

## RGICS ISSUE BRIEF (09 May, 2016)

### CUSTODIAL DEATH BY FAKE ENCOUNTER: THE MURDER OF ISHRAT JAHAN

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## Custodial Death By Fake Encounter: The Murder Of Ishrat Jahan

### Introduction:

On 15<sup>th</sup> June, 2004, 19-year-old Ishrat Jahan was gunned down along with three men on the outskirts of Ahmedabad by the Gujarat police. A college student from Mumbra, Maharashtra, she was alleged to have been affiliated to the Lashkar-e-Toiba (LeT), and part of a plan to kill then Gujarat Chief Minister Narendra Modi in retaliation for the 2002 Gujarat pogrom. However, many experts doubt the veracity of police claims about the encounter, believing instead that Ishrat was a victim of an extra-judicial execution by the Gujarat police in collusion with the Intelligence Bureau.

The subsequent scrutiny that the Gujarat government was subjected to after the “encounter” was in part due to the murky circumstances surrounding the case that implicated state leaders, and in part due to the fact that the crime branch of the Gujarat police had gained a reputation for encounter killings, some allegedly fake, that eliminated not only the alleged criminal but also any possible witnesses, whether guilty or innocent.

This case brings to light the darker side of Indian democracy – that of custodial deaths and fake encounter killings. Unfortunately, these issues have been brushed aside in a race to gain political mileage out of the travesty of justice meted out to a young girl who was also a citizen of this country.

### What Led the Gujarat Police to Ishrat?

Jammu & Kashmir police had shot dead LeT terrorist Ehsan Illahi in February 2004. The subsequent investigation led the Intelligence Bureau to the LeT’s plan to attack Gujarat through one Javed Sheikh.

The First Information Report (FIR) filed by the Gujarat police stated that they had received intelligence that two “Pakistani fidayeens were traveling from Kashmir to Ahmedabad” to “attempt a suicidal attack” on Modi. The two were identified as Amjad Ali Rana and Zeeshan Johar. Javed Sheikh was allegedly “arranging their local network.” The FIR further stated that one of the officers was informed by a “personal source” that the three men were traveling from Mumbai to Ahmedabad in a blue Indica with “firearms and explosives.” The police allegedly planned a stakeout to “nab” the car, which then led to a car chase that ended in a shootout at a deserted spot. Despite police claims that over 50 rounds were fired from two revolvers and two Kalashnikovs, not a single policeman was injured in the crossfire. The FIR does not mention Ishrat Jahan’s name (she is referred to as a “female terrorist”), or what intelligence the police had about her.<sup>i</sup>

At the time, Ishrat had been a B.Sc. student at Guru Nanak Khalsa college, and gave tuitions to help support her widowed mother and her siblings. She started working for Javed Sheikh when her mother Shamima Kauser found out that he needed a salesgirl for a new perfume shop. Ishrat started working with him on 1<sup>st</sup> May, 2004. This work also involved some travel.<sup>ii, iii</sup> It was while they were travelling that Ishrat was apprehended and killed along with Javed and two other men.

Convinced of her daughter’s innocence, Shamima Kauser filed a Writ Petition in the Gujarat High Court calling for a CBI investigation into the matter two months after her daughter’s murder.<sup>iv</sup>

A chargesheet was filed in July 2013, almost a decade after the fake encounter, against 7 Gujarat police officials (and later, in a supplementary chargesheet in February 2014, 4 Intelligence Bureau officials) for a host of charges, including unlawful killing, abduction and criminal conspiracy.

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### Who was Killed?

1. **Ishrat Jahan Raza:** Ishrat Jahan was a 19-year-old B.Sc. student at Guru Nanak Khalsa College and a resident of Mumbra, a suburb outside Mumbai. Following the death of her father, Ishrat started giving tuitions in order to help support her mother and siblings. Since tuitions did not provide a steady income, Ishrat found work with Javed Ghulam Sheikh, who claimed that he needed a salesgirl to work at a perfume shop.<sup>v</sup>
2. **Javed Ghulam Sheikh:** Born Praneshkumar Pillai at Thamarakulam village in Kerala, Sheikh converted to Islam in an unsuccessful attempt to win over the family of his future wife, Sajida Sheikh. The two married and moved to Mumbra in 1995, but soon moved to Pune following a violent business dispute. Sheikh seemed to be dogged by controversy – having four riot cases lodged against him in 1997. It was after he returned from a job in Dubai in 2003 that his wife reported that he seemed to have become embittered by video footage that he had seen of the previous year’s anti-Muslim riots in Gujarat.<sup>vi</sup>
3. **Amjad Ali Rana:** From Haveli Diwam in Pakistan<sup>vii</sup>. The CBI chargesheet states that he told Gujarat police that he had planned to commit a terror attack in a crowded part of Ahmedabad.<sup>viii</sup> Amjad and Javed are believed to have met several times in Oman.<sup>ix</sup>
4. **Zeeshan Johar:** Originally from Gujranwala in Pakistan<sup>x</sup>, Zeeshan was once caught trespassing with Amjad in Srinagar in 2003. Records of their arrest are reportedly with Kashmir police.<sup>xi</sup>

The police claimed that they found fake identity cards on the bodies of Amjad and Zeeshan that were reportedly made in Udhampur.<sup>xii</sup> Although the police claimed that the two were from Pakistan, Metropolitan Magistrate SP Tamang accused the police of forging the ID cards, and having conducted no probe to verify the originality of the identity proofs. "No Pakistani terrorist would carry his identity proof once he enters Indian territory, particularly when he is on a mission to kill a chief minister of a state," he noted.<sup>xiii</sup>

### Issues:

There are two contentions at issue in the present case:

#### 1. Was Ishrat Jahan a Lashkar-e-Toiba operative?

Ishrat Jahan’s supposed LeT affiliations have been asserted and contested endlessly by different political parties. Although the Gujarat police claimed that she was a terrorist and several media outlets reported the Ghazwa Times article that claimed that she was a LeT operative, the LeT later retracted that claim in Jamaat-ud-Dawa and apologized to Ishrat’s family and Indian Muslims. This apology was treated with skepticism from certain quarters, with Ajit Doval, now National Security Advisor under the Modi government, claiming that “such a move must have been prompted by increasing pressures from influential lobbies of Muslims in India”<sup>xiv</sup>.

Crucially, the CBI chargesheet states regarding Ishrat’s link with Javed that, “She had travelled with Javed ... She may have understood that Javed was engaged in illegal activities involving smuggling and counterfeit currency. ... However, there is no evidence to indicate that she had any terrorist links.”<sup>xv</sup>

A magisterial enquiry, SIT probe and CBI investigation all concluded that she had no terrorist links.

#### 2. Was Ishrat killed in a fake encounter while in police custody?

The real issue at hand (and one that has been effectively obfuscated by the BJP constantly proclaiming that she was a terrorist) is whether Ishrat Jahan was killed while in police custody. This is the criminal case that is presently being heard in court. Her LeT links

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are irrelevant to the present case, since the allegations are that she was taken into custody by the police, illegally detained, and then murdered in cold blood. This murder was then dressed up as an encounter killing to justify her death.

### Mounting Evidence:

1. In his statement before the Magistrate, DH Goswami, then Deputy SP, mentioned a meeting days before the encounter during which DG Vanzara, PP Pandey and SIB officer Rajinder Kumar were discussing an LeT operation which Kumar asked Vanzara to talk to the Chief Minister (Modi ) about. Goswami then quoted Vanzara telling Kumar that he would talk to ‘safed dadhi’ and ‘kali dadhi’.<sup>xvi</sup>
2. Goswami went on to testify about another meeting the day before Ishrat and the others were killed with police officer GL Singhal and Vanzara, who handed over a written complaint to Singhal. “There was a plan to kill some persons of LeT who intended to kill the chief minister. GL Singhal was disagreeing with the draft complaint as there was something to do about the girl Ishrat. But Vanzara was adamant. Shri Vanzara also told that he had approval from the chief minister and minister of home.”<sup>xvii</sup> This statement shows that the complaint or FIR was prepared in advance of the encounter.
3. The chargesheet states that Ishrat first met Javed Sheikh on 1<sup>st</sup> May, 2004. She was shot dead on 15<sup>th</sup> June. Out of those 45 days, her college attendance records show that she had missed only 10 days of college (during which she was presumably travelling with Javed Sheikh), which is far too short a time period for her to have become an LeT operative.
4. Javed Sheikh’s wife said that on the morning of 11<sup>th</sup> June, he called to say that he had to leave for Mumbai on unexpected work and would return in a day. When he did not return two days later, she found that his cellphone was out of network coverage. The police claim that Sheikh disabled his cellphone after he met Johar and Rana. However, the cellphone SIM was later found in the boot of his car, considered evidence by the Magistrate, Mr. Tamang, that Sheikh was kidnapped and killed by the police sometime after 12<sup>th</sup> June.<sup>xviii</sup>
5. The CBI, after examining ballistic and forensic evidence, found that it contradicted the account given by the Gujarat police. It found that bullets recovered from the victims’ bodies, as well as cartridges, did not match any of the guns that were claimed to have been used during the encounter. Moreover, the location of the car in which the four were travelling and the location of the bodies did not match the trajectory of the shots fired.<sup>xix</sup>
6. A magisterial enquiry, SIT probe and CBI investigation all concluded that the encounter was staged, and that the police claim of having fired on her in ‘self-defence’ was a lie.
7. Multiple Indian media outlets reported that Ghazwa Times, a magazine published by the Jamaat-ud-Dawa, had claimed that Ishrat was an LeT operative.<sup>xx</sup> However in 2007, Business Standard<sup>xxi</sup> reported that Jamaat-ud-Dawa had retracted that claim and apologized to Ishrat’s family and to Indian Muslims for “causing them problems due to an inadvertent mistake.”
8. The main accused in this matter have been accused of fake encounters before. DG Vanzara was already in custody for his involvement in the Sohrabuddin fake encounter killing. Many of the other accused, including GK Singhal, PP Pandey have also been implicated in multiple “fake encounters” between 2002 and 2006.<sup>xxii</sup> After his arrest, Vanzara wrote an open letter in which he categorically stated that between 2002-2007, all the officers of the Crime Branch, ATS and Border Range “simply acted and performed their duties in compliance with a conscious policy of this government.”<sup>xxiii</sup>
9. The most crucial allegation in the chargesheet was that all four were **already in the custody of the Gujarat police** when they were killed. Johar was allegedly in illegal custody for three months, Rana had been detained since May, and Sheikh and Ishrat, only days before they were killed.<sup>xxiv</sup>

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### Recent Developments and Political Controversy:

#### 1. David Headley's Testimony:

While David Headley was giving evidence as an approver in the 26/11 Mumbai Terror Attack case earlier this year, he appeared to confirm that Ishrat Jahan was a Lashkar-e-Toiba member. However, there are glaring issues in this testimony that have been ignored by the mainstream media and the ruling establishment.

1. He was an approver in the case. The evidence of an approver is weak and must be backed by material proof, of which there is none whatsoever.
2. Why did Ujjwal Nikam (recently awarded a Padma Shri) pose questions to him about Ishrat Jahan when he was supposed to be giving evidence about LeT member Abu Jundal?
3. From the transcript of Headley's testimony, it is clear that a certain agenda is being aggressively pushed through the line of questioning. An excerpt of the transcript is below, with an analysis by Vrinda Grover, lawyer for Ishrat's mother.

**Nikam:** Are there female suicide bombers in LeT?

**Headley:** No. I don't know.

**Nikam:** Can you name a suicide bomber?

*[Vrinda Grover: This is a slightly strange sequence of questions since he just told you he doesn't know if they have female suicide bombers – but the court allows it]*

**Headley:** I cannot name.

**Nikam:** Was there a botched up operation in India?

**Headley:** Yes, there was a botched up operation which I learnt when Zakiur Rehman Lakhvi was talking to Muzammil Bhat. Later I asked Muzammil and he told me there was a female member of LeT who was killed in a police shootout at a naka. Exact place I cannot recall.

*[Vrinda Grover: Note what he is telling you – there was a botched up operation somewhere in India, some woman was shot dead, I don't know who she was, I can't even remember the place. Later apparently he is asked 'do you think it was Gujarat?', and he says yes. This is hearsay twice over, it cannot be seen as evidence in any known jurisprudence. Yet this line of question is allowed, and such answers remained on record even though it cannot be read as evidence in India]*

**Nikam:** I will give you three options: Noor Begum, Ishrat Jahan or Mumtaz.

**Headley:** I think it was the second one. I have heard the name Ishrat Jahan.

*[Vrinda Grover: Well across the globe, particularly in India, most people have by now heard the name Ishrat Jahan, thanks to the politicians who seem to want to make a circus out of a very serious case. Now what is one to do with what has been stated by Headley. It is not evidence, cannot be used in the 26/11 case, and certainly not in the quadruple murder case. This paper cannot be read in the Ishrat murder case.... the court is simply going to say to you, I don't care who she was. You had her in your custody and you killed her. I'm interested in who killed her.]<sup>xv</sup>*

#### 2. The Two Affidavits Submitted by the UPA Government:

The BJP has whipped up a storm of accusations against the UPA, focusing on the two affidavits submitted by the then Home Minister, the first of which, they claim, stated that she was a terrorist, and the second which they allege was modified under political pressure to declare Ishrat Jahan innocent.

The first affidavit by the Union Home Ministry, submitted on 6<sup>th</sup> August, 2009 quotes news reports that Ghazwa Times, an LeT mouthpiece, had claimed that Ishrat Jahan was a “woman activist of LeT”. Further, it stated that Jamaat-ud-Dawa, another LeT

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mouthpiece, later published an apology to Ishrat Jahan's family for claiming that she was a part of the LeT. On the basis of this, it surmised that Ishrat was "actively associated with the LeT, and apology by the LeT mouthpiece is only tactical to discredit Indian security agencies and police and aimed at misleading the court."<sup>xxvi</sup>

The Home Ministry went on to submit a second affidavit a month later, in which it is stated that the paragraph containing the news items "does not constitute intelligence inputs and the inference drawn in relation thereto have been needlessly misinterpreted."<sup>xxvii</sup>

**It is clear from the first affidavit itself that the information was not based on intelligence inputs, and the second affidavit only seeks to clarify this fact. There is no contradiction or backtracking in the second affidavit.**

Vrinda Grover said, "Now even if this second affidavit had not been filed, any lawyer or judge reading the first affidavit would understand that this is not an intelligence input. But the Gujarat government at the time used this affidavit to create a complete media frenzy, saying that the central government had confirmed that Ishrat Jahan was a LeT operative, as though the counter affidavit was based on some heavy duty intelligence input. But the government never had any real information to that effect, and it clarifies that. The second counter affidavit doesn't really add or detract anything."

However, the government has seized this opportunity to fixate on this as proof of a political vendetta being carried on against the Prime Minister. Home Minister Rajnath Singh declared in Parliament that the Union Home Ministry is conducting a probe into the circumstances that led to the filing of the second affidavit. He accused the UPA of diluting the fact that Ishrat was an LeT operative, and that the two affidavits were a "deep conspiracy to defame the then Gujarat CM Narendra Modi"<sup>xxviii</sup>. He went on to claim that David Headley's statement confirmed the first affidavit filed by the UPA government.<sup>xxix</sup> At a weekly meeting of BJP MPs, Arun Jaitley claimed that the Congress compromised on national security for political gains and caused grave damage to the security apparatus.<sup>xxx</sup> Union Minister Mukhtar Abbas Naqvi stated, "This was the first time a home minister was trying to prove a terrorist as a nationalist. The home minister appeared to be working with the LeT."<sup>xxxi</sup>

Former under-secretary RVS Mani, who filed both affidavits in the Gujarat High Court on behalf of the Home Ministry, recently claimed that he was burned with cigarette butts and hounded by the CBI until he almost wanted to quit.<sup>xxxii</sup> This allegation was denied by SIT member and IPS officer Satish Verma.

Moreover, accused GL Singhal recorded a conversation between himself and the other accused PP Pandey (Additional Director-General of Police, Gujarat) about one Abhichandani, the advocate for RVS Mani, through whom the first affidavit was filed before the High Court. In it, Pandey mentions that "if he does properly, we may try to make him high court judge."<sup>xxxiii</sup>

Former Home Secretary GK Pillai claimed that former Home Minister, P. Chidambaram had himself dictated the Centre's revised affidavit in the Ishrat Jahan case in 2009, in which the references to her alleged Lashkar-e-Taiba links were removed.<sup>xxxiv</sup> Chidambaram rubbished these claims, saying that Pillai was "equally responsible" for the second affidavit. Moreover, he went on to state that the second affidavit was absolutely correct and "clarified what the real intention was".<sup>xxxv</sup>

He also stated that the conclusion drawn from the first affidavit which named Ishrat Jahan as a terrorist and the second affidavit showing that she wasn't a terrorist were not the correct conclusions to be drawn from the two affidavits. "The IB only provides intelligence inputs. Whether a person is a terrorist or not has to be proved in a court of law on the basis of admissible evidence," he said.<sup>xxxvi</sup>

The Supreme Court has agreed to consider a writ petition filed against Mr. Chidambaram that contended that by filing a false affidavit, he committed contempt and perjury. The petition also sought to quash the "false" fake encounter case registered against Gujarat police officers based on this affidavit.<sup>xxxvii</sup>

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### Why Has the Trial Stalled?

The chargesheet in the matter was filed in July 2013, with a supplementary chargesheet being filed in February 2014. 7 Gujarat police officials and 4 Intelligence Bureau officials have been implicated. However, two years later, the trial has still not commenced.

It is safe to say that political interests are standing in the way of proceeding with the trial against the police and IB officers. The BJP seems fixated on declaring Ishrat Jahan a terrorist, even when it has no bearing on the criminal case at hand.

Former Deputy SP Goswami's testimony is admissible in evidence, and would result in summons inevitably being issued to Narendra Modi and Amit Shah as they were implicated in his statement. The Congress has claimed that a "tsunami of misinformation" is deliberately being unleashed by the BJP to prevent the trial from moving forward and Modi and Shah being summoned as accused.<sup>xxxviii</sup> Mr. Chidambaram accused the BJP of ignoring the real issue of a fake encounter killing, which is currently sub-judice.<sup>xxxix</sup>

### Conclusion:

Vrinda Grover asserts that the only issue facing the court is one of custodial murder, rendering the issue of whether Ishrat was linked to the LeT immaterial.<sup>xl</sup>

Unfortunately, the premeditated execution of a young woman by the police in whose custody she was unlawfully detained continues to be ignored. The political din being raised over whether Ishrat Jahan was a terrorist is of little importance. If she was innocent, then those responsible for her death must be held accountable. If she was indeed a terrorist, then she was guaranteed the right to a fair trial in a court of law, and those responsible for her death must still be held accountable. The government's attempt to justify extra-judicial killings in the name of national security is a glorification of nationalistic vigilantism that has no place in a democratic country. The ramifications of this political stance extend beyond this particular case to indicate a deliberate attempt to move away from the rule of law.

Satish Verma, who was a part of the SIT that investigated the matter said, "National security cannot become a defence for the premeditated murder of a 19-year-old girl and be branded it as collateral damage." He continued, "It is very unfortunate that national security was being used as a phrase to condone the extreme illegalities of the most serious crime in the book. It cannot happen. These raise concerns..."<sup>xli</sup>

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