the assassination and the assassins are matters of privilege between the petitioner and his lawyer and thus, warrant no comment.