

<http://thehindu.com/fline/fl1912/19121190.htm>

Volume 19 - Issue 12, June 8-21, 2002

India's National Magazine

from the publishers of THE HINDU

GUJARAT

Proof of connivance

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in New Delhi

THE National Human Rights Commission (NHRC) released on May 31 its findings and comments on the situation in Gujarat. In the process the Commission expressed its dissatisfaction with the Gujarat government's response to its earlier interventions regarding the violent acts against the minority Muslim community following the Godhra train carnage of February 27. The NHRC's proceedings, approved unanimously by chairperson Justice J.S. Verma and three members, Justice K. Ramaswamy, Justice Sujata V. Manohar, and Virendra Dayal, throw fresh light on the events surrounding the Godhra tragedy, and its aftermath in Gujarat.

While unravelling these painful events, the NHRC has brought out new evidence, which could help in prosecuting the guilty. The proceedings should also help establish the State government's culpability in the violence, on the basis of credible adverse inferences.

In its preliminary comments released on April 1 (*Frontline*, April 26, 2002), the NHRC had asked the State government whether it had discharged its primary responsibility to protect the rights to life, liberty, equality and dignity of all. In assessing the degree of State responsibility in the failure to protect the rights of the people of Gujarat, the NHRC cited the principle of *res ipsa loquitur* (the affair speaking for itself). The NHRC observed that the responsibility of the state extended not only to the acts of its own agents, but also to those of non-state players within its jurisdiction and to any action that may have caused or facilitated the violation of human rights. It added that unless the State government rebutted the adverse inferences against it the latter would be deemed accountable.

Ironically, the State government could not use the first opportunity provided by the NHRC to rebut any such inferences. In its report submitted to the NHRC on April 12, the State government testified to the fact that an increasing number of people were being killed or injured or compelled to seek shelter in relief camps. It also confirmed the assault on the dignity and worth of the human person, particularly of women and children. This was sufficient for the NHRC to conclude that there was a comprehensive failure on the

part of the State to protect the constitutional rights of the people, starting from the tragedy in Godhra to the violence that ensued. In the NHRC's view, the appointment of K.P.S. Gill as Security Adviser to the Chief Minister of Gujarat, Narendra Modi, implicitly confirmed that the State had failed to bring under control the persisting violation of the rights to life, liberty, equality and dignity of the people.

From the sequence of events, it appears that the Gujarat government could have prevented the Godhra incident had it received in time intelligence about the return of kar sevaks from Ayodhya by the Sabarmati Express. The State government claimed that such intelligence came into its possession only in the wee hours of February 28. This made the NHRC conclude that the inability to establish a two-way flow of intelligence between the Gujarat Intelligence Bureau and the Uttar Pradesh Police about the travel plans of the kar sevaks from Gujarat led to the tragedy. The State government was unable to rebut the presumption that there was a major failure of intelligence.

The failure of intelligence, the NHRC noted, was accompanied by a failure to take appropriate anticipatory measures to prevent the spread and continuation of riots. While examining why some districts were more prone to violence than others after the Godhra tragedy, the NHRC wanted the State government to identify certain local factors as well as players who had allegedly overwhelmed the officials responsible for preventing such violence. The State government evaded a specific reply to this, on the grounds that the matter was covered by the terms of reference of the Commission of Inquiry appointed by it. The NHRC found this response to be lacking in transparency.

It is true that the allegations of violence have to be substantiated in a court of law to get their perpetrators convicted. However, the mere appointment of a Commission of Inquiry does not absolve the State law-and-order agencies from their duty to investigate the crimes on the basis of specific allegations made by the victims.

The NHRC's report was prepared after the visit of its team to Ahmedabad, Vadodara and Godhra from March 19 to 22. It was kept confidential until the State government responded to some of the allegations made in it. The NHRC team, led by Justice J.S. Verma, met many prominent citizens and human rights activists, and the report includes a summary of what was revealed by them.

The report has made some specific allegations: 1. State Home Minister Gordhan Zadafia and Health Minister Ashok Bhatt monitored the progress of the riots from the City Police Control room; 2. Urban Development Minister I.K. Jadeja controlled things from Police Bhawan, Gandhi Nagar; 3. Someone stated that he had seen the Home Minister moving about in the riot-affected areas, displaying the "V" signal; 4. Former Deputy Mayor of Ahmedabad, and Member of the State Assembly Maya Ben Kudnani and Vishwa Hindu Parishad (VHP) leader Dr. Jai Deep Patel were named by a number of victim families from Naroda Patia; 5.

Legislator Usman Bhai alleged that Zadafia was directly monitoring the progress of the attacks on Muslim localities from the office of Home Secretary Ashok Raina; 6. Certain BJP leaders of Vadodara had made provocative speeches on local television, before

violence erupted in the city; 7. Certain members of the police force allegedly played a dubious role in fomenting violence against the minorities (the report names them).

The report reveals the identity of persons who were responsible for ignoring the pleas for help made by former Congress(I) MP Ashan Jaffrey, who along with some members of his family and 39 others were burnt alive in Ahmedabad on February 28. Former Chief Minister Amar Singh Choudhury spoke to the NHRC team about his futile efforts to obtain police protection for Jaffrey. He first contacted the Police Commissioner, P.C. Pande, at 10-30 a.m. and apprised him of the imminent danger to Jaffrey's life. Pande assured Choudhury that police assistance would be despatched quickly. Choudhury reminded Pande again upon receiving another frantic call from Jaffrey. He spoke to the Chief Minister in the afternoon and found him well-informed about the presence of a violent crowd outside Jaffrey's house. Choudhury also spoke to the Chief Secretary and the Home Secretary between 12-30 p.m. and 2 p.m. - all in vain.

In a report to the NHRC on April 24, the Commission's Special Representative in Gujarat, P.G.J. Nampoothiri, observed that almost 90 per cent of those arrested - even for grave offences such as murder and arson - had managed to get bail almost as soon as they were arrested. He also reported that the victims were finding it difficult to record first information reports (FIRs), and to name the guilty. Many persons with political connections, who were named by the victims, defied arrest, he told the Commission. This made the NHRC to emphasise the need to investigate the crimes and prosecute the guilty without any extraneous influence coming into play. Its recommendation to the Centre to refer certain cases to the Central Bureau of Investigation (CBI) - despite the State government's refusal to do so - under Article 355 of the Constitution has to be seen in this context.

The NHRC found that the response of the State government to the security needs of former Judge Justice A.N. Divecha and sitting Judge Justice M.H. Kadri of the Gujarat High Court, was hopelessly inadequate. Justice Divecha's house was burnt down, after he and his family had moved to a safer place. Justice Kadri, the NHRC noted, was compelled to move from house to house because of the pervasive insecurity. And in the case of less prominent Muslims, the NHRC found, the official response to their security needs exposed gross negligence or, as in certain instances, tacit complicity in the violence against them.