

# Such forgetfulness!

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Two years after it came to power, the BJP regime appointed, on May 8, 2000, a Commission of Inquiry (Col) comprising a former judge of the Supreme Court, Justice G.T. Nanavati, to inquire into the **pogrom of Sikhs** after the assassination of Indira Gandhi on October 31, 1984. He gave his report on February 9, 2005. The Terms of Reference (ToR) recalled an earlier inquiry by a sitting judge of the court, Ranganath Misra J. appointed on April 26, 1985; he reported in February 1987. He was asked “to inquire into the allegations in regard to the incidents of organised violence” in Delhi then.

His ToR accepted that there was ‘organised violence’, but the probe was confined to ‘allegations’ against its perpetrators; actual or legally re-sponsible. He cited four dictionaries to prove that they could not have been ‘organised’. The Delhi Sikh Gurdwara Management Committee (DSGMC) presented a list of 19 ‘organisers’ of the carnage at the local level and names of 13 senior leaders. Misra J. plumped for the former; ignored the latter. “The commission takes the phrase ‘organised violence’ in the reference by the government to have been used in that (popular) sense - the riots after spontaneous origin got into channelised methods by gangsters.” Some were “from the lower ranks of the Congress(I) party”.

Officials were blamed, politicians exonerated. Eleven important witnesses were examined behind the back of the counsel for the victims. They included Home Minister P.V. Narasimha Rao. Cross-examination was refused. The Citizens’ Justice Committee, headed by a former CJI, Justice S.M. Sikri, withdrew from the proceedings. The victims, however, were grilled. At least 5,000 troops were available by mid-night on October 31. Who was responsible for not deploying them? Not Rao, but the Lt. Governor of Delhi, P.G. Gavai, and the Police Commissioner, S.C. Tandon, Misra J. held. The report was rightly denounced as a sham.

Nanavati J.’s ToR cited public clamour for another inquiry into all the aspects to cover the police “and those who were in a position to ex-ercise control over them”. But the BJP regime stifled this probe at its birth. It knew how Misra J. had dealt with the big guns and with the aspect of ‘organised violence’. Yet, it consciously omitted the remit which figured in all ToRs since the Madon inquiry into the Bhiwandi riots: “Whether there is any organisation or group... which has fermented communal tension or directly or indirectly provoked these communal disturbances.”

Nanavati J. was asked “to inquire into the causes and course of the criminal violence”- note the omission of ‘organised’ - the sequence of events, lapses on the part of anyone, etc. It speaks poorly for the bona fides of the government which set up the commission that what one para envisaged as a fact-finding body was curtailed by another: “The inquiry by the commission shall be in regard to (a) complaints or allegations that may be made before the commission...”

Fortunately, the mass of affidavits pointed fingers at the ‘higher-ups’, as Nanavati J. calls them. But his highest reach was to Jagdish Tytler. He was served with a notice to reply to charges against him. His reply was “partly received as reply to additional incriminating material sent on April 23, 2004, has not been received”. He cannot complain.

The Akali Dal (Badal) was one of the bodies which were allowed to be represented before the Col on behalf of the Sikhs. The others were the DSGMC and the November 1984 Carnage Justice Committee. But while these two appeared through counsel, the Badal group did not put its money where its mouth was.

A Supreme Court judge is expected to respond to public disquiet about the role of supreme power in times of a supreme wrong. President Zail Singh and Prime Minister Rajiv Gandhi are no more. Happily with us are men who wielded power, unaffected by the trauma the PM underwent, and who should have been asked to speak up. Of them, only Narasimha Rao gave evidence.

Nanavati J. “agrees with the findings” of Misra J. on the politicians – bar the likes of Tytler & Co. - on the officials and on “the delay in calling the army” testifies to the farce. Neither Nanavati J.’s language nor approach is judicial.

Gavai was not among the 197 witnesses examined by the commission. He furnished a detailed ‘explanation’, in writing and untested by cross-examination. He referred at length to the role played by the principal secretary to the PM, P.C. Alexander. We are told, “In reply to the queries raised by the commission, Dr P.C. Alexander has sent a note on the explanation given by Shri P.G. Gavai” in which he contested Gavai’s version. Apparently, his version, like Gavai’s, was not on oath, (i.e. on affidavit).

Neither Gavai nor Alexander was summoned to testify and be cross-examined. The office of the governor is no bar to such a summons. Alexander became member of the Rajya Sabha in July 2002. **His memoirs, published in mid-2004, give a false version of the happenings on October 31, particularly. It is scandalous that a former judge of the highest court in the land, conducting an inquiry into a matter of such sensitivity and gravity, should put on record statements which are not on oath, are untested by cross-examination and deliver findings on important issues based on such material.** The report is liable to be quashed by the courts on this ground alone.

Narasimha Rao got away by prevarication which Nanavati J. was either unable or unwilling to perceive: “He... stated that the home minister was not competent to call the troops.” Sections 130 and 131 of the CrPC enable even an “executive magistrate of the highest rank” to do so. Every home minister, at the Centre or in the states, knows how to get the army deployed. Rao’s evidence flatly contradicted that of men with reputation for integrity.

**Nanavati J. holds that, from the morning of November 1, “What had initially started as an angry outburst became an organised carnage ... but for the backing and help of influential and resourceful persons, killing of Sikhs so swiftly and in large numbers could not have happened.” Who they were he cared not to probe.** He holds, like Misra J. that they were not any “high-ranking Congress leaders” but “local Congress(I) leaders.”

**Arun Nehru is the one man who is uniquely qualified to shed light on the entire affair. He was in the thick of Congress politics and at the very heart of the administration, especially immediately after the death of Indira Gandhi. Why neither judge summoned him to depose is a mystery.**

B.K. Nehru’s memoirs record him as saying that “she had ordered him to get rid of Farooq (Abdullah); this was what he was doing without asking why”. Arun Nehru could get a CM sacked in July 1984 though he himself held no official position, and give orders to those who did. Immediately after Indira Gandhi’s death, Rajiv Gandhi made him minister for internal security. He knew all that was happening. Not surprisingly, Arun Nehru became a member of the BJP. If the government was keen to get at the truth, it should have asked him to testify; under oath and be cross-examined in public hearing.

**Neither the Congress government in 1985 nor the BJP in 2000 was interested in knowing the truth. Nor were the judges they had nominated. Misra J. was made head of NHRC by Rao. With the BJP’s approval in the appointments committee, he became Congress MP. It would be interesting to watch Nanavati J.’s career graph.**

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